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

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70.	**[Shivanya Pandey vs. State of U.P. and others, 2022(1) ADJ 160(LB).] Allahbad High Court**
71.	**[Ram Prakash vs. Deputy Director of Consolidation, Hardoi and others, 2022(3) ADJ 1 (LB)(DB)] (Allahabad High Court)**
72.	**[Om Pal vs. Deputy Director of Consolidation, Muzaffar Nagar and others, 2022(2) ADJ 572] (Allahabad High Court)**

73.	**[Keshav and another vs. D.D.C. Azamgarh and others, 2022(2) ADJ 149] Allahabad High Court**
74.	**[Renu Chaudhary vs. State of U.P. and others, 2022(2) ADJ 14] Allahabad High Court**
75.	**[Suresh Chandra Tewari and others vs. State of U.P. and others, 2022(3) ADJ 586(LB)]**
76.	**[Ram Vilas vs. Commissioner Devi Patan Mandal Gonda and others, 2022(1) ADJ 1(LB)(DB).]**
77.	**[Rinku Singh vs. State of U.P. and others, 2022(2) ADJ 83]**
78.	**.[Saumya Tiwari vs. State of U.P. and other, 2022(1) ADJ 191(Alld.HC).]**
79.	**[Ashiq Abbas Khan (Waqf No. 34-A) vs. U.P. Sunni Central Board of Waqfs, Llucnow and others, 2022(1) ADJ 253(L.B.)] Allahbad High Court**
80.	**[Dulari and others vs. Board of Revenue U.P. at Allahabad and another, 2022(3) ADJ 632] (Allahabad High Court)**
81.	**[Smt. Parvinder Kaur and others vs. Board of Revenue of U.P., Lucknow and others, 2022(2) ADJ 561(LB)] (Allahabad High Court)**

Ss. 35 and 36-B

Thus, under the Advocates Act, a duty is cast upon the Bar Council of India/State Bar Councils to safeguard the integrity of the legal profession. It is duty of the Bar Council of India/respective State Bar Councils to ensure the nobility of the legal system at all costs. The powers to conduct disciplinary proceedings against members of the Bar are provided under Sections 35 and 36B of the Advocates Act. The mandate is to dispose of the complaint received under Section 35 and/or Section 36 within a period of one year from the date of receipt of the said complaint and/or from the date of such proceeding to the Bar Council of India. By not disposing of the complaint within the stipulated time provided under the Act would tantamount to failure on their part to perform the duty cast under the Advocates Act.

We also direct the respective State Bar Councils to decide and dispose of the complaint(s) received by it under Section 35 expeditiously and to conclude the same within a period of one year from the date of receipt of the complaint as mandated under Section 36B of the Advocates Act.

Only in exceptional case and for the reasons to be recorded where it is found that for valid reasons, the proceedings could not be completed within the period stipulated under Section 36B of the Advocates Act, then and then only such proceedings shall stand transferred to the Bar Council of India and on such transfer the Bar Council of India shall also dispose of the such transferred proceedings/complaints within a period of one year from receipt of such transferred proceedings.

Having regard to the aforesaid provisions and bearing in mind the fact that 1273 complaints (minus 27 complaints which are disposed) are pending before the Bar Council of India, it is just and necessary that a mechanism is found for disposal of the said complaints in accordance with the procedure prescribed.

For an efficient and quick disposal of the complaints by the Bar Council of India vis-à-vis those complaints which have been transferred to it as per section 36B of the Act, the Bar Council of India may consider empanelling experienced and seasoned advocates and/or retired judicial officers to act as Inquiry Officers where an inquiry would be necessitated. On such inquiry being concluded the report of the Inquiry Officers could be received by the Bar Council of India. On

consideration of the said inquiry report, the Bar Council of India could pass appropriate orders on the complaint.

The aforesaid suggestion is being made bearing in mind the number of complaints that are pending before Bar Council of India, that is, the transferred complaints which would act as the disciplinary authority on such transfer as it would be highly impossible for the said complaint to be disposed of within a reasonable time if the inquiry is also to be conducted by the Bar Council of India.

Hence the Bar Council of India may issue suitable directions to the State Bar Council to enlist a panel of Inquiry Officers for the purpose of conducting the inquiry on behalf of the Bar Council of India in the respective States itself and on conclusion of the said inquiry to transmit the inquiry report to the Bar Council of India for enabling it to take it further action in the matter.

This would also enable the complainants and the concerned advocates against whom the complaints are made to appear before the Inquiry Officers wherever such an inquiry is instituted in the State where the complaint has been filed. This would also remove the difficulties caused to the parties to travel from various parts of the country to Delhi for appearing before the inquiry, if any, to be conducted on the complaints filed by the complainants.

Further and as directed hereinabove, the Bar Council of India to also issue suitable directions to the State Bar Council to conclude the proceedings from the complaints filed against the advocates within a period of one year since the intention of the Parliament appears to be to decide on the said complaint within the said period which is a reasonable period. The object and purpose of section 36B of the Act is not to encourage delay in the disposal of the complaint so as to enable the complaints to be transferred to the Bar Council of India by operation of law and thereby increase the burden on the All India body and at the same time create a leeway for the State Bar Council to not act on the complaints and to simply wait for the passage of time so that by operation of law the said complaint would stand transferred to the Bar Council of India.

In fact, section 36B of the Act mandates that there should be no tardiness by the State Bar Council in completion of the proceedings on the complaints received by them within a period of one year as stated in the said provision. When the number of complaints transferred from the State Bar Councils to Bar Council of India is noted from the aforesaid statistics, it implies that the States Bar Council have not been discharging their duties by not disposing the complaints within a period of one year as provided under section 36B of the Act.

Further in order to enable the State Bar Council to dispose of the complaints within a period of one year as provided under section 36B of the Act, it is incumbent for the respective disciplinary committees of the State Bar Councils meet on a regular basis.

The State Bar Council could also enlist a panel of Inquiry Officers who could be entrusted with the conduct of the inquiry as and when the same is necessitated on a complaint.

The disciplinary committee of the State Bar Council on consideration of the said inquiry report may pass orders in accordance with the provision of section 35 of the Act.

We are constrained to issue the aforesaid directions and suggestions having regard to the observations of this Court which are extracted as under:-

> (i) "The Bar Councils are enjoined with the duty to act as sentinels of professional conduct and must ensure that the dignity and purity of the profession are in no way undermined. Its job is to uphold the standards of professional conduct and etiquette. Thus every State Bar Council and the Bar Council of India has a public duty to perform, namely, to ensure that the monopoly of practice granted under the Act is not misused or abused by a person who is enrolled as an advocate. The Bar Councils have been created at the State level as well as the Central level not only to protect the rights, interests and privileges of its members but also to protect the litigating public by ensuring that high and noble traditions are maintained so that the purity and dignity of the profession are not jeopardized." **Indian council of Legal Aid and Advice v. Bar Council of India, (1995) 1 SCC 732**

> (ii) "The interest of the Bar Council is to uphold standards of professional conduct and etiquette in the profession, which is founded upon integrity and mutual trust. The Bar Council acts as the custodian of the high traditions of the noble profession." **Bar Council of Maharashtra v. M.V. Dabholkar, (1975) 2 SCC 702**

> (iii) "Every Bar Council is a body corporate. The functions of the State Bar Council are inter alia to admit persons as advocated, on its roll; to prepare and maintain such roll; to entertain and determine cases of

misconduct against advocates on its roll; to safeguard the rights, privileges and interest of advocates on its roll. The functions of the Bar Council of India are to lay down standards of professional conduct and etiquette for advocates, to lay down the procedure to be followed by the Disciplinary Committee of the Bar Council of India and the Disciplinary Committees of the State Bar Councils, to safeguard the rights, privileges and interests of advocates. A Bar Council is empowered under the Act to constitute one or more Disciplinary Committees." **Adi Pherozshah Gandhi vs. H.M. Seervai, Advocate General of Maharashtra, (1970) 2 SCC 484**

(iv) "The Bar Council has a very important part to play, first, in the reception of complaints, second, in forming reasonable belief of guilt of professional or other misconduct and finally in making reference of the case to its Disciplinary Committee." **Bar Council of Maharashtra v. M.V. Dabholkar, (1975) 2 SCC 702; K.Anjinappa vs. K.C. Krishna Reddy and another, 2022(1) ADJ 169(SC).**

Arbitration and Conciliation Act, 1996

Ss. 9 & 17: Application for grant of interim relief before Court, under S. 9, post constitution of Arbitral Tribunal - Entertain ability of Deviation from the general principle of refusing such remedy. Applications filed prior to constitution of Arbitral Tribunal - When may be adjudicated even post constitution of Arbitral Tribunal despite the remedy before Tribunal being efficacious.

Unnecessary delay or expense frustrates the very purpose of arbitration. Section 9(1) of the A&C Act, 1996, as amended, enables a party to an arbitration agreement to apply to a court for interim measures of protection before or during the arbitral proceedings, or at any time after an award is made and published, but before the award is enforced in accordance with Section 36 of the A&C Act, 1996.

A civil court of competent jurisdiction has the jurisdiction to admit, entertain and decide an application under Section 9(1) of the A&C Act, 1996, any time before the final arbitral award is enforced in accordance with Section 36 of the A&C Act, 1996.

However, sub-section (3) of Section 9 of the A&C Act, 1996, provides that once an Arbitral Tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render, the remedy provided under Section 17 efficacious.

The bar of Section 9(3) operates after an Arbitral Tribunal is constituted. There can, therefore, be no question of usurpation of jurisdiction of the Arbitral Tribunal under Section 17 before the Arbitral Tribunal is constituted. The Court is obliged to exercise power under Section 9 of the A&C Act, 1996, if the Arbitral Tribunal is yet to be constituted. Whether the Court grants interim relief or not is a different issue, for that would depend on the facts of the case-whether the applicant has made out a good prima facie case, whether the balance of convenience is in favour of relief being granted to the applicant, whether the applicant would suffer irreparable injury by refusal of interim relief, etc. **Arcelor Mittal Nippon Steel India Limited v. Essar Bulk Terminal Limited, (2022) 1 SCC 712**

Ss. 16, 5 & 34: Jurisdiction of arbitrator - Interference under Arts. 226/227 of the Constitution by High Court with arbitral process is not permissible except in exceptionally rare circumstances. Discretion under Articles 226/227 of the Constitution cannot be exercised to allow judicial interference beyond procedure established under the A&C Act, 1996.

It is therefore, prudent for a Judge not to exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" is shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient. **Bhaven Construction through authorized signatory Premjibhai K. Shah v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and another, (2022) 1 SCC 75**

S. 17 r/w Ss. 2(a), (b), (c), (d), 2(6), 2(8), 6, 9, 19 and 21 - Emergency arbitration proceedings with juridical seat in India, under governing institutional rules

Definition of "Arbitral Tribunal" contained in S. 2(1)(d) - Not constrictive so as to apply only to an Arbitral Tribunal that can give final reliefs by way of interim or final award - Objective of de-clogging court system and giving timely reliefs is the objectives behind introduction of Ss. 9(2) and 9(3) and amendment of S. 17.

Arbitration and Conciliation Act, 1996- - Ss. 17(2) and 37 - Appeal under CPC [i.e. Or. 43 R. 1(r) CPC] against an order for enforcement of award passed under S. 17(2) of the A&C Act i.e. when such remedy is not provided for under S. 37 of the A&C Act - Non-maintainability of-Legal fiction under S. 17(2) - Limits of

Sections 37 & 17 (2) of Arbitration and Conciliation Act, 1996: Remedy of appeal against an order for enforcement of award passed under S. 17(2). A literal reading of S. 17 would show that the grant or non-grant of interim measures under

S. 37(2)(b) refers only to S. 17(1) of the A&C Act, 1996. Thus, enforcement proceedings are not covered by the appeal provision.

Or. 39 Rr. 1, 2 and 2-A - Contempt of court, and, enforcement of orders of courts distinguished - Or. 39 2-A whether requires "mere disobedience" or the contempt of court standard of "willful disobedience." It is one thing to say that the power exercised by a court under Or. 39 R. 2-A is punitive in nature and akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. It is quite another thing to say that Or. 39 R. 2-A requires not "mere disobedience" but "willful disobedience". **Amazon.com NV Investment Holdings LLC v. Future Retail Limited and others, (2022) 1SCC 209**

Ss. 31(7) (a), 28 and 34 - Award of interest - Arbitrator cannot award interest contrary to the terms of the agreement/contract between the parties. Bar under specific clause of the contract/agreement that no interest would be payable upon earnest money or security deposit or amounts payable to contractor under contract. Held, in such a case, Arbitral Tribunal independently of the contract and on equitable grounds and/or to do justice, cannot award interest pendent lite or future interest. **Union of India v. Manraj Enterprises, (2022) 2 SCC 331**

S. 34: Award in excess of claim-Non-establishment of-Reserving of right to furnish further details of expenditure.

Arbitrator exceeding scope of reference-Non-establishment of-Date of invocation of arbitration clause/appointment of arbitrator/entering into reference.

Award being contrary to contract/re-writing of contract by arbitrator. Non establishment of Appellant contended that by awarding Rs 45,000 per km per month the arbitrator had rewritten the contract with respect to the amount payable. **State of Haryana v. Shiv Shankar Construction Company and another, (2022) 3 SCC 109**

Ss. 34 & 28 (3): **Setting aside of award on ground of patent illegality. What constitutes "patent illegality"? When arbitrator fails to decide matter in accordance with terms of contract governing parties.**

Held, it will attract "patent illegality ground" as it amounts to gross contravention of S. 28(3).

Failure on the part of the sole arbitrator to decide in accordance with the terms of the contract governing the parties, would certainly attract the "patent illegality ground", as the said oversight amounts to gross contravention of Section 28(3) of the 1996 Act, that enjoins the Arbitral Tribunal to take into account the terms of the contract while making an award. The said "patent illegality" is not only apparent on the face of the award; it goes to the very root of the matter and

deserves interference. Accordingly, the appeal was partly allowed and the impugned award, insofar as it has permitted deduction of "supervision charges" recovered from the respondent Company by the appellant State as a part of the expenditure incurred by it while calculating the price of the Sal seeds, is quashed and set aside, being in direct conflict with the terms of the contract governing the parties and the relevant circular. **State of Chhattisgarh and another v. Sal Udyog Private Limited, (2022) 2 SCC 275**

Ss. 37 and 34

It has been held in an appeal under S. 37, Court cannot enter into merits of claim As per settled position of law, an award can be set aside under Ss. 34/37, only if award is found to be contrary to: (a) fundamental policy of Indian law; or (b) interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions, held, were attracted in present case. **Haryana Tourism Limited v. Kandhari Beverages Limited, (2022) 3 SCC 237.**

Ss. 44 to 48 of Arbitration and Conciliation Act, 1996: Awarding of tort claims in a foreign arbitration award. It has been held that tort claims may be decided by an arbitrator provided they are disputes that arise in connection with the agreement. Also, claims in tort may be so intimately connected with a contract that a clause of appropriate width designed primarily to make contractual disputes arbitrable will nevertheless render such claims in tort arbitrable as well. **Gemini Bay Transcription Private Limited v. Integrated Sales Service Limited and another, (2022) 1 SCC 753**

Civil Procedure Code, 1908

S. 11 - Plea of res judicata is a restraint on the right of a plaintiff to have an adjudication of his claim-Rule of res judicata is founded on considerations of public policy that finality should be attached to the binding decisions pronounced by the Courts of competent jurisdiction. In view of section 11, explanation IV, CPC, applicants (respondents) might and ought to have made grounds of defence in the former suit to claim possession of the land measuring 7128.5 sq. yards – Consequence would be that failure to raise such defence or counter claim would be deemed to be constructive res judicata in terms of Explanation IV of Section11 CPC – For res judicata to apply, the matter in the former suit must have been alleged by one party and either denied or admitted, expressly or impliedly by the other - Since the issue in the suit was restricted to 4971.5 sq. yards, the decree would be binding to that extent only-Issue cannot be said to be barred by constructive res judicata as per Explanation IV as it applies to the plaintiff in a later suit-Appellants have denied the claim of the plaintiffs in the first suit to the extent that it was the subject matter of that suit alone - Therefore,

the decree in the first suit will not operate as res judicata in the subsequent matters – Appeal is allowed. **Union of India and another v. S. Narasimhulu Naidu (D) through L.Rs. and other, 2022 (154) RD 377 –(SC)**

S. 11 -"The best method" to decide the question of res judicata is first to determine the case of the parties as they are put forward in their respective pleadings of their previous suits, and then to find out as to what had been decided by the judgments which operate as res judicata – High Court has committed an error in applying the principle of res judicata based on the judgment in the second suit – It was observed by High Court that the second suit that was decreed in terms of the compromise was intended to put the litigation to an end and would thus bar any subsequent suit on the title to the suit property by virtue of the principle of res judicata – Appeal is allowed.

In view of the discussion above, we summarise our 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 alternation 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;

(ii) While deciding on a scheme for administration in a representative suit filed under section 92 of the CPC the Court may, if they title is contested, have to decide if the property in respect of which the scheme for administration and management is sought belongs to the Trust;

(iii) A suit under section 92, CPC is of a representative character and all persons interested in the Trust would be bound by the judgment in the suit, and persons interested would be barred by the principle of res judicata from instituting a subsequent suit on the same or substantially the same issue;

(iv) Since the first suit (O.S. No. 92 of 1950-51) was filed by members interested in the Kamia Masjid and the suit out of which the instant proceedings arise (O.S. N. 149 of 1998) was filed by the President of Jamia Masjid, the formulation in (iii) above is satisfied;

(v) There was no adjudication in the first suit (O.S. No. 92 of 1950-51) on whether Abdul Khuddus had absolute title to the suit property. There was only a prima facie determination that Items 2 and 3 of the schedule of properties to the first suit belonged to Abdul Khuddus. The matters substantially in issue in O.S. No. 92 of 1950-51, which was suit for administration and management of trust properties and for accounts, are

distinct from the issues in the suit out of which the instant proceedings arise. Therefore, O.S. No. 149 of 1998 is not barred by res judicata in view of the decision in the first suit;

(vi) While a compromise decree in a prior suit will not bar a subsequent suit by virtue of res judicata, the subsequent suit could be barred by estoppel by conduct. However, neither the compromise petition dated 27 October 1969 nor the final decree in the second suit dated 27 October 1969 indicate that a compromise on the title to the suit property was arrived at. The compromise was restricted to the issue of the erstwhile lessee handing over possession of the suit property at the end of the lease; and

The third suit (O.S. No. 100/1983) was sit for an injunction simpliciter. The third suit was withdrawn after the suit out of which the instant proceeding arises was filed for seeking a substantive declaration and an injunction. No adjudication on the rights of the parties was made in the third suit. **Namia Masjid v. K.V. Rudrappa (Since Dead) by L.Rs. and others, 2022 (154) RD 595- SC**

O.1, R.8—Suit filed in representative capacity—Salient features of O.1, R. 8 of CPC—Discussed -While discussing salient feature of order 1 rule 8 court

The Explanation under Order I Rule 8 is of significance. It distinguishes persons having the same interest in one suit from persons having the same cause of action. To establish sameness of interest, it is not necessary to establish sameness of the cause of action.

The Explanation under Order I Rule 8, is a necessary concomitant of the provisions of the Rules 1 and 3 of Order I. Order I Rule 1, CPC, allows many persons to join in one suit as plaintiffs. Order I, Rule 3 allows many persons to be joined in one suit as defendants. But to fall under Order I Rule 1 or Order I Rule 3, the right to relief should arise out of or be in respect of the same act or transaction allegedly existing in such persons, jointly, severally or in the alternative. To some extent, Rules 1 and 3 of Order I are founded upon the sameness of the cause of action. This is why the Explanation under Order I Rule 8 distinguishes sameness of interest from the sameness of the cause of action. **Brigade Enterprises Ltd. Vs. Anil Kumar Virmani, AIR 2022 SC 119**

O.V, R.9(5) and O.IX, R.13 – Respondent No. 2 herein filed a suit in the Court of Civil Judge (Junior Division), for recovery of money along with interest submitting inter alia that the defendant in the suit i.e. respondent No. 1 - On 16.9.1997 an ex parte decree was passed.

In the application filed by respondent No. 2 seeking execution of property admeasuring 0.93 acres was sought to be attached – Later, the property was attached vide order dated 4.12.1999 – On 16.12.2000 the property was put to auction in which the present appellant was the highest bidder – In accordance with

the prescribed procedure, 1/4th of the amount was deposited by appellant – On 19.12.2000 respondent No. 1, for the first time, appeared before the Court and filed an application under Order IX, Rule 13 of Code of Civil Procedure praying that the ex parte decree dated 16.9.1997 be set aside – Application dismissed – Appeal against, allowed by High Court – Recall application against order of High Court dismissed – Observing that after the order dated 21.4.2006 passed by the High Court – Appeals against – Held, notice was served upon respondent No. 1 which was duly acknowledged by him by putting signature on the copy of the notice – Despite such knowledge, respondent No. 1 allowed the property to be put to auction in the month of December, 2000 - It was only after the auction was so undertaken, that he preferred the application under Order IX, Rule 13 of the Code – Fact that the auction was allowed to be undertaken, respondent No. 1 was disentitled from claiming any relief as was prayed for – Further, after completion of proceedings in auction, sale certificate was also issued in favour of the appellant – Appeals are allowed.

Even after the passing of the ex parte decree, the report filed by the process server on 4.4.2000 clearly indicated that notice was served upon respondent No. 1 which was duly acknowledged by him by putting signature on the copy of the notice. Despite such knowledge, respondent No. 1 allowed the property to be put to auction in the month of December, 2000. It was only after the auction was so undertaken, that he preferred the application under Order IX, Rule 13 of the Code. The High Court, therefore, rightly observed in its order dated 21.4.2006 that respondent No. 1 was not vigilant. Yet, the High Court proceeded to grant relief in favour of respondent No. 1.

In the light of the feature indicated above and the fact that the auction was allowed to be undertaken, respondent No. 1 was disentitled from claiming any relief as was prayed for. Further, after completion of proceedings in auction, sale certificate was also issued in favour of the appellant.

We, therefore, allow these appeals, set aside the orders dated 21.4.2006 and 18.10.2019 passed by the High Court and dismiss the application preferred by respondent No. 1 under Order IX, Rule 13 of the Code, No costs. Appeals allowed.
Vishwabandhu v. Sri Krishna and another, 2022 (154) RD 571 – SC

O.7, R. 11(d), O.23, R. 3A, O. 32, R.7—Rejection of plaint—Barred by law—Plaintiff filed suit challenging compromise decree

The Trial Court rejected the plaint of O.S. No.537 of 2018 in exercise of powers under Order VII Rule 11 CPC on the ground that an independent suit challenging the Compromise Decree would be barred in view of Order XXIII Rule 3A CPC. On plain reading of Order XXIII Rule 3A CPC, the Trial Court was justified in rejecting the plaint. Order XXIII Rule 3A CPC, which has been inserted by amendment in 1976.

In *Triloki Nath Singh* v. *Anirudh Singh*, (2020) 6 SCC 629, this Court referring to earlier judgments reiterated the same proposition i.e. the only remedy available to a party to a consent decree to avoid such consent decree is to approach the court which recorded the compromise and separate suit is not maintainable. In paras 17 and 18, the following has been laid down: (SCC p. 638)

"*17*. By introducing the amendment to the Civil Procedure Code (Amendment) Act, 1976 w.e.f. 1-2-1977, the legislature has brought into force Order 23 Rule 3-A, which creates bar to institute the suit to set aside a decree on the ground that the compromise on which decree is based was not lawful. The purpose of effecting a compromise between the parties is to put an end to the various disputes pending before the court of competent jurisdiction once and for all.

18. Finality of decisions is an underlying principle of all adjudicating forums. Thus, creation of further litigation should never be the basis of a compromise between the parties. Rule 3-A Order 23 CPC put a specific bar that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The scheme of Order 23 Rule 3 CPC is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and a voluntary act on the part of the parties. The court can be instrumental in having an agreed compromise effected and finality attached to the same. The court should never be party to imposition of a compromise upon an unwilling party, still open to be questioned on an application under the proviso to Order 23 Rule 3 CPC before the court."

That thereafter it is specifically observed and held that a party to a consent decree based on a compromise to challenge the compromise decree on the ground that the decree was not lawful i.e., it was void or voidable has to approach the same court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable.

In view of the above decisions of this Court, the Trial Court was absolutely justified in rejecting the plaint on the ground that the suit for the reliefs sought challenging the Compromise Decree would not be maintainable.

Now, so far as the submission on behalf of the plaintiff that in the suit the plaintiff has not specifically prayed for setting aside the Compromise Decree and what is prayed is to declare that the Compromise Decree is not binding on him and that for the other reliefs sought, the suit would not be barred and still the suit would be maintainable is concerned, the aforesaid cannot be accepted.

As held by this Court in a catena of decisions right from 1977 that a mere clever drafting would not permit the plaintiff to make the suit maintainable which otherwise would not be maintainable and/or barred by law. It has been consistently held by this Court that if clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.

In the case of T. Arivandandam Vs. T.V. Satyapal, (1977) 4 SCC 467, it is observed and held as under:-

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits."

In the case of Ram Singh v. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364, this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation. **M/s. Raja Pushpa Properties Pvt. Ltd. vs. N. Sailesh Prasad, AIR 2022 SC 1031**

O.8, R.1, 10 & O.55, R.1—Commercial Courts Act, S. 16—Written statement— Delay in filing

In the wake of outbreak of COVID-19 pandemic, exclusion of period of pandemic, special and extraordinary measures were provided by Supreme Court for advancing cause of justice in the wake of challenges thrown by pandemic. Its applicability cannot be denied in filing written statement. **Prakash Corporates vs. Dee Vee Projects Ltd., AIR 2022 SC 946**

Restoration of suit rejected on ground of filing vakalatnama without having signature of advocate

Order for restoration set aside by revisional court on the ground that Vakalatnama was signed only by the plaintiffs and not by Advocate, therefore Advocate was not properly appointed and it is an error which cannot be corrected. Mere defect in filing of power by not signing the same by counsel is not a defect which cannot be cured. Order passed by revisional court set aside. **Saeeda Ashraf vs. V Addl. District Judge Faizabad, AIR 2022 All 67**

O. 21 R.16 - Explanation and S.47 and 146: Transferee of rights in the property, which is the subject-matter of the suit, held, can obtain execution of a decree without separate assignment of decree. The objective is to avoid multifarious

proceedings to determine the issue of assignment. Thus, the issue of assignment can be determined in the execution proceedings itself.

The Law Commission recommended amending Order 21 Rule 16 CPC to clarify that it does not affect the provisions of Section 146 CPC and that a transferee of rights in the subject-matter of the suit can obtain execution of a decree without separate assignment of the decree. The objective appears to be to not have multifarious proceedings to determine the issue of assignment, but to determine the issue of assignment in the execution proceedings itself. Objective of amending Order 21 Rule 16 CPC by adding the Explanation was to deal with the scenario as exists in the present case, to avoid separate suit proceedings being filed there from and to that extent removing the distinction between an assignment pre decree and an assignment post the decree. The Explanation added to Order 21 Rule 16 CPC in 1976 clearly stipulates that nothing in Order 21 Rule 16 CPC would affect the provisions of Section 146 CPC and the transferee of the right in property which is subject-matter of a suit may apply for execution of the decree without separate assignment of the decree as required by law. No doubt the appellants are not parties in the suit proceedings but they claim as assignees of the decree-holder. In light of the legal position as above, their execution application could not have been rejected at the threshold. The matter is remanded to the executing court to determine it on merits in accordance with law. **Vaishno Devi Construction Represented through Sole Proprietor (Dead) through Legal Representatives and another v. Union of India and others, (2022) 2 SCC 290**

O. 37, R. 3-- Summary suit—Maintainability of prayer for leave to defend

In Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36] , following direction were issued-

17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into

court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.
17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.
17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court."

Thus, it could be seen that in the case of substantial defence, the defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the defendant or genuineness of the triable issues as also the probability of defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or payment or furnishing security. Thus, even in such cases of doubts or reservations, denial of leave to defend is not the rule; but appropriate conditions may be imposed while granting the leave. It is only in the case where the defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the Court's view that the defence is frivolous or vexatious that the leave to defend is to be refused and the plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the plaintiff is admitted by the defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the defendant in the Court.

Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and the Court finds the defence to be frivolous or vexatious. **B.L. Kashyap and Sons Ltd. vs. M/s. JMS Steels and Power Corporation, AIR 2022 SC 785: (2022) 3 SCC 297**

O.41, R.31-First appeal - Reasons to be assigned for decision by first appellate court - Mandatory requirement of compliance with Or. 41 R. 31- First

appellate court, is mandatorily required to comply with requirements of Or. 41 R. 31 and non-observance of these requirements lead to infirmity in judgment.

Appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. First appeal is a valuable right, and, at that stage, all questions of fact and law decided by trial court are open for reconsideration. Judgment of appellate court must, therefore, reflect conscious application of mind and must record court's findings, supported by reasons for its decision in respect of all issues, along with contentions put forth and pressed by parties. **Manjula and others v. Shyamsundar and others, (2022) 3 SCC 90**

Constitution of India

Art. 21 of Constitution of India: "Personal liberty"-Speedy trial, under trials cannot be detained indefinitely pending trial -Courts when obligated to enlarge them on bail. Terrorism and Organized Crime - Unlawful Activities (Prevention) Act, 1967- Ss. 43-D(5), 18 and 20 - Entitlement to bail - Matters to be considered - Seriousness of charges, incarceration already suffered by accused, period within which trial likely to be concluded, age of accused.

Terrorism and Organized Crime National Investigation Agency Act, 2008 - Ss. 11, 13, 14, 19 and 22 Requirement of designating one or more Courts of Session as Special Courts for trial of Scheduled Offences, under scheme of the NIA Act, 2008 - In instant case, only one Special Court was designated by State to try cases under 2008 Act. In such given circumstances, appropriate directions issued by Supreme Court.

It is clearly demonstrated from the instant case that after the charge sheet came to be filed in the year 2012, charges have been framed in June 2019 and looking to the voluminous record and number of the prosecution witnesses which are to be examined, it may take its own time to conclude and indeed the under trial prisoner cannot be detained for such a long period of incarceration. The correspondence which has taken place between the Central Government and the State of West Bengal from time to time is placed for our perusal but nothing elicits from the record.

In the given circumstances, it is appropriate to direct that the State of West Bengal shall take up the issue and designate more dedicated Courts of Session as Special Courts for the trial of offences specified in the Schedule appended to the 2008 Act. At the same time, the Central Government may also, in consultation with the Chief Justice of the High Court, Calcutta may exercise its power and take up the issue at the earliest so that such trials which are pending under the 2008 Act may go ahead speedily and the mandate, as intended by the legislature in its

wisdom, reflected from Section 19 of the Act, is being complied with in its letter and spirit.

We accordingly direct that the appellant-accused be produced before the trial court within three days and shall be released on post-arrest bail by the learned trial court. We also make it clear that the learned trial court will be at liberty to consider and impose appropriate conditions subject to which the appellant-accused will be released on bail so as to ensure that the appellant accused is available for trial in terms of the present order. **Ashim alias Aim Kumar Haranath Bhattacharya alias Asim Harinath Bhattacharya alias Aseem Kumar Bhattacharya v. National Investigation Agency (2022) 1 SCC 695**

Art. 21 of the Constitution of India & Ss. 101-103, 112, 50, 32(5) & 114 of the Indian Evidence Act: Right to privacy of person whose DNA test is sought. Balancing rights of person seeking to establish or dispute identity/relationship based on DNA test. Person whether can be compelled to undergo DNA test against their will. Discretion of court in directing DNA test. Test of eminent need and test of proportionality: Presumption of legitimacy of child under Indian law can only be displaced by strong preponderance of evidence, and not merely by balance of probabilities.

It has been held that in circumstances where other evidence is available to prove or dispute the relationship, held, court should ordinarily refrain from ordering blood tests like DNA test, against the will of the party who is to be subjected to such test - It is the burden on a litigating party to prove his case adducing evidence in support of his plea and court cannot compel the party to prove his case in the manner suggested by the contesting party, subject to drawing of adverse inference if so warranted in the facts of the case

Section 112 of the Evidence Act, 1872: Presumption as to legitimacy of child cannot be lightly repelled and said presumption can only be displaced by strong preponderance of evidence, and not merely by balance of probabilities. **Ashok Kumar v. Raj Gupta and others, (2022) 1 SCC 20.**

Art.136

The Hon’ble Supreme Court referred to the principles governing the interference by this Court in a criminal appeal by a special leave have been laid down by this Court in Dalbir Kaur v. State of Punjab, (1976) 4 SCC 158.

The Hon’ble Supreme Court observed that in a criminal appeal by special leave, this Court at the hearing examines the evidence and the judgment of the High Court with the limited purpose of determining whether or not the High Court has followed the principles enunciated above. Where the Court finds that the High Court has committed no violation of the various principles laid down by this Court

and has made a correct approach and has not ignored or overlooked striking features in the evidence which demolish the prosecution case, the findings of fact arrived at by the High Court on an appreciation of the evidence in the circumstances of the case would not be disturbed.

It is well settled that the evidence of prosecution witnesses cannot be rejected in toto merely because the prosecution chose to treat them as hostile and cross examined them. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of testimony which he finds to be creditworthy and act upon it.

Right to testify in Courts in a free and fair manner without any pressure and threat whatsoever is under serious attack today. If one is unable to testify in Courts due to threats or other pressures, then it is a clear violation of Article 19 (1) (a) and Article 21 of the Constitution. **Hari vs. State of U.P., 2022 (188) ACC 924**

Art. 226: Interference with quantum of punishment imposed by disciplinary authority. Substitution of penalty of removal from service, with confinement from 1.00 p.m. to 10.00 p.m. in quarter-guard jail and direction to reinstate respondent with all consequential benefits, dehors S. 11(1) of the CRPF Act, 1949.

Armed Forces Central Reserve Police Force Act, 1949 - S. 11 Words "in lieu of, or in addition to, suspension or dismissal" occurring therein – Connotation. Removal and dismissal stand on same footing and both terminate employer-employee relationship. However, only difference between them is that "dismissal" precludes employee from seeking future employment in government service, while "removal" entails no such disqualification.

"Removal", "Dismissal" considered as major penalties under R. 11 of the 1965 Rules which can be imposed against employees in civil services for proved misconduct, while they are considered minor punishment under S. 11(1) of the 1949 Act applicable to members of Force. **Union of India and others v. Ex. Constable Ram Karan, (2022) 1 SCC 373**

Consumer Protection Act, 1986

S. 2(1)(g)—Medical negligence

Mere non-availability of emergency operation theatre during period when surgeries were being performed on other patients is not valid ground to hold Hospital negligent in any manner. **Syad Akbar v. State of Karnataka, (1980) 1 SCC 30 and Jacob Mathew v. State of Punjab and Anr. discussed**; **Bombay Hospital and Medical Research Centre vs. Asha Jaiswal, AIR 2022 SC 204.**

General Clauses Act, 1897-Ss. 6(c) and (e) - Plain consequence of clauses (c) and (e), when read together in the present case re proceedings pending under the Act after its repeal by the 2019 Act, is twofold: (i) the right which has accrued on the date of the institution of the consumer complaint under the 1986 Act is preserved; and (ii) the enforcement of the right through the instrument of a legal proceeding or remedy will not be affected by the repeal. **Neena Aneja and another v. Jai Prakash Associates Limited, (2022) 2 SCC 161.**

Contract Act

Performance of Contract: Time whether of the essence of the contract - Determination of Matters to be considered-Mere existence of an explicit clause stipulating that time is of the essence of the contract. Entirety of contract and conduct of parties - Relevance of Contract containing provision for extension of time/payment of penalty on default. Arbitration award on the issue of time not being of the essence of the contract, and that there was no breach of contract. Non-interference with, the same being a plausible view.

Contract and Specific Relief-Remedies for Breach of Contract - Award of damages in case of non-timely completion of contractual obligation. **Welspun Specialty Solutions Limited v. Oil and Natural Gas Corporation Limited, (2022) 2 SCC 382**

Copyright Rules, 2013

Copyright Rules, 2013-R. 29(4) - Judicial re-drafting of R. 29(4) of the 2013 Rules, and that too at the interlocutory stage.

The court is entrusted by the Constitution of the power of judicial review. In the discharge of its mandate, the court may evaluate the validity of legislation or rules made under it. A statute may be invalidated if it is ultra vires constitutional guarantees or transgresses the legislative domain entrusted to the enacting legislature. Delegated legislation can, if it results in a constitutional infraction or is contrary to the ambit of the enacting statute be invalidated. However, the court in the exercise of judicial review cannot supplant the terms of the provision through

judicial interpretation by rewriting statutory language. Draftsmanship is a function entrusted to the legislature. Craftsmanship on the judicial side cannot transgress into the legislative domain rewriting the words of a statute. For then, the judicial craft enters the forbidden domain of a legislative draft. **Saregama India Limited v. Next Radio Limited and others, (2022) 1 SCC 701**

Criminal Procedure Code

S. 154 - Preliminary Inquiry in cases of Corruption cases

Hon'ble Apex Court held that it is not mandatory before registration of FIR under Cr.P.C. that preliminary inquiry is not required. It was also held that preliminary inquiry before registration of FIR is even not required under Prevention of Corruption Act or CBI Manual. In case information is received by CBI through a complaint or a source, information discloses commission of cognizable offence it can directly register a regular case instead of conduction a preliminary inquiry. It was also held that said formulation does not take away from the value of conducting a preliminary inquiry in an appropriate case. It was also held while discussing on the issue of quashing of FIR in the case under Prevention of Corruption Act that High Court while quashing FIR conducted a mini trial to absolve accused persons. Thus, the order of High Court quashing FIR, was set aside. **Central Bureau of Investigation (CBI) and another v. Thommandru Hannah Vijayalakshmi alias T.H. Vijayalakshmi and another, 2022 Cri.L.J. 168 : AIR Online 2021 SC 869.**

S. 167(2)—Statutory bail—Grant of—Offence of fraud, cheating and criminal breach of trust by Company Directors

The indefeasible right of an accused to seek statutory bail under Section 167(2), CrPC arises only if the charge-sheet has not been filed before the expiry of the statutory period. Non-filing of the charge-sheet within the statutory period is the ground for availing the indefeasible right to claim bail under Section 167(2), CrPC. The conundrum relating to the custody of the accused after the expiry of 60 days has also been dealt with by this Court in Bhikamchand Jain (supra). It was made clear that the accused remains in custody of the Magistrate till cognizance is taken by the relevant court. **Serious Fraud Investigation Office vs. Rahul Modi, AIR 2022 SC 902**

Ss. 170, 41, 41-A, 41-B, 41-C, 41-D, 42, 438 and 468 - Arrest of the accused prior to taking charge-sheet on record. Held, not mandatory as per S. 170 - Hence, anticipatory bail cannot be denied solely on the ground that as police were ready to file charge-sheet - It was mandatory to arrest appellant-accused, and thus anticipatory bail could not be granted. S. 170 does not impose an

obligation on police to arrest each and every accused at the time of filing of the charge-sheet and, therefore, if the IO does not believe that the accused will abscond or disobey summons he/she need not be produced in custody.

Anticipatory bail, held, cannot be denied solely on ground that as police were ready to file charge-sheet, it was mandatory to arrest accused under S. 170 and thus anticipatory bail could not be granted.

The word "custody" appearing in Section 170 CrPC does not contemplate either police or judicial custody. It merely connotes the presentation of accused by the investigating officer before the court at the time of filing of the charge-sheet where after the role of the court starts. Had it not been so the investigating officer would not have been vested with powers to release a person on bail in a bailable offence after finding that there was sufficient evidence to put the accused on trial and it would have been obligatory upon him to produce such an accused in custody before the Magistrate for being released on bail by the court.

In case the police/investigating officer thinks it unnecessary to present the accused in custody for the reason that the accused would neither abscond nor would disobey the summons as he has been cooperating in investigation and investigation can be completed without arresting him, the IO is not obliged to produce such an accused in custody.

In the normal and ordinary course, the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of cooperation is provided by the accused to the investigating officer in completing the investigation. It is only in cases of utmost necessity, where the investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapon of offence or for eliciting some information or clue as to his accomplices or any circumstantial evidence, that his arrest may be necessary. Such an arrest may also be necessary if the investigating officer concerned or officer in charge of the police station thinks that presence of the accused will be difficult to procure because of grave and serious nature of crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out. **Siddharth v. State of Uttar Pradesh and another, (2022) 1 SCC 676**

Ss. 218 to 223(a) to (g) and S. 223: Proviso Trial whether to be joint or separate - Charging accused and trying them together-Principles for determination of-Requisite tests that need to be applied by trial court.

Joint trial warranted or not should be determined at the beginning of the trial and not after the trial based on the result of the trial.

S. 386 r/w Ss. 218 to 223 - Appeal challenging conviction/acquittal-Effect of possibility of a joint or a separate trial, on the validity of the conviction/acquittal, the case may be - Held, a conviction or acquittal of the accused cannot be set aside on the mere ground that there was a possibility of a joint or a separate trial - To set aside the order of conviction or acquittal, it must be proved that the rights of the parties were prejudiced because of the joint or separate trial, as the case may be.

Section 386 (1) of the Criminal Procedure Code, 1973: It has been held that appellate court can reverse acquittal and direct further inquiry or retrial of accused, or, on finding him guilty sentence him according to law.

Section 386 of Criminal Procedure Code, 1973: Retrial of case is permissible, when trial court had no jurisdiction, trial is vitiated by serious illegalities and irregularities, or, prosecutor or an accused for reasons beyond their control were prevented from leading or tendering evidence material to the charge. Retrial of case on ground of additional evidence is permissible, in extraordinary cases when the trial was conducted in a faulty manner on the basis of tainted investigation. However emphasized, this is permissible only in extraordinary cases and this principle cannot be applied to all cases uniformly, because as matter of general rule. A retrial cannot be directed to adduce additional evidence and correct the faulty investigation.

It has been held that even if a retrial is directed in exercise of revisional powers by High Court, the evidence already recorded at the initial trial cannot be erased or wiped out from the record of the case and, thus, the trial Judge has to decide the case on the basis of the evidence already on record and the additional evidence which would be recorded on retrial.

Criminal Procedure Code, 1973 S. 386 r/w S. 313 - Retrial Failure to put all relevant questions while examining accused under S. 313 was held to can be taken as factor for directing retrial from the stage of questioning the accused because non-compliance with S. 313 may cause prejudice to the accused. **Nasib Singh v. State of Punjab and another, (2022) 2 SCC 89**

Ss. 273, 205, 299, 353, 367, 391 Cr.P.C. and Ss. 30, 33 Indian Evidence Act

In the matter of criminal trial against any accused the distinctiveness of evidence is paramount in light of accused's right to fair trial, which encompasses two important factor along with others, i.e. firstly, the recording of evidence in the present of accused or his pleader and secondly, the right of accused to cross examination the witnesses. These facts are, of course, subject to exceptions provided under law. In other words, the culpability of any accused cannot be decided on the basis of any evidence, which was not recorded in his presence or his pleader's presence and for which he did not get an opportunity of cross examination. Evidence recorded in a criminal trial against any accused is confined to the culpability of that accused only and it does not have any bearing upon a co-

accused, who has been tried on the basis of evidence recorded in a separate trial, though for the commission of the same offence. It is also an undisputed proposition of law that in a criminal appeal against conviction, the appellate court examines the evidence recorded by the trial court and takes a call upon the issue of guilt and innocence of the accused. Hence the scope of appellate court's power does not go beyond the evidence available before it in the form of trial court record of a particular case unless section 367 or section 391 of Cr.P.C. comes into a play in a given case which are meant for further enquiry or additional evidence while dealing with any criminal appeal.

It was held that in the present controversy, two different criminal appeals were being heard and decided against two different judgment based upon evidence recorded in separate trials, though for the commission of the same offence. As such, the High Court felt into an error while passing a common judgment, based on evidence recorded in only one trial, against two sets of accused persons having been subjected to separate trials. It was held that the High Court ought to have distinctly considered and dealt with the evidence both the trials and then to decide the culpability of accused persons. **A.T. Mydeen v. Assistant Commissioner, Customs Department, 2022 Cri.L.J. 1041 :AIR Online 2022 SC 969**

S. 319—Application for summoning

In this case, Hon'ble Supreme Court discussed on the scope and ambit of the powers of the Court under Section 319 CrPC and summarized as under:

(i) That while exercising the powers under Section 319 CrPC and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;

(ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;

(iii) the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;

(iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;

(v) where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial;

(vi) Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it;

(vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;

(viii) Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;

(ix) the power under Section 319(1) CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre- trial stage intended to put the process into motion;

(x) the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence;

(xi) the word "evidence" in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;

(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of material collected during the investigation;

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s);

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under Section 319 CrPC can be exercised;

(xv) that power under Section 319 CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses); (xvii) while exercising the powers under Section 319 CrPC the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial. **Manjeet Singh vs. State of Haryana, 2022 (118) ACC 293**

Ss. 320 and 482— Compromise arrived at between the accused and the victim

In this case, Hon'ble Supreme Court held that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, it is reiterated that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind:

(i) Nature and effect of the offence on the conscious of the society;

(ii) Seriousness of the injury, if any;

(iii) Voluntary nature of compromise between the accused and the victim; &

(iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations. **Ramgopal vs. State of M.P., 2022 (118) ACC 318**

S. 321—Withdrawal of prosecution- immunity provided

In this case, Hon'ble Supreme Court formulated law on the withdrawal of a prosecution under section 321 of the Cr.P.C. :

(i) Section 321 entrusts the decision to withdraw from a prosecution to the public prosecutor but the consent of the court is required for a withdrawal of the prosecution;

(ii) The public prosecutor may withdraw from a prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice;
(iii) The public prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution;
(iv) While the mere fact that the initiative has come from the government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the public prosecutor was satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons;
(v) In deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature. Before deciding whether to grant its consent the court must be satisfied that:

(a) The function of the public prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes;

(b) The application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law;

(c) The application does not suffer from such improprieties or illegalities as would cause manifest injustice if consent were to be given;

(d) The grant of consent sub-serves the administration of justice; and

(e) The permission has not been sought with an ulterior purpose unconnected with the vindication of the law which the public prosecutor is duty bound to maintain;
(vi) While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinizing the PART C nature and gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated; and
(vii) In a situation where both the trial judge and the revisional court have concurred in granting or refusing consent, this Court while exercising its jurisdiction under Article 136 of the Constitution would exercise caution before disturbing concurrent findings. The Court may in exercise of the well-settled principles attached to the exercise of this jurisdiction, interfere in a case where there has been a failure of the trial judge or of the High Court to apply the correct principles in deciding whether to grant or withhold consent.

The Hon'ble Supreme Court held that on the touchstone of these principles, there can be no manner of doubt that the CJM was justified in declining consent for the withdrawal of the prosecution under Section 321. The acts complained of

which are alleged to constitute offences punishable under Sections 425, 427 and 447 of the IPC and under Section 3(1) of the Prevention of Damage of Public Property Act 1984 are stated to have been committed in the present case on the floor of the State Legislature. Committing acts of destruction of public property cannot be equated with either the freedom of speech in the legislature or with forms of protest legitimately available to the members of the opposition. To allow the prosecution to be withdrawn in the face of these allegations, in respect of which upon investigation a final report has been submitted under Section 173 of the CrPC and cognizance has been taken, would amount to an interference with the normal course of justice for illegitimate reasons. Such an action is clearly extraneous to the vindication of the law to which all organs of the executive are bound.

Further Hon'ble Supreme Court observed on Sanction of Speaker that the legal immunity to 'anything said or any vote given' in the first limb and the 'publication of a report, paper, votes, or proceedings' in the second limb of Article 194(2), flow from the freedom of speech that is provided under Article 194(1). The exercise of these manifestations of the freedom of speech – as provided in Article 194(2) – has been provided with express immunity. However, the only difference between the two limbs of Article 194(2) is that the first limb protects the exercise of the freedom, and the second limb protects the member against the publication of the said exercise of the freedom.

The immunity provided for the exercise of the manifestations of the freedom of speech in the second limb of under Article 194(2) cannot exceed the freedom of speech provided in the first limb of Article 194(2). As held above, that acts of destruction of public property are not privileged under the first limb of Article 194(2). Consequently, acts of vandalism cannot be said to be manifestations of the freedom of speech and be termed as "proceedings" of the Assembly. It was not the intention of the drafters of the Constitution to extend the interpretation of 'freedom of speech' to include criminal acts by placing them under a veil of protest. Hence, the Constitution only grants the members the freedom of speech that is necessary for their active participation in meaningful deliberation without any fear of prosecution.

The Hon'ble Supreme Court accordingly, rejected the submissions of the appellant and hold that the video recording of the incident was not a "proceeding" of the Assembly, which would be protected from legal proceedings under Article 194(2).

It is not the duty of trial Court, in an application under Section 321 of the CrPC, to adjudicate upon evidentiary issues and examine the admissibility or sufficiency of evidence. **State of Kerala vs. K. Ajith, 2022 (118) ACC 332**

Sentence

In view of the legal proposition, so culled out from the aforesaid judgments, the facts and the given circumstances of each case, nature of crime, manner in which it was planned and committed, motive for commission of crime, conduct of accused, nature of weapons used and all other attending circumstances are relevant facts which would enter into area of consideration. Further, undue sympathy in sentencing would do more harm to justice dispensations and would undermine the public confidence in the efficacy of law. Needless to point out that it is the duty of every Court to award proper sentence having regard to nature of offence and manner of its commission. The Apex Court has gone even to the extent that the Courts must not only keep in view the right of victim of crime but also society at large. While considering imposition of appropriate punishment, the impact of crime on the society as a whole and rule of law needs to be balanced. Moreover, the judicial trend in the country has been towards striking balance between reform and punishment. The protection of society and stamping out criminal proclivity must be the object of law which can be achieved by imposing appropriate sentence on criminals and wrongdoers. **Bala Prasad Kurmi vs. State of U.P., 2022(3) ADJ 215(DB)**

S. 392- Evidence Act, S.3—Robery—Appreciation of evidence—Accused and co-accused allegedly committed robber of motor cycle and mobile at midnight on gun-point. Complainant narrated incident in great detail. His testimony not shaken in cross-examination. He identified accused in Court. No incident of political rivalry to prove the defence of false implication on that ground—Two-wheeler of complainant recovered at instance of accused. Conviction proper. Sentence reduced to period of punishment already undergone by accused i.e. 3 years, 5 months.

The term ‘offender’ under Section 397 IPC is confined to the ‘offender’ who uses any deadly weapon and use of deadly weapon by one offender at the time of committing robbery cannot attract Section 397 IPC for the imposition of minimum punishment on another offender who has not used any deadly weapon. Even there is distinction and difference between Section 397 and Section 398 IPC. The word used in Section 397 IPC is ‘uses’ any deadly weapon and the word used in Section 398 IPC is ‘offender is armed with any deadly weapon’. Therefore, for the purpose of attracting Section 397 IPC the ‘offender’ who ‘uses’ any deadly weapon Section 397 IPC shall be attracted. **Ram Ratan vs. State of M.P., AIR 2022 SC 518**

S. 397/401—IPC, Ss. 427, 447, 506, 120-B read with Section 34—Quashing of summoning order—

In this case Hon'ble Supreme Court reiterated the case Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 and observed that From the order passed by the learned Magistrate issuing the process against the respondents herein – accused nos. 1 to 8, there does not appear that the learned Magistrate has recorded his satisfaction about a prima facie case against respondent nos. 2 to 5 and 7 & 8. Merely because respondent Nos. 2 to 5 and 7 & 8 are the Chairman/Managing Director/Executive Director/Deputy General Manager/Planner & Executor, automatically they cannot be held vicariously liable, unless, as observed hereinabove, there are specific allegations and averments against them with respect to their individual role. Under the circumstances, the High Court has rightly dismissed the revision applications and has rightly confirmed the order passed by the learned Sessions Court quashing and setting aside the order passed by the learned Magistrate issuing process against respondent nos. 1 to 8 herein – original accused nos. 1 to 8 for the offences punishable under Sections 427, 447, 506 and 120B read with Section 34 IPC. **Ravindranatha Bajpe vs. Mangalore Special Economic Zone Ltd., 2022 (118) ACC 325**

S. 401(3)—Revision—Scope of jurisdiction—High Court cannot convert finding of acquittal into one of conviction

Sub-section (3) of Section 401 Cr.P.C. prohibits/bars the High Court to convert a finding of acquittal into one of conviction. Though and as observed hereinabove, the High Court has revisional power to examine whether there is manifest error of law or procedure etc., however, after giving its own findings on the findings recorded by the court acquitting the accused and after setting aside the order of acquittal, the High Court has to remit the matter to the trial Court and/or the first appellate Court, as the case may be. As observed by this Court in the case of K. Chinnaswamy Reddy (supra), if the order of acquittal has been passed by the trial Court, the High Court may remit the matter to the trial Court and even direct retrial. However, if the order of acquittal is passed by the first appellate court, in that case, the High Court has two options available, (i) to remit the matter to the first appellate Court to rehear the appeal; or (ii) in an appropriate case remit the matter to the trial Court for retrial and in such a situation the procedure as mentioned in paragraph 11 of the decision in K. Chinnaswamy Reddy (supra), referred to hereinabove, can be followed. Therefore, 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 401Cr.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. Issue no.1 is answered accordingly.

It cannot be disputed that now after the amendment in Section 372 Cr.P.C. after 2009 and insertion of proviso to Section 372 Cr.P.C., a victim has a statutory right of appeal against the order of acquittal.

No revision shall be entertained at the instance of the victim against the order of acquittal in a case where no appeal is preferred and the victim is to be relegated to file an appeal. Even the same would be in the interest of the victim himself/herself as while exercising the revisional jurisdiction, the scope would be very limited, however, while exercising the appellate jurisdiction, the appellate Court would have a wider jurisdiction than the revisional jurisdiction. Similarly, in a case where an order of acquittal is passed in any case instituted upon complaint, the complainant (other than victim) can prefer an appeal against the order of acquittal as provided under sub-section (4) of Section 378 Cr.P.C., subject to the grant of special leave to appeal by the High Court.

As observed by this Court in the case of Mallikarjun Kodagali (supra), so far as the victim is concerned, the victim has not to pray for grant of special leave to appeal, as the victim has a statutory right of appeal under Section 372 proviso and the proviso to Section 372 does not stipulate any condition of obtaining special leave to appeal like sub- section (4) of Section 378 Cr.P.C. in the case of a complainant and in a case where an order of acquittal is passed in any case instituted upon complaint. The right provided to the victim to prefer an appeal against the order of acquittal is an absolute right. Therefore, so far as issue no.2 is concerned, namely, in a case where the victim and/or the complainant, as the case may be, has not preferred and/or availed the remedy of appeal against the order of acquittal as provided under Section 372 Cr.P.C. or Section 378(4), as the case may be, the revision application against the order of acquittal at the instance of the victim or the complainant, as the case may be, shall not be entertained and the victim or the complainant, as the case may be, shall be relegated to prefer the appeal as provided under Section 372 or Section 378(4), as the case may be. Issue no.2 is therefore answered accordingly. **Joseph Stephen vs. Santhanasamy, AIR 2022 SC 670**

S. 439: Grant of bail to attend wedding of child - Permitted with strict conditions

Directions issued by Supreme Court to take appellant out of jail he is presently lodged in and transfer him to prison of State where marriage ceremony and post-marriage ceremonies of his daughter has to take place and where after he has to be again transferred and lodged back in present jail Further directed, that on all such days of appellant attending ceremonies, he shall be accompanied by police

personnel in plain clothes. However, he will not be handcuffed during said period. **Sami Ullah and others v. Zulfikar Nasir and others, (2022) 1 SCC 195**

S. 439: Forum shopping to obtain bail: Accused charged under special Act and IPC and the Vires of special Act under which accused was charged were challenged and quashment of the proceedings sought before High Court under Art. 226 of the Constitution upon failure to obtain bail as per law By impugned order, respondent released on bail by High Court, that too by way of interim relief, without at all considering seriousness of offences alleged against respondent, and other settled parameters for grant of bail in such cases. High Court did not at all even consider allegations with respect to offences under IPC. Such order was held to be wholly impermissible. Hence, impugned order quashed and respondent directed to surrender forthwith to face trial. **State of Maharashtra v. Pankaj Jagshi Gangar, (2022) 2 SCC 66**

S. 439—Bail—Grant of—While releasing accused on bail, High Court did not consider accusation and material collected during course of investigation

At this stage few decisions of this Court on the relevant considerations to be considered by the High Court while grant of bail are required to be referred to. In the case of Prasanta Kumar Sarkar vs. Ashis Chatterjee and Anr., (2010) 14 SCC 496, while cancelling the bail and quashing and setting aside the order passed by the High Court granting the bail to the accused it is observed in para 9 to 12 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. **State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21] (SCC p. 31, para 18),**

Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280], and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598.

In the case of Neeru Yadav vs. State of UP & Anr., (2016) 15 SCC 422, it is held by this Court in para 11 as under:

"11. It is a well settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are:

(i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence,

(ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and

(iii) prima facie satisfaction of the Court in support of the charge. (See Chaman Lal v. State of U.P., (2004) 7 SCC 525)"

In Anil Kumar vs. State (NCT of Delhi), (2018) 12 SCC 129, it is observed and held by this Court that while granting bail, the relevant considerations are,

(i) nature of seriousness of the offence;

(ii) character of the evidence and circumstances which are peculiar to the accused; and

(iii) likelihood of the accused fleeing from justice;

(iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and

(v) likelihood of his tampering.

Centrum Financial Services Ltd. vs. State of NCT of Delhi, AIR 2022 SC 650

S. 439 - Cancellation of bail

The matter was related to Bail in which accused have been order to be enlarged on bail though the charged there under were grave which include Section 302 IPC and Section 27, 30 of Arms Act. The investigation was carried out and the charge sheet was filed.

It was held by the Hon'ble Supreme Court that when deceased died due to fire arm wound suffered by him and both FIR's referred to indiscriminate use of fire arm in clash. Release of accused was not justified. More particularly in a circumstance where the leaned single judge has not recorded his satisfaction with regard to the specific details of the case and the reason for the which each of the accused was entitled to be enlarged on bail.

It was held that it is too premature to arrive at any conclusion as to which group was aggressor and manner in which firing has erupted and also weapons that were used. These were the matters to be looked during investigation of pending

complaint and for purpose of framing charges and consequent trial. It was held that allegation were of serious nature which would require detailed investigation and recovery of weapons in course of investigation which is yet to be completed. Hence, bail was rejected. **Laxman Prasad Pandey v. State of Uttar Pradesh, 2022 Cri.L.J. 802 : AIR Online 2022 SC 1178: AIR 2022 SC 510**

S. 439 - Grant of Bail under Section 439 in the matter Section 302 IPC

The appeal was prefer against an order of High Court of Judicature, Rajasthan in a matter of bail application, whereby bail has been granted to the accused, who was the second respondent in the instant appeal.

It was held that the court deciding a bail application cannot completely divorce its decision from material aspects of the case such as allegations made against the accused, severity of the punishment, if the allegations are proved beyond reasonable doubt and would result in a conviction, reasonable apprehension of the witnesses being influenced by the accused, tempering 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. The court considering an application for bail has to exercise discretion in judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial on the other hand. Thus, while elaborate reasons may not be assign for grant of bail or an extensive discussion of the merits of the case may not be undertaken by the court considering a bail application, an order de hors reasoning or bereft of the relevant reasons cannot result in grant of bail.

The offence alleged was the murder of disabled person. It was of grave nature post mortem report proved cause of death as ante-mortem strangulation. The accused was a person exercising significant political influence, he was arrested only following protest outside police station, demanding his arrest. It was held that if bail is granted possibility of influencing witness cannot be ruled out. Thus, order granting bail was quashed and set aside. **Manoj Kumar Khokhar v. State of Rajasthan, 2022 Cri.L.J. 859 : AIR Online 2022 SC 28.**

S. 439: Case of brutal murder of appellant complainant's husband by tying him with rope to gate and then beating him by pipe and belt, leading to his death. Eyewitnesses identified accused in test identification parade. Entire incident was captured/ recorded in CCTV footages and mobile phone Pipe and belt used in commission of crime were recovered. High Court released accused on bail in most perfunctory and casual manner.

S. 439- Bail- Cancellation of bail, and quashing and setting aside wrong order passed by court releasing accused on bail- Submissions of accused herein that

after they were released on bail by impugned judgments and orders passed by High Court, more than 2 1/2 yrs have passed and there are no allegations of misuse of liberty, and therefore, bail may not be cancelled. Absence of appeal by State in serious case where High Court releasing accused on bail. Duties of State and Director of Prosecution, explained. Necessary directions issued. **Jayaben v. Tejas Kanubhai Zala and another, (2022) 3 SCC 230**

S. 439: Bail - Considerations to be balanced while deciding to grant bail.

Grant of bail by High Court to accused Respondent 2. Case of assault using lethal weapons by assailants including Respondent 2, leading to death of one due to bullet injury and injuries to deceased victim's younger brother appellant informant. No reasons whatsoever assigned by High Court while releasing Respondent 2 on bail. High Court did not consider gravity, nature and seriousness of offences alleged against accused Respondent 2 nor his criminal antecedents. High Court erred in not considering material relevant to determination of whether accused was to be enlarged on bail. High Court passed bail order mechanically and in a most perfunctory manner. Hence, impugned judgment and order passed by High Court releasing accused Respondent 2 on bail was quashed and set aside. **Sunil Kumar v. State of Bihar and another, (2022) 3 SCC 245**

S. 439— Penal Code, Sec. 302—Bail—Grant of—Challenge as to-

The Court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial of the case on the other.

Thus, while elaborate reasons may not be assigned for grant of bail or an extensive discussion of the merits of the case may not be undertaken by the court considering a bail application, an order de hors reasoning or bereft of the relevant reasons cannot result in grant of bail. In such a case the prosecution or the informant has a right to assail the order before a higher forum. As noted in Gurcharan Singh vs. State (Delhi Admn.), 1978 CriLJ 129, when bail has been granted to an accused, the State may, if new circumstances have arisen following the grant of such bail, approach the High Court seeking cancellation of bail under section 439 (2) of the CrPC. However, if no new circumstances have cropped up since the grant of bail, the State may prefer an appeal against the order granting bail, on the ground that the same is perverse or illegal or has been arrived at by ignoring material aspects which establish a prima-facie case against the accused. **Manoj Kumar Khokhar vs. State of Rajasthan, AIR 2022 SC 364**

S. 482- Quashing of FIR under section 406,419, 420 IPC

There were allegation that Builder Company had sold four excess flats beyond its share in terms of joint development agreement and supplementary agreement. The plea was taken that it was specifically agreed between parties for adjustment of payment made to finance company by builder on behalf of complainant. The question was regarding the quashing of FIR No. 185/2016 implicating the appellants for offences under Section 420 and the case under section 406,419, 420 read with section 34 of IPC. The High Court vide order dismissed the same.

Hon'ble Apex Court held that there was no cogent case regarding criminal breach of trust or cheating. It was held that dispute could be termed as mere breach of contact. Hon'ble Apex Court relying on the observation rendered in the case of M/s Indian Oil Corporation v. M/s NEPC India Ltd. & others, (2006)6 SCC 736, held that existence of dishonest or fraudulent intention were not made out and it involves determination of issues of Civil nature. It was also stated that complainant already instituted multiple civil suits. Hence, it was held that although there can be no doubt that jurisdiction under section 482 Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the end of justice, the FIR was liable to be quashed. **Mitesh Kumar v. State of Karnataka, 2022 Cri.L.J. 231 : AIR Online 2021 SC 936.**

S. 482—Misuse of provision

The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them. **Kahkashan Kausar @ Sonam vs. State of Bihar, AIR 2022 SC 820**

Election Law

Election petition based on allegations of corrupt practices not supported by an affidavit in Form 25, as prescribed under R. 94-A of the 1961 Rules - Held, election petition cannot be thrown out at threshold in such a case. Non-

filing of affidavit or non-filing of proper verification is technical defect which is curable by allowing candidate to file proper affidavit.

Election law is technical in nature. In the present matter, an election conducted under an independent body like the Election Commission is sought to be assailed, where the mandate of the public has gone in a particular way. The allegations must strictly fall within the parameters of the manner in which such a mandate can be overturned. The primary plea taken by the appellant is largely that success in the elections was obtained by concealment of material, which would have been germane in determining the opinion of the electorate. In effect, were such material to be available with the electorate, they would have exercised another option on the basis of it. However, while the requirements to be met in the election petition may be technical in nature, they are not hyper technical. **A. Manju v. Prajwal Revanna alias Prajwal R and others, (2022) 3 SCC 269**

Evidence Act

S. 3 and Ss. 323, 324, 325, 302 IPC - Contradiction between oral testimony and medical evidence

In this matter before Hon'ble Supreme Court the issue was related to voluntarily causing hurt and murder. Oral evidence disclosed that there was an indiscriminate attack by accused on deceased and other injured witnesses. There was contradiction between oral testimony of witnesses and medical evidence. It was seen that fatal injuries were caused by hard and blunt weapon on left parietal bone but no corresponding injury to weapons used by accused persons was seen.

There was abundant evidence on record to show that accused persons attacked deceased and injured witnesses with deadly weapons.

Hence, conviction of accused persons under section 302, 149 was set aside. However, there conviction under section 325, 324, 323 was held proper. Hon'ble Court modified the sentence of life imprisonment to seven years. **Viram alias Virma v. State of Madhya Pradesh, 2022 Cri.L.J. 553: AIR Online 2021 SC 1073.**

Family and Personal Laws

Hindu Marriage Act, 1955 Ss. 13(1)(i-a) and (i-b) - Concurrent findings of courts below on cruelty and desertion-Irretrievable breakdown of marriage also taking place - Held, no interference called for with divorce decree.

However, respondent father cannot be absolved from his liability and responsibility to maintain his son as per status of his father, till he attains age of majority. Hence, respondent directed to pay Rs 50,000 p.m. to appellant towards maintenance of his son. Necessary directions given to Army authorities regarding

such payment, as respondent was Army Officer. **Neha Tyagi v. Lieutenant Colonel Deepak Tyagi, (2022) 3 SCC 86.**

Ss. 63 and 59 r/w Ss. 67, 68, 45 and 47 of the Evidence Act, 1872 : Validity of will - Held, intention of testator to make testament must be proved, and propounder of will must examine one or more attesting witnesses and remove all suspicious circumstances with regard to execution of will.

Section 96 of the Civil Procedure Code, 1908: Jurisdiction and powers of first appellate court detail in reasoning required when affirming judgment of trial court as contrasted with reasoning required when reversing or modifying judgment of trial court.

The legal principles with regard to the proof of the will are no longer res integra. Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872 are relevant in this regard. The propounder of the will must examine one or more attesting witnesses and the onus is on the propounder to remove all suspicious circumstances with regard to the execution of the will. **Murthy and others v. C. Saradambal and Others, (2022) 3 SCC 209**

S. 68 – High Court disbelieved the registered deed of cancellation whereby, the Will, was revoked by the testator – Appeal genuineness of the cancellation deed testator chose to append his thumb impression – Since the said Expert's Report was marked in Court, without objection from the applicant, the genuineness of the same cannot be allowed to be questioned before the Appellate Court – A contrary inference was erroneously drawn by High Court by refereeing to the health condition of the testator, when the revocation deed was registered.

Where no protest was registered by the probate applicant against production of certified copy of the cancellation deed, he cannot later be allowed to take up the plea of non-production of original cancellation deed in course of the appellate proceeding-Objection as to the mode of proof must be taken when the document is tendered and before it is marked as an exhibit-It cannot be taken in appeal-Held, High Court had erred by ignoring the material evidence in disbelieving the cancellation deed and on that score declaring that the applicant is entitled to g rant of probate of the Will-Given the fact that Probate applicant never raised any objection regarding the mode of proof before the Trial Court, there was no occasion for the High Court to say that it was the duty of defendant to produce original deed of cancellation-Appeal is allowed.

In consequence of above, we are of the considered opinion that the High Court had erred by ignoring the material evidence in disbelieving the Cancellation Deed and on that score declaring that the applicant is entitled to grant of probate of the Will (Ext. 2). Given the fact that Probate applicant never raised and objection

regarding the mode of proof before the Trial Court, there was no occasion for the High Court to say that it was the duty of defendant to produce original deed of cancellation. The reliance therefore on the opinion of Lord Thankerton in Babu Anand Behari v. Dinshow and Co., AIR 1946 PC 24**,** is found to be unjustified. This is because in that case, the authenticity of some extract of power of attorney, was questioned but in the present case the certified copy of the re glistered cancellation deed is produced and most importantly, the same was not objected. Moreover, the plea of mode of proof was never raise before the Trial Court and therefore High Court's reliance on aforementioned case to support the applicant is unacceptable. **Lachhmi Narain Singh (D) through L.Rs. and others v. Sarjug Singh (D) through L.Rs and others, 2022)154) RD 258 - SC**

Hindu Marriage Act

Ss. 13B(1), 14, Proviso—Divorce by mutual consent—Waiving off cooling period of six months—Petition for divorce filed after one year had elapsed from date of marriage—Husband and wife are highly educated and highly placed

Section 13B(1) of the Hindu Marriage Act read with Section 13B(2) envisages a total waiting period of 1 1⁄2 years from the date of separation to move the motion for a decree of divorce. The provisions of the Hindu Marriage Act evince an inherent respect for the institution of marriage, which contemplates the sacramental union of a man and a woman for life. However, there may be circumstances in which it may not reasonably be possible for the parties to the marriage to live together as husband and wife.

The Hindu Marriage Act, therefore has provisions for annulment of marriage in specified circumstances, which apply to marriages which are not valid in the eye of law and provisions of judicial separation and dissolution of marriage by decree of divorce on grounds provided in Section 13(1) of the said Act, which apply to cases where it is not reasonably possible for the parties to a marriage to live together as husband and wife.

Section 13B incorporated in the Hindu Marriage Act with effect from 27.5.1976, which provides for divorce by mutual consent, is not intended to weaken the institution of marriage. Section 13B puts an end to collusive divorce proceedings between spouses, often undefended, but time consuming by reason of rigmarole of procedures. Section 13B also enables the parties to a marriage to avoid and/or shorten unnecessary acrimonious litigation, where the marriage may have irretrievably broken down and both the spouses may have mutually decided to part. But for Section 13B, the defendant spouse would often be constrained to defend the litigation, not to save the marriage, but only to refute prejudicial allegations, which if accepted by Court, might adversely affect the defendant spouse.

Legislature has, in its wisdom, enacted Section 13B (2) of the Hindu Marriage Act to provide for a cooling period of six months from the date of filing of the divorce petition under Section 13B (1), in case the parties should change their mind and resolve their differences. After six months if the parties still wish to go ahead with the divorce, and make a motion, the Court has to grant a decree of divorce declaring the marriage dissolved with effect from the date of the decree, after making such enquiries as it considers fit.

The object of Section 13B(2) read with Section 14 is to save the institution of marriage, by preventing hasty dissolution of marriage. It is often said that “time is the best healer”. With passage of time, tempers cool down and anger dissipates. The waiting period gives the spouses time to forgive and forget. If the spouses

have children, they may, after some time, think of the consequences of divorce on their children, and reconsider their decision to separate. Even otherwise, the cooling period gives the couple time to ponder and reflect and take a considered decision as to whether they should really put an end to the marriage for all time to come.

Where there is a chance of reconciliation, however slight, the cooling period of six months from the date of filing of the divorce petition should be enforced. However, if there is no possibility of reconciliation, it would be meaningless to prolong the agony of the parties to the marriage. Thus, if the marriage has broken down irretrievably, the spouses have been living apart for a long time, but not been able to reconcile their differences and have mutually decided to part, it is better to end the marriage, to enable both the spouses to move on with the life.

In Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746, relied upon by the Family Court and the High Court, this Court held:

"19. Applying the above to the present situation, we are of the view that where the court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13B (2), it can do so after considering the following:

(i) The statutory period of six months specified in Section 13B(2), in addition to the statutory period of one year under Section 13B(1) of separation of parties is already over before the first motion itself;

(ii) All efforts for mediation/conciliation including efforts in terms of Order 32A Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;

(iii) The parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;

(iv) The waiting period will only prolong their agony.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned.

The period mentioned in Section 13B(2) is not mandatory but directory, it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation."

The factors mentioned in Amardeep Singh v. Harveen Kaur (supra), in Paragraph 19 are illustrative and not exhaustive. These are factors which the Court is obliged to take note of. If all the four conditions mentioned above are fulfilled, the Court would necessarily have to exercise its discretion to waive the statutory waiting period under Section 13B (2) of the Marriage Act.

For exercise of the discretion to waive the statutory waiting period of six months for moving the motion for divorce under Section 13B (2) of the Hindu Marriage Act, the Court would consider the following amongst other factors:

(i) the length of time for which the parties had been married;
(ii) how long the parties had stayed together as husband and wife;
(iii) the length of time the parties had been staying apart;
(iv) the length of time for which the litigation had been pending;
(v) whether there were any other proceedings between the parties;
(vi) whether there was any possibility of reconciliation;
(vii) whether there were any children born out of the wedlock;
(viii) whether the parties had freely, of their own accord, without any coercion or pressure, arrived at a genuine settlement which took care of alimony, if any, maintenance and custody of children, etc. **Amit Kumar vs. Suman Beniwal, AIR 2022 SC 570**

S. 14—Right of daughter over coparcenary property

Coparcener died leaving behind the sole daughter who also died issue-less. Right of a widow or daughter to inherit the self-acquired property or share received in partition of a coparcenary property of a Hindu male dying intestate is well recognized not only under the old customary Hindu Law but also by various judicial pronouncements. If a property of a male Hindu dying intestate is a self-acquired property or obtained in partition of a co-parcenery or a family property, the same would devolve by inheritance and not by survivorship, and a daughter of such a male Hindu would be entitled to inherit such property in preference to other collaterals. Since the property in question was admittedly the self-acquired property of deceased despite the family being in state of jointness upon his death intestate, his sole surviving daughter, will inherit the same by inheritance and the property shall not devolve by survivorship. **Arunachala Gounder (Dead) by Lrs. Vs. Ponnusamy, AIR 2022 SC 605**

Human and Civil Rights

Human and Civil Rights-Rights of Differently-Abled Persons and Mental Health Dignified and Easy accessibility in public places and transportation - Rights of differently-abled persons during air travel - Draft of revised guidelines regarding "Carriage by Air of Persons with Disability and/or Persons with Reduced Mobility" put in public domain in the year 2021 - Objections/suggestions pertaining to the matter to be submitted within stipulated time.

Further, suggestions that (i) No differently-abled person should be manually lifted without his consent since it is inhumane; and (ii) Differently abled persons

with prosthetic limbs/callipers should be checked for the purpose of security in a manner where no such person is asked to remove prosthetic limbs/callipers to maintain human dignity while ensuring the requirement of security checks. **Jeeja Ghosh and another v. Union of India and others, (2022) 1 SCC 202**

Income Tax Act, 1961

Ss. 9(1)(vi) r/w S. 90- Amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software, as per EULAs/distribution agreements between the parties concerned in the present case "Royalty", as defined under Double Taxation Avoidance Agreement (DTAA) which was applicable in the present case Primacy of, over definition provided under the Income Tax Act. Held, the amounts in question did not amount to royalty in the present case.

When, under a non-exclusive licence, an end-user gets the right to use computer software in the form of a CD, the end-user only receives a right to use the software and nothing more - The end-user does not get any of the rights that the owner continues to retain under S. 14(b) of the Copyright Act read with sub-sections (a)(i)-(vii) thereof-Hence, held, the consideration paid by such end-user for such right to use the software and nothing more, does not amount to "royalty"

Income Tax Act, 1961- Ss. 195 and 201 r/w Ss. 4, 9(1)(vi) and 90 - Liability of payer to deduct TDS/TAS-Non-existence of, when the payment does not give rise to any income taxable in India Latin maxims: (i) lex non cogit ad impossibilia i.e. the law does not demand the impossible; and (ii) impotentia excusat legem i.e. when there is a disability that makes it impossible to obey the law, the alleged disobedience of the law is excused - Applicability of

Income Tax Act, 1961- Ss. 9(1)(vi) and 90 Double Taxation Avoidance Agreement (DTAA) Bindingness of "Royalty", as defined under DTAA - Primacy of, over definition provided under the Income Tax Act, once a DTAA applies

Income Tax Act, 1961-S. 9(1)(vi)-"Royalty"- Meaning and Scope of under, explained

Income Tax Act, 1961- S. 9(1)(vi) Expln. 4 (as brought in by the Finance Act, 2012) Applicability of, to right for the use of or the right to use computer software

Intellectual Property - Copyright Act, 1957- Ss. 13, 14, 30 and 52(1)(aa) - Copyright - What is, its coming into existence and ownership of copyright - Transfer/assignment and licensing and exploitation of copyright and rights constitutive of copyright or flowing from copyright - Principles explained in detail - Copyright infringement vis-à-vis computer software - When does not take place

Intellectual Property - Copyright Act, 1957-S. 14(b)(ii) - Deletion of the words "regardless of whether such copy has been sold or given on hire on earlier occasions" via amendment of 1999- Effect of

Income Tax - Double Taxation/Double Taxation Relief - DTAAS - Meaning of the term "royalty"-OECD Commentary - Relevance of

Interpretation of Statutes Taxing/Fiscal statutes - Use of the expression "in respect of" Scope of - - Expression "in respect of", when used in a taxation statute - When to be treated as synonymous with the words "on" or "attributable to" - Held, such meaning accords with the meaning to be given to the expression "in respect of" contained in Expln. 2(v) to S. 9(1)(vi) of the IT Act, 1961. **Engineering Analysis Centre of Excellence Private Limited v. Commission of Income Tax and another, (2022) 3 SCC 321**

Insecticides Act, 1968

Ss. 24, 3(k)(i), 17, 18, 33 and 29—Insecticides Rules, 1971, Rule 27(5)—Criminal Procedure Code, 1973, Sec. 482—Quashing of the criminal proceedings

In this case, Hon'ble Supreme Court held that when it is clear from the language of Section 469, Cr.PC that the period of limitation shall commence on the date of offence, there is no reason to seek computation of limitation only from the date of receipt of report of the Central Insecticide Testing Laboratory, Faridabad. As per the procedure prescribed under the Statute, i.e., Insecticide Act, 1968 and the rules made thereunder, the Insecticide Testing Laboratory, Ludhiana was the competent authority to which the sample was sent on 17.02.2011, after drawing on 10.02.2011, and the report of analysis was received on 14.03.2011, as such the said Crl.A.@S.L.P.(Crl.)No.4102 of 2020 date is said to be the crucial date for commencement of period of limitation. By virtue of the said report received on 14.03.2011 which states that the active ingredient of the sample was only to the extent 34.70% as against the labelled declaration of 40%, it is clear that it is the date of offence allegedly committed by the accused. Merely because a further request is made for sending the sample to the Central Insecticide Testing Laboratory, as contemplated under Section 24(4) of the Act, which report was received on 09.12.2011, receipt of such analysis report on 09.12.2011 cannot be the basis for commencement of limitation. The report of analysis received from the Insecticide Testing Laboratory, Ludhiana on 14.03.2011 itself indicates misbranding, as stated in the complaint, thus, the period of limitation within the meaning of Section 469, Cr.PC commences from 14.03.2011 only. In that view of the matter, the complaint filed is barred by limitation and allowing the proceedings to go on, on such complaint, which is ex facie barred by limitation is

nothing but amounts to abuse of process of law. **M/s. Cheminova India Ltd. vs. State of Punjab, 2022 (118) ACC 633**

Indian Penal Code

S. 34 - Common Intention, Appreciation of Ballistic Report

There were allegations that main accused used country made pistol and caused injuries on deceased and co-accused persons assaulted deceased with their respective knives. The eye witnesses to incident specifically stated that main accused fired from gun and deceased sustained injury. Injury by gun was established and proved from medical evidence. It was held by Hon'ble Supreme Court that merely because ballistic report shows that bullet recovered does not match with gun recovered, it is not possible to reject credible and reliable deposition of eye witnesses. It was also held by Hon'ble Supreme Court that in present case the prosecution was successful in proving the motive. There was a prior long time enmity between the deceased and accused. Co-accused persons inflicted blows by knives was supported by medical evidence and deposition of eye witnesses. Injuries were different parts of body which show intention and conduct on part of other accused. Their presence and participation established and proved by prosecution by examining eye witnesses was sufficient to hold the conviction of main accused under section 302 and co-accused persons under section 302 read with section 34. **Rakesh and another v. State of U.P., 2022 Cri.L.J. 590: AIR Online 2021 SC 324.**

S 34: Imposition of vicarious liability with aid of When permissible and requirements of Amendment made to S. 34 in the above Act adding the phrase "in furtherance of the common intention" Significance of Necessity of proving that accused on whom vicarious liability is sought to be imposed shared common intention Common intention how to be inferred and determined in each case.

Section 34 of above Act: Common intention - Onus to prove the same is on the prosecution and the evidence needs to be substantial, concrete, definite and clear. However, a common intention qua its existence is a question of fact and also requires an act "in furtherance of the said intention" and it is for the court to come to a conclusion in regard thereto on a cumulative assessment of the evidence on record. The purpose behind the provision is to remove the difficulties in distinguishing the acts/omissions of individual members of a group of persons acting in furtherance of a common intention.

Applicability of Mere sharing of common intention per se was held may not attract S. 34, sans an action or omission in furtherance thereof, because there may

also be cases where a person despite being an active participant in forming a common intention to commit a crime, may actually withdraw from it later.

Presence of accused, without dissuading themselves or others from carrying out the criminal act in furtherance of the common intention of them all held might well be a relevant circumstance, provided a prior common intention is duly proved. Hence, held, this is an aspect which needs to be looked into by the court on the evidence placed before it and, thus, the defence need not specifically raise such a plea in a case where adequate evidence is available before the court.

Conviction held to be rightly recorded under S. 304 Pt. I, when the deceased himself went nearer the accused and the accused found not stationing themselves waiting for his arrival. **Jasdeep Singh Alias Jassu v. State of Punjab, (2022) 2 SCC 545**

S. 34—Common intention—Phrase "in furtherance of common intention"

Sec. 34 creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus shall always be on the prosecution to prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the accused within the fold of S. 34 is disbelieved, the remaining part will have to be examined with adequate care and caution, since Court has to deal with a case of vicarious liability fastened on the accused by treating him at par with the one who actually committed the offence. What is required is the proof of common intention. Thus, there may be an offence without common intention, in which case S. 34 does not get attracted. Intendment of S. 34 is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act "in furtherance of the said intention". One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offense. Normally, in an offense committed physically, the presence of an accused charged u/S. 34 is required, especially in a case where the act attributed to the accused is one of instigation/exhortation. However, there are exceptions, in particular, when an offense consists of diverse acts done at different times and places. Therefore, it has to be seen on a case to case basis. Thus fact that all accused charged with an offence read with S. 34 are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided a prior common intention is duly proved. **Jasdeep Singh @ Jassu vs. State of Punjab, AIR 2022 SC 805**

Ss. 53, 363, 366-A, 364, 346, 376-D, 376-A, 302, 201—Protection of Children from Sexual Offences Act, Ss. 5(g), (m), 6—Death sentence—Rape and murder of 11 years minor girl

It is travesty of justice as the Appellant was not given a fair opportunity to de fend himself. This is a classic case indicating the disturbing tendency of Trial Courts adjudicating criminal cases involving rape and murder in haste. It is trite law that an accused is entitled for a fair trial which is guaranteed under Article 21 of the Constitution of India. In respect of the order of conviction and sentence being passed on the same day, the object and purpose of Section 235 (2) CrPC is that the accused must be given an opportunity to make a representation against the sentence to be imposed on him. A bifurcated hearing for convicting and sentencing is necessary to provide an effective opportunity to the accused'. Adequate opportunity to produce relevant material on the question of death sentence shall be provided to the accused by the Trial Court. **Rajendra Pralhadrao Wasnik vs. State of Maharashtra, (2019) 12 SCC 460**.

The Appellant was aged 25 years on the date of commission of the offence and belongs to a Scheduled Tribes community, making his livelihood by doing manual labour. No evidence has been placed by the prosecution on record to show that there is no probability of rehabilitation and reformation of the Appellant and the question of an alternative option to death sentence is foreclosed. The Appellant had no criminal antecedents before the commission of crime for which he has been convicted. There is nothing ad verse that has been reported against his con duct in jail. Therefore, the death sentence requires to be commuted to life imprisonment. However, taking into account the barbaric and savage manner in which the offences of rape and murder were committed by the Appellant on a hapless 11 year old girl, the Appellant is sentenced to life imprisonment for a period of 30 years during which he shall not be granted remission.

The Appeals are partly allowed. The conviction of the Appellant under Sections 363, 366A, 364, 346, 376D, 376A, 302, 201 of Indian Penal Code, 1860 ("IPC") and Section 5(g) (m) read with Section 6 of The Protection of Children from Sexual Offences Act, 2012 is upheld and the sentence is con verted from death to that of imprisonment for life for a period of 30 years without re mission. **Bhagwani vs. State of M.P., AIR 2022 SC 527**

Ss. 107 & 34 & S. 306 r/w Ss. 107 and 34: Abetment of suicide Instigation on part of accused can be inferred - Where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide. `

Criminal Procedure Code, 1973- S. 482-Quashment of proceedings: The required test is whether the allegations in the complaint as they stand, without

adding or detracting from the complaint, prima facie establish the ingredients of the offence alleged. Thus, High Court cannot test the veracity of the allegations nor for that matter can it proceed in the manner that a Judge conducting a trial would on the basis of the evidence collected during the course of trial. Furthermore, the High Court must consider whether the allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint.

Section 482 of Criminal Procedure Code, 1973: Quashment of proceedings - Prima facie decision in a case where the entire facts are incomplete and hazy is not permissible, particularly when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of wide magnitude and cannot be seen in their true perspective without sufficient material.

Criminal Procedure Code, 1973-S. 482-Quashment of proceedings - Examination of question of fact - Held, permissible, when no offence is disclosed by the report and, thus, when a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto Quashment of proceedings - Observations by High Court diminishing the importance of mental health, held not justified, because mental health of a person cannot be compressed into a one-size-fits. **Mahendra K C v. State of Karnataka and another, (2022) 2 SCC 129**

Ss. 141, 142 and 149 and Ss. 302/149: Unlawful assembly - Accused whether had become member of Case of victim dying due to assault by unlawful assembly Appellant-accused had only pointed towards place where victim was hiding. Held, mere fact that appellant was not brave enough to conceal where victim was hiding did not make him a part of the unlawful assembly that had the common object to murder the victim. Hence, conviction of appellant-accused under Ss. 302/201/147/148/149 set aside.

Ss. 141, 142 and 149 and Ss. 302/149 of Indian Penal Code: Tendency to implicate innocents along with guilty especially when large number of assailants are involved in commission of offence - Duty of court in such case is to scrutinize depositions with particular care in such a scenario. **Taijuddin v. State of Assam and others, (2022) 1 SCC 395**

Ss. 147, 302/149, 325/149 and 323—Conviction—Sustainability

In this case, Hon'ble Supreme Court on the basis of the facts and circumstances of this case concluded that-

a) The deceased had died as a result of injuries which were suffered by a blunt object, such as, lathi.

b) Not a single injury could be associated with any sharp cutting weapon.

c) Similarly, most of the injuries suffered by the injured prosecution witnesses were also by a blunt object.
d) The record indicates that the place of occurrence was in an agricultural field situated at Khasra No.210.
e) The evidence suggests that said agricultural field was a subject matter of dispute between the parties.
f) Two of the accused persons themselves also suffered injuries and some of those injuries were by sharp cutting weapons.
g) The incident was stated to have occurred when initially there was an exchange of words between the ladies which then got converted into an incident where blows were exchanged.

In the premises, the matter would be covered by Exception fourthly to Section 300 IPC and as such, the crime in question would not be "murder" but "culpable homicide not amounting to murder".

In the totality of the circumstances, all the accused would be principally guilty of the offences under Section 304-II and Section 304-II read with Section 149 of the IPC. **Sita Ram vs. State of Rajasthan, 2022 (188) ACC 965**

Ss. 149, 302—Unlawful assembly and murder—Acquittal

The mere fact that the appellant was not brave enough to conceal where the victim was hiding did not make him a part of the unlawful assembly.

In Subal Ghorai v. State of West Bengal, (2013) 4 SCC 607 , Court considered the possibility of often people gathering at the scene of offence out of curiosity but that did not make them share the common object of the assembly. The Court must guard against the possibility of convicting mere passive onlookers who did not share the common object of the unlawful assembly. There must be reasonable direct or indirect circumstances which lend assurance to the prosecution case that they shared common object of the unlawful assembly. Not only should the members be part of the unlawful assembly but should share the common object at all stages. This has to be based on the conduct of the members and the behaviour at or near the scene of the offence, the motive for the crime, the arms carried by them and such other relevant considerations.

In Ranjit Singh v. State of Punjab and Ors., (2013) 16 SCC 752, the Court referred to the aspect of faction-ridden village community having a tendency to implicate innocents along with the guilty especially when a large number of assailants are involved in commission of the offence – which is a matter of common knowledge. The depositions have to be carefully scrutinised in such a scenario. **Taijuddin vs. State of Assam, AIR 2022 SC 232.**

Ss. 224, 225, 332, 353, 392, 307, 302, 120-B—Arms Act, Sec. 25, 54, 59—Evidence Act, Secs. 3, 9—Attempt to murder—Appreciation of evidence

It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable corroborative evidence, is not safe to convict the accused. In the case of Indra Dalal v. State Of Haryana1, Crl.A.@SLP(Crl.)No.5438 of 2020, this Court has considered the conviction based only on confessional statement and recovery of vehicle used in the crime. In the said case, while setting aside the conviction, this Court has held in paragraphs 16 & 17 as under:

> "16. The philosophy behind the aforesaid provision is acceptance of a harsh reality that confessions are extorted by the police officers by practising oppression and torture or even inducement and, therefore, they are unworthy of any credence. The provision absolutely excludes from evidence against the accused a confession made by him to a police officer. This provision applies even to those confessions which are made to a police officer who may not otherwise be acting as such. If he is a police officer and confession was made in his presence, in whatever capacity, the same becomes inadmissible in evidence. This is the substantive rule of law enshrined under this provision and this strict rule has been reiterated countlessly by this Court as well as the High Courts.
>
> 17. The word "confession" has nowhere been defined. However, the courts have resorted to the dictionary meaning and explained that incriminating statements by the accused to the police suggesting the inference of the commission of the crime would amount to confession and, therefore, inadmissible under this provision. It is also defined to mean a direct acknowledgment of guilt and not the admission of any incriminating fact, however grave or conclusive. Section 26 of the Evidence Act makes all those confessions inadmissible when they are made by any person, whilst he is in the custody of a police officer, unless such a confession is made in the immediate presence of a Magistrate. Therefore, when a person is in police custody, the confession made by him even to a third person, that is, other than a police officer, shall also become inadmissible. **Parveen @ Sonu vs. State of Haryana, AIR 2022 SC 270**

Ss. 279 & 304A: Rash and negligent driving resulting in death of one person

No allegation against appellant-accused that at the time of accident, he was under influence of liquor or any other substance impairing his driving skills. It was a rash and negligent act simpliciter and not a case of driving in inebriated condition which is undoubtedly despicable aggravated offence warranting stricter and harsher punishment.

Hence, conviction of appellant under Ss. 279 and 304-A IPC maintained and imposition of fine also affirmed. However, substantive sentence of imprisonment reduced to period already undergone of more than 7 months. Also, compensation of Rs 3 lakhs was deposited by appellant, besides fine, in Registry of Supreme Court which was directed to be transferred to Motor Accidents Claims Tribunal and shall be released by Tribunal to widow of deceased victim. **Sagar Lolienkar v. State of Goa and another, (2022) 1 SCC 161**

Ss. 302/149, 326/149 and Ss. 325/149, 324/149, 323/149 and 147: Altercation leading to assault by 21 accused using deadly weapons resulting in death of one and injuries to others. Fatal injury on deceased caused by hard and blunt weapon on left parietal bone but there is no injury corresponding to weapons used by four accused. As found by courts below, there is contradiction between oral testimony of witnesses and medical evidence in this regard. Therefore, conviction of appellants under Ss. 302/149 is not justified. However, there is abundant evidence on record to show that appellants attacked deceased and injured witnesses with deadly weapons. Hence, appellants are liable to be convicted under Ss. 326/149 instead of Ss. 302/149- Moreover, conviction of appellants under Ss. 325/149, 324/149 and 323/149 confirmed.

Article 136 of the Constitution of India: Reappreciation of evidence by Supreme Court. **Viram alias Virma v. State of Madhya Pradesh, (2022) 1 SCC 341**

Ss .302 and 302/34 or 326: Causing injury(ies) to vital part of body which injury(ies) were the actual cause of death. Death occurring six days after the injury(ies) were inflicted. Such case would still fall under S. 302, as such injury(ies) inflicted on vital part of body were the actual cause of the death. Therefore, trial court rightly convicted accused under S. 302 and Ss. 302/34 respectively. **State of UP v. Jai Dutt and another, (2022) 3 SCC 184**

Ss. 302/34 or Ss. 120-B/302- Accused 2 not proved to share common intention to murder nor proved to be a party to conspiracy to murder-Solely on basis that appellant-Accused 2 accompanied Accused 1 when they went to house of deceased and invited him to dinner in their house (where deceased was murdered), that by itself, without any other act being attributed to Accused 2, held,

not enough to establish common intention on part of Accused 2 to murder nor that he was part of a criminal conspiracy to murder. Hence, conviction of Accused 2, quashed. **Mukesh v. State of Madhya Pradesh, (2022) 3 SCC 241**

S. 302/34 : Identification of accused when assailants are not known to the eyewitnesses who witnessed the incident/ assault. Manner in which is required to be done - Murder by shooting from pistol. Alleged involvement of appellant-accused and two other co-accused in the incident, held, could not be established beyond reasonable doubt as eyewitnesses to the shooting were not aware of identity of assailants - Nor was identity of the assailants established in any other reliable manner. Hence, appellant and similarly situated co-accused, acquitted. **Suryavir v. State of Haryana, (2022) 3 SCC 260**

Ss. 302/34: Murder of one person by shooting him with firearm. Culpability of accused who gave exhortation to murder Common intention to murder established against Accused 2 who had exhorted Accused 1 to shoot deceased dead with the firearm. It was held that accused 2 rightly convicted for murder under S. 302 with the aid of S. 34. **Omkar Singh v. Jai Prakash Narain Singh and another, (2022) 3 SCC 281**

Ss. 302/34, 120-B and 504- Death of two persons by throwing bomb upon them allegedly by respondent-accused and other persons Cause being objection by appellant-informant to illegal sale of liquor by accused persons High Court acquitting all 3 respondents.

Held, having correctly reappreciated evidence of witnesses, High Court was justified in acquitting all 3 respondent-accused as the said evidence did not support prosecution case against them. However, that portion of impugned judgment of High Court is set aside, which directs trial court to initiate proceedings of perjury against appellant-informant. Rest of judgment and order of acquittal passed by High Court stands confirmed. Circumstances under which Supreme Court may entertain appeal against order of acquittal and pass order of conviction Principles summarized. **Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471**

Ss. 302 and 201—Conviction—Sustainability

In this case, the Hon'ble Supreme Court discussed law on circumstantial evidence and observed that Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the Court can always draw an appropriate inference.

When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused.

In this case, the circumstances established by the prosecution do not lead to only one possible inference regarding the guilt of the appellant-accused.

Moreover, there is no explanation brought on record by the prosecution for the delay in registering First Information Report. Though the post-mortem report was available on 18th November 2011, First Information Report was belatedly registered on 25th August 2012.

Therefore, the guilt of the accused has not been established beyond a reasonable doubt. **Nagendra Sah vs. State of Bihar, 2022 (118) ACC 311**

Ss. 302, 201, 506-B—Evidence Act, Secs. 3, 27—Murder—Proof—Accused allegedly killed his two siblings and nephew

It could thus be seen that what is required to be considered is whether the evidence of the witness read as a whole appears to have a ring of truth. It has been held that minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, would not ordinarily permit rejection of the evidence as a whole. It has been held that the prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. What is important is to see as to whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. It has been held that there are always normal discrepancies due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence. It is the duty of the court to separate falsehood from the truth in every case.

Applying these principles, we are of the view that the minor discrepancies in the evidence of the prosecution witnesses are not of such a nature which would persuade this Court to disbelieve their testimonies. It is further to be noted that the witnesses are rustic villagers and some inconsistencies in their depositions are bound to be there.

In case of rustic witnesses, some inconsistencies and discrepancies are bound to be found. It has been held that the inconsistencies in the evidence of the witnesses should not be blown out of proportion. To do so is to ignore hard realities of village life and give undeserved benefit to the accused. It has been held that the evidence of such witnesses has to be appreciated as a whole. A rustic witness is not expected to remember every small detail of the incident and the manner in which the incident had happened. Further, a witness is bound to face shock of the untimely death of his near relatives. **Bhagchandra vs. State of M.P., AIR 2022 SC 410**

Ss. 302, 304, Part II, 300, Cl. Thirdly, 364, 201, 329, 149, 147—Evidence Act, Sec. 300 Murder or culpable homicide not amounting to murder—Proof

Court made a reference to the case of Virsa Singh v. The State of Punjab, AIR 1958 SC 465 which has stood the test of time.

Paragraphs 12 and 13 of the said decision which are locus classicus read thus: -

"12.To put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300, "Thirdly";

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; these are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

13.Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under S. 300 , "Thirdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective

inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional."

Once the prosecution establishes the existence of the three ingredients forming a part of "thirdly" in Section 300, it is irrelevant whether there was an intention on the part of the accused to cause death. As held by this Court in the case of Virsa Singh (supra), it does not matter that there was no intention even to cause the injury of a kind that is sufficient to cause death in ordinary course of nature. Even the knowledge that an act of that kind is likely to cause death is not necessary to attract "thirdly". Hence, it follows that clause "thirdly" of Section 300 will apply in this case. **Vinod Kumar vs. Amritpal @ Chhotu, AIR 2022 SC 244**

S. 302/34—Conviction—Sustainability

The Hon'ble Supreme Court observed that the prosecution is not required to prove that there was an elaborate plan between the accused to kill the deceased or a plan was in existence for a long time. A common intention to commit the crime is proved if the accused by their words or action indicate their assent to join in the commission of the crime. The appellant reached the spot with a lathi, along with Idrish who had a pistol. The appellant's exhortation was crucial to the commission of the crime since it was only after he made the statement that the enemy has been found, that Idrish fired the fatal shot. The role of the appellant, his presence at the spot and the nature of the exhortation have all emerged from the consistent account of the three eye-witnesses.

In the above facts and circumstances, there is no merit in the appeal, the appeal shall accordingly stand dismissed. **Gulab vs. State of U.P., 2022 (118) ACC 943**

S. 304B: Victim dying within 2 yrs of marriage due to consumption of insecticide/poison in her matrimonial home

Conviction of Appellant 1, husband of deceased, confirmed but conviction of Appellant 2 mother-in-law of the deceased was held, not justified in present case as there was no specific evidence regarding any of the ingredients of dowry death being established against her. Sweeping statements that husband and in-laws of deceased had inflicted cruelty, or, that husband and his mother had done so,

without specifying their roles was held not sufficient to convict appellant mother-in-law, though sufficient ground for conviction of appellant husband. **Kuljit Singh and another v. State of Punjab, (2022) 1 SCC 385**

Ss. 304-B, 498-A—Dowry Prohibition Act, S.2—Evidence Act, S. 3—Dowry death and cruelty—Proof

The most fundamental constituent for attracting the provisions of Section 304-B IPC is that the death of the woman must be a dowry death. The ingredients for making out an offence under Section 304-B have been reiterated in several rulings of this Court. Four pre-requisites for convicting an accused for the offence punishable under Section 304- B are as follows:

(i) that the death of a woman must have been caused by burns or bodily injury or occurred otherwise than under normal circumstance;

(ii) that such a death must have occurred within a period of seven years of her marriage;

(iii) that the woman must have been subjected to cruelty or harassment at the hands of her husband, soon before her death; and

(iv) that such a cruelty or harassment must have been for or related to any demand for dowry.

As the word "dowry" has been defined in Section 2 of the Dowry Prohibition Act, 19617, the said provision gains significance and is extracted below:

"2. Definition of 'dowry' - In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly –

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal law (Shariat) applies.

Explanation I.— xxx xxx xxx8 Explanation II.— The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860)."

In a three Judge Bench decision of this Court in Rajinder Singh v. State of Punjab9, Section 2 of the Dowry Act has been split into six distinct parts for a better understanding of the said provision, which are as follows:

"8. A perusal of Section 2 shows that this definition can be broken into six distinct parts:

(1) Dowry must first consist of any property or valuable security— the word "any" is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever.

(2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary. (3) Such property or security can be given or agreed to be given either directly or indirectly.
(4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned. (5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnized.
(6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean "in relation with" or "relating to"."

In the light of the above provision that defines the word "dowry" and takes in its ambit any kind of property or valuable security.

The word "Dowry" ought to be ascribed an expansive meaning so as to encompass any demand made on a woman, whether in respect of a property or a valuable security of any nature. When dealing with cases under Section 304-B IPC, a provision legislated to act as a deterrent in the society and curb the heinous crime of dowry demands, the shift in the approach of the courts ought to be from strict to liberal, from constricted to dilated. Any rigid meaning would tend to bring to naught, the real object of the provision. Therefore, a push in the right direction is required to accomplish the task of eradicating this evil which has become deeply entrenched in our society.

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 meaning of the expression "soon before her death" has been discussed threadbare in several judgments. A three Judge Bench of Supreme Court in Gurmeet Singh v. State of Punjab that has restated the detailed guidelines that have been laid down in Satbir Singh and Another v. State of Haryana , both authored by Chief Justice N.V. Ramana, relating to trial under Section 304-B IPC where the law on Section 304-B IPC and Section 113-B of the Evidence Act has been pithily summarized in the following words:

> "38.1. Section 304-B IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.
>
> 38.2. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B IPC. Once these ingredients are satisfied, the rebuttable presumption of causality,

provided under Section 113-B of the Evidence Act operates against the accused.

38.3. The phrase "soon before" as appearing in Section 304- B IPC cannot be construed to mean "immediately before".

The prosecution must establish existence of "proximate and live link" between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

38.4. Section 304-B IPC does not take a pigeonhole approach in categorising death as homicidal or suicidal or accidental. The reason for such non-categorisation is due to the fact that death occurring "otherwise than under normal circumstances" can, in cases, be homicidal or suicidal or accidental." **State of M.P. vs. Jogendra, AIR 2022 SC 933**

S. 307—Arms Act, Ss. 3, 25(1B)(a), 27—Attempt to murder—Proof

Accused persons allegedly opened fire on police personnel from house. None of PWs saw accused firing on police party. Alleged accused persons surrendered alongwith guns before police party. All proceedings including arrest, seizure prepared at police station and not on spot. FSL Report showing that from right barrel of 12 bore gun, fire could not be done and empty cartridges received not fired from left barrel. Use of 12 bore gun seized from accused thus not proved. Therefore, conviction under S. 27, Arms Act, not justified. Sentence under S. 25(1B)(a) of Arms Act already served. Ingredients of S. 307 not proved beyond reasonable doubt. Conviction, set aside. **Vasudev vs. State of M.P., AIR 2022 SC 708**

S. 376: Conviction of accused on sole testimony of victim/prosecutrix, with or without corroboration. Rape of victim/prosecutrix by her relative Conviction based on sole testimony of prosecutrix, without any further corroboration was held, can be sustained in present case. Hence, Conviction confirmed. There can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality.

Testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Further, seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. **Phool Singh v. State of Madhya Pradesh, (2022) 2 SCC 74**

S. 326—Cr.P.C., S. 357—Conviction and order to pay monetary compensation—Sustainability

The Hon'ble Supreme Court discussed that the compromise if entered at the later stage of the incident or even after conviction can indeed be one of the factor in interfering the sentence awarded to commensurate with the nature of offence being committed to avoid bitterness in the families of the accused and the victim and it will always be better to restore their relation, if possible, but the compromise cannot be taken to be a solitary basis until the other aggravating and mitigating factors also support and are favourable to the accused for molding the sentence which always has to be examined in the facts and circumstances of the case on hand.**Bhagwan Narayan Gaikwad vs. State of Maharashtra, 2022 (118) ACC 272**

Ss. 363, 366-A, 364, 376-D, 376-A, 302, 201—Protection of Children from Sexual Offences Act, Ss. 5(g), (m), 6—Evidence Act, Sec. 3—Rape and murder—Appreciation of evidence— Accused and co-accused allegedly committed rape on 11 years minor girl by kidnapping—Medical evidence proving death due to asphyxia, neurogenic shock due to neck pressing, severe injuries and bleeding in vagina and anal opening by committing rape forcefully. Seizure of clothes worn by accused and deceased. Recovery of blood-stained shawl and blanket of victim girl at instance of accused from his house. Blanket and button recovered from place of incident was proved to be from shirt of co-accused. Unexplained scratch mark found on body of accused. Forensic report proving that all alleges observed in male DNA profile of co-accused were found to be same as DNA profile observed from vaginal and rectal slides of deceased. Same female autosomal STR DNA profile was detected on source of deceased, dhoti and underwear of co-accused. Blood sample of co-accused matched with articles found on vaginal slide, rectal slide and dried blood on hair of deceased. Conviction proper. **Attorney General for India v. Satish & Others, AIR 2022 SC 13**

S. 376—Conviction—Sustainability

In this case, Hon'ble Supreme Court reiterated the law laid down in the case of Sham Singh v. State of Haryana, (2018) 18 SCC 34, it observed that testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.

The Hon'ble Supreme Court held that there is no reason to doubt the credibility and/or trustworthiness of the prosecutrix. She is found to be reliable and trustworthy. Therefore, without any further corroboration, the conviction of the accused relying upon the sole testimony of the prosecutrix can be sustained.

Now so far as the submission on behalf of the accused that as there were no external or internal injuries found on the body of the prosecutrix and therefore it may be a case of consent is concerned, the aforesaid has no substance at all. No such question was asked, even remotely, to the prosecutrix in her cross-examination. Therefore, the aforesaid submission is to be rejected outright.

It is required to be noted that it was the specific and consistent case on behalf of the prosecutrix that immediately on the occurrence of the incident, she narrated the incident to her sister-in-law (Jethani) and mother-in-law but they did not believe the prosecutrix. On the contrary, they beat her. Even no other family members in her matrimonial home supported the prosecutrix and therefore she sent message to her parental house and thereafter she was taken to her parental house and FIR was lodged. It is very unfortunate that in this case the sister-in-law and mother-in-law though being women did not support the prosecutrix. On the contrary, she was compelled to go to her parental house and thereafter the FIR was lodged. Being women at least the sister-in-law and mother-in-law ought to have supported the prosecutrix, rather than beating her and not believing the prosecutrix. Therefore, when in such a situation, the delay has taken place in lodging the FIR, the benefit of such delay cannot be given to the accused who as such was the relative. **Phool Singh vs. State of M.P., 2022 (118) ACC 998: 2022 Cri.L.J. 616: AIR Online 2021 SC 1112.**

Ss. 376, 302—Protection from Children from Sexual Offences Act, Sec. 6—Evodence Act, Secs. 3, 27—Rape and murder—Circumstantial evidence

The law with regard to conviction in cases based on circumstantial evidence has been very well crystalised in the celebrated case of Hanumant, son of Govind Nargundkar v. State of Madhya Pradesh, 1952 SCR 1091. A three Judge Bench of this Court, speaking through Mehr Chand Mahajan, J., observed thus:

"It is well to remember that in case where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be

such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act much have been done by the accused."

It is thus clear that for resting a conviction in the case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn, should be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis, but the one proposed to be proved. There must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused, and it must be such as to show that within all human probabilities, the act must have been done by the accused.

Subsequently, this Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, observed thus:

"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 guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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

The aforesaid view has been consistently followed by this Court in a catena of decisions. **Lochan Shrivas vs. State of Chhattisgarh, AIR 2022 SC 252**

Ss. 376(2)(f)/511—Judgment of acquittal—Justifiability

In this case, the questions for determination is whether the offence proved to have been committed by the respondent amounts to 'attempt' to commit rape within the meaning of Section 376(2)(f) read with Section 511 IPC or was it a mere 'preparation' which led to outraging the modesty of the victims?

The Hon'ble Supreme Court analyzed that there is a visible distinction between 'preparation' and 'attempt' to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of 'preparation' consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission o f the offence. Whereas, an 'attempt' to commit the offence, starts immediately after the completion of preparation. 'Attempt' is the execution of mens rea after preparation. `Attempt' starts where `preparation' comes to an end, though it falls short of actual commission of the crime.

However, if the attributes are unambiguously beyond the stage of preparation, then the misdemeanours shall qualify to be termed as an 'attempt' to commit the principal offence and such 'attempt' in itself is a punishable offence in view of Section 511 IPC. The 'preparation' or 'attempt' to commit the offence will be predominantly determined on evaluation of the act and conduct of an accused; and as to whether or not the incident tantamounts to transgressing the thin space between `preparation' and 'attempt'. If no overt act is attributed to the accused to commit the offence and only elementary exercise was undertaken and if such preparatory acts cause a strong inference of the likelihood of commission of the actual offence, the accused will be guilty of preparation to commit the crime, which may or may not be punishable, depending upon the intent and import of the penal laws.

We may at the outset explain that what constitutes an `attempt' is a mixed question of law and facts. 'Attempt' is the direct movement towards the commission after the preparations are over. It is essential to prove that the attempt was with an intent to commit the offence. An attempt is possible even when the accused is unsuccessful in committing the principal offence. Similarly, if the attempt to commit a crime is accomplished, then the crime stands committed for all intents and purposes.

There is overwhelming evidence on record to prove the respondent's deliberate overt steps to take the minor girls inside his house; closing the door(s); undressing the victims and rubbing his genitals on those of the prosecutrices. As the victims started crying, the respondent could not succeed in his penultimate act and there was a sheer providential escape from actual penetration. Had the respondent succeeded in penetration, even partially, his act would have fallen within the contours of `Rape' as it stood conservatively defined under Section 375 IPC at that time.

The Hon'ble Supreme Court held that Since the acts of the respondent exceeded the stage beyond preparation and preceded the actual penetration, the Trial Court rightly held him guilty of attempting to commit rape as punishable within the ambit and scope of Section 511 read with Section 375 IPC as it stood in force at the time of occurrence. **State of M.P. vs. Mahendra @ Golu, 2022 (118) ACC 980**

Ss. 391 and 395

The Hon'ble Supreme Court observed that the term 'offender' under Section 397 IPC is confined to the 'offender' who uses any deadly weapon and use of deadly weapon by one offender at the time of committing robbery cannot attract Section 397 IPC for the imposition of minimum punishment on another offender who has not used any deadly weapon.

Further the Court held that merely because some of the accused absconded and less than five persons came to be tried in the trial, it cannot be said that the offence under Section 391 IPC punishable under Section 395 IPC is not made out. What is required to be considered is the involvement and commission of the offence of robbery by five persons or more and not whether five or more persons were tried. Once it is found on evidence that five or more persons conjointly committed the offence of robbery or attempted to commit the robbery a case would fall under Section 391 IPC and would fall within the definition of 'dacoity'. Therefore, in the facts and circumstances, the accused can be convicted for the offence under Section 391 IPC punishable under Section 395 IPC. **Ganesan vs. State, 2022 (118) ACC 636**

Ss. 409, 420, 477A—Prevention of Corruption Act, Ss. 13(1)(d), (2)—Evidence Act

Before we advert to the relevant evidence on record, we deem it appropriate to brace ourselves with the relevant statutory ingredients necessary to bring home the guilt of an accused when charged under Sections 409, 420 and 477A IPC.
Ingredients necessary to prove a charge under Section 409 IPC:

Section 409 IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is duly bound to account for and that he has committed criminal breach of trust. (See: Sadupati Nageswara Rao v. State of Andhra Pradesh).

The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a sine qua non for making an offence punishable under Section 409 IPC. The expression 'criminal breach of trust' is defined under Section 405 IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. 9 (2012) 8 SCC 547 shall be held to have committed criminal breach of trust. Hence, to attract Section 405 IPC, the following ingredients must be satisfied:

(i) Entrusting any person with property or with any dominion over property;

(ii) That person has dishonestly mis-appropriated or converted that property to his own use;

(iii) Or that person dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.

It ought to be noted that the crucial word used in Section 405 IPC is 'dishonestly' and therefore, it pre-supposes the existence of mens rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is 'mis-appropriates' which means improperly setting apart for ones use and to the exclusion of the owner.

No sooner are the two fundamental ingredients of 'criminal breach of trust' within the meaning of Section 405 IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under Section 409 IPC, for which it is essential to prove that:

(i) The accused must be a public servant or a banker, merchant or agent;

(ii) He/She must have been entrusted, in such capacity, with property; and

(iii) He/She must have committed breach of trust in respect of such property.

Accordingly, unless it is proved that the accused, a public servant or a banker etc. was 'entrusted' with the property which he is duty bound to account for and that such a person has committed criminal breach of trust, Section 409 IPC

may not be attracted. 'Entrustment of property' is a wide and generic expression. While the initial onus lies on the prosecution to show that the property in question was 'entrusted' to the accused, it is not necessary to prove further, the actual mode of entrustment of the property or misappropriation thereof. Where the 'entrustment' is admitted by the accused or has been established by the prosecution, the burden then shifts on the accused to prove that the obligation vis-à-vis the entrusted property was carried out in a legally and contractually acceptable manner.

Ingredients necessary to prove a charge under Section 420 IPC:

Section 420 IPC, provides that whoever cheats and thereby dishonestly induces a person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine.

It is paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea of the accused at the time of making the inducement. It goes without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

It is equally well-settled that the phrase 'dishonestly' emphasizes a deliberate intention to cause wrongful gain or wrongful loss, and when this is coupled with cheating and delivery of property, the offence becomes punishable under Section 420 IPC. Contrarily, the mere breach of contract cannot give rise to criminal prosecution under Section 420 unless fraudulent or dishonest intention is shown right at the beginning of the transaction. It is equally important that for the purpose of holding a person guilty under Section 420, the evidence adduced must establish beyond reasonable doubt, mens rea on his part. Unless the complaint showed that the accused had dishonest or fraudulent intention 'at the time the complainant parted with the monies', it would not amount to an offence under Section 420 IPC and it may only amount to breach of contract.

Ingredients necessary to prove a charge under Section 477-A IPC:

The last provision of IPC with which we are concerned in this appeal, is Section 477A, which defines and punishes the offence of 'falsification of accounts'. According to the provision, whoever, being a clerk, officer or servant, or employed or acting in that capacity, willfully and with intent to defraud, destroys, alters, mutilates or falsifies any book, electronic record, paper, writing, valuable

security or account which belongs to or is in possession of his employer, or has been received by him for or on behalf of his employer, or willfully and with intent to defraud, or if he abets to do so, shall be liable to be punished with imprisonment which may extend to seven years. This Section through its marginal note indicates the legislative intention that it only applies where there is falsification of accounts, namely, book keeping or written accounts.

In an accusation under Section 477A IPC, the prosecution must, therefore, prove—(a) that the accused destroyed, altered, mutilated or falsified the books, electronic records, papers, writing, valuable security or account in question; (b) the accused did so in his capacity as a clerk, officer or servant of the employer; (c) the books, papers, etc. belong to or are in possession of his employer or had been received by him for or on behalf of his employer; (d) the accused did it willfully and with intent to defraud.

As already clarified by us, to prove the charge under Section 409 IPC, the prosecution need not prove the exact manner of misappropriation. Once the 'entrustment' is admitted or proved, as has been done in the present case, the onus lies on the Accused to prove that the entrusted property was dealt by him in an acceptable manner. Thus, misappropriation with this dishonest intention is one of the most important ingredients of proof of 'criminal breach of trust'. The offence under Section 409 IPC can be committed in varied manners, and as we are concerned with its applicability in the case of a bank officer, it is fruitful to point out that the banker is one who receives money to be drawn out again when the owner has occasion for it. Since the present case involves a conventional bank transaction, it may be further noted that in such situations, the customer is the lender and the bank is the borrower, the latter being under a super added obligation of honouring the customer's cheques up to the amount of the money received and still in the banker's hands. The money that a customer deposits in a bank is not held by the latter on trust for him. It becomes a part of the banker's funds who is under a contractual obligation to pay the sum deposited by a customer to him on demand with the agreed rate of interest. Such a relationship between the customer and the Bank is one of a creditor and a debtor. The Bank is liable to pay money back to the customers when called upon, but until it's called upon to pay it, the Bank is entitled to utilize the money in any manner for earning profit. **N. Raghvender vs. State of A.P., AIR 2022 SC 826**

S. 498A: Victim immolating herself in her matrimonial home leading to her death in hospital - Concurrent findings of facts recorded by both courts below on harassment and/or torture and/or cruelty by appellant mother-in-law of victim, on appreciation of evidence, stand established Therefore, appellant, held, rightly convicted under Section 498-A.

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 does not protect another lady, 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, Thiruvotriyur Police Station, (2022) 3 SCC 93**

Juvenile Justice (Care & Protection of Children) Act, 2000

Ss. 7A, 49—Juvenile Justice (Care and Protection of Children) Rules, 2007, R.12—Juvenility—Determination of age—

What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

(i) A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

(ii) An application claiming juvenility could be made either before the Court or the JJ Board.

(iia) When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, section 94 of the JJ Act, 2015 applies.

(iib) If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

(iic) When an application claiming juvenility is made under section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission

of offence is pending before a Court, then the procedure contemplated under section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of 44 juvenility when the trial is before the concerned criminal court, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide section 9 of the JJ Act, 2015).

(iii) That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i), (ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

(iv) The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

(v) That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

(vi) That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

(vii) This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

(viii) If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015

is not misused by persons to escape punishment after having committed serious offences.

(ix) That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

(x) Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz., section 35 and other provisions.

(xi) Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015. **Rishipal Singh Solanki vs. State of U.P., AIR 2022 SC 630**: **2022 (118) ACC 900**

Land Acquisition Act, 1894

S.23 - Increase in market value - Escalation in market rates - Old exemplar - Manner in which may be relied on- Principles explained.

It has been held that escalation in market value should be reckoned at a cumulative rate and not at a flat rate Moreover, when market value is sought to be ascertained with reference to transactions which took place before the acquisition, the law adopted is to grant the year-to-year increase However, when the time-gap between the exemplar transaction and the acquisition is of many years (9 years in present case), courts have to be extremely cautious in the extent of yearly escalation that is to be granted based on such exemplar transaction.

Furthermore, even if the transaction is 2 to 3 yrs prior to the acquisition, the court should, before adopting a standard escalation satisfy itself that there were no adverse circumstances affecting the market value in the period in question.

S.23: Determination of market value - Deduction @15% towards the development charges was held, justified in present case, when the land in question being acquired for establishing a spinning mill, at the relevant time was agricultural land. **Ramesh Kumar v. Bhatinda Integrated Cooperative Cotton Spinning Mill and others (2022) 1 SCC 284**

Ss.23, 18 & 4: Determination of market value of land - No material changes for period between two Notifications under S. 4-Market value has to be determined for

both notifications at the same rate. **Anil Kumar Soti and others v. State of Uttar Pradesh through Collector Bijnore (Uttar Pradesh) (2022) 2 SCC 268**

S. 28-A—Legal Services Authority Act, Ss. 20, 21—Re-determination of compensation—Application for, on basis of award passed by Lok Adalat—Not maintainable

In the instant case, a notification came to be issued u/S 4(1) for planned industrial development. The Land Acquisition Officer fixed a compensation for the lands belonging to the respondents. The respondents did not seek enhancement u/S.18 of the Act. An application seeking reference against award was filed by one landowner. The said reference was made over to a Lok Adalat and Lok Adalat passed an Award. The compensation was fixed at Rs.297 per sq yard as against Rs.20 per sq yard which was fixed by the Land Acquisition Officer by his Award. This led to respondents filing applications for re-determination of compensation u/S.28-A of Land Acquisition Act. The applications were allowed by the High Court on the ground that the Award of the Lok Adalat would be deemed to be decree of the Civil Court and, consequently, the respondents would be entitled to invoke Section 28-A of the Act. The scheme of S.28-A contemplates a re-determination of compensation under an award passed under Part III. S.28-A requires re-determination of compensation by the Civil Court. The jurisdiction of the Lok Adalat u/S.20 is to facilitate a settlement of disputes between the parties in a case. It has no adjudicatory role. It cannot decide a lis. The award which is passed by the Lok Adalat cannot be said to be an award passed under Part III. It is the compromise arrived between the parties before the Lok Adalat which culminates in the award by the Lok Adalat. Not only must it be an award passed as a result of the adjudication but it must be passed by the Court' allowing compensation in excess of the amount awarded by the collector. The Award passed by the Lok Adalat in itself without anything more is to be treated by the deeming fiction to be a decree. It is not a case where a compromise is arrived at under Order XXIII of CPC, between the parties and the court is expected to look into the compromise and satisfy itself that it is lawful before it assumes efficacy by virtue of S.21. Without anything more, the award passed by Lok Adalat becomes a decree. An Award passed by the Lok Adalat u/S.20 is not a compromise decree. It is to be treated as a decree inter alia. The mere compromise arrived at between the parties does not have the imprimatur of the Court. It becomes a compromise decree only when the procedures under Code are undergone. In the instant case, the enhancement of the compensation is determined purely on the basis of compromise which is arrived at and not as a result of any decision of a 'Court' as defined in the Act. Held, an application u/S.28-A can not be maintained on the basis of an award passed by the Lok Adalat u/S.20. **New Okhla Industrial Development Authority (Noida) vs. Yunus, AIR 2022 SC 847**

S.30: Apportionment of compensation - Dispute relating to date of death of predecessor-in-interest of appellant and R-3-Jurisdictional District Judge directed to hold inquiry on the issue and, on facts, findings of the same accepted. **Manjari Tanty alias Laria v. Special Land Acquisition Officer and Sub Collector, Ultra Mega Power Project, Sundargarh and others, (2022) 1 SCC 204**

S. 28-A- Legal Services Authorities Act, 1987- Sections 20, 21.

The question which arises is whether the Award passed by a Lok Adalat under Section 20 of CA No. 901/2022 (@ SLP (C) No.9927/2020 etc.) the Legal Services Authorities Act, 1987 (hereinafter referred to as the '1987 Act') can form the basis for redetermination of compensation as contemplated under Section 28A of the Land Acquisition Act, 1894 (hereinafter referred to as 'Act').

We declare that an application under Section 28A of the Act cannot be maintained on the basis of an award passed by the Lok Adalat under Section 20 of 1987 Act. **New Okhla Industrial Development authority (NOIDA) vs. Yunus and others, 2022(3) ADJ 129(SC)**

Land Acquisition, Rehabilitation and Resettlement Act, 2013

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - Ss. 24(1)(a), 25(1) and 114(1) & (2): Acquisition proceedings initiated under Ss. 4 and 6 of the 1894 Act not culminating in award on date of coming into force of 2013 Act on 1-1-2014

Land Acquisition and Requisition: Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - Ss. 24(1)(a), 25(1) and 114(1) & (2) - Determination of compensation under S. 24(1)(a). Limitation of one year from date of commencement of 2013 Act Time during which stay order of court is operating shall be excluded - Plea that award in present case was backdated, not tenable Stay granted in the present case would be applicable to others who had also not obtained stay in that behalf.

Filing of an award in Collector's office whether under S. 12(1) of the 1894 Act or under S. 37(1) of the 2013 Act, held, is final and conclusive evidence between Collector and persons interested. Belated notice to persons interested would not affect the validity of acquisition proceedings. When court is satisfied that award was made/published within period prescribed, even when there was backdating of the award or delay in effecting service on the landowners, the land acquisition proceedings, held, need not be set aside.

Limitation - Generally-Alteration of limitation period by repealing statute Rights of claimant under limitation period provided for under repealed statute - When saved and when not saved.

Interpretation of Statutes - Anomaly, ambiguity, absurdity, hardship, redundancy, repugnancy. A construction that results in unreasonably harsh and absurd results must be avoided. **Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation v. Mahesh and others, (2022) 2 SCC 772**

Mines and Minerals Act

S. 11 of the Coal Mines (Special Provisions) Act, 2015: **Cancellation of coal mine allotments-Effect of**- On contracts between allottees whose allotments stood cancelled and their contractors. Entitlement of such prior contractors under such contracts, to mine coal and perform the said contracts, against subsequent allottees of the coal mines was held discretionary in nature i.e. dependent upon the discretion of the subsequent allottee, even in cases where the allotment is again conferred on the same allottee post cancellation.

Art.14 of the Constitution of India: Applicability of the Principle of substantive legitimate expectation. Decision-maker's freedom to change the policy in public interest cannot be fettered by applying the principle of substantive legitimate expectation. So long as the Government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of a legitimate expectation of an individual or a group of individuals being defeated. **Punjab State Power Corporation Limited and another v. Emta Coal Limited, (2022) 2 SCC 1**

Illegal mining: Violation of environmental law - Ban on mining activities by earlier Court order. Mining operations conducted despite such ban based on rider or stopgap arrangement permitted by Court with regard to sand mining considering its importance in construction activities and loss to public exchequer. **State of Bihar and other v. Pawan Kumar and others, (2022) 3 SCC 102**

Motor Vehicles Act

S. 163A (3) and Schedule II of the Motor Vehicles Act, 1988 - Fatal accident - Fixation of notional income of Rs 15,000 p.a. under Sch. II for computing compensation in case of fatal accident of non-earning family member (minor aged 7 yrs), held, unjust and unreasonable due to of higher cost of living since 1994 when Rs 15,000 was fixed as the notional income under Sch. II for non-earning

members. Judicial enhancement of said notional income upon failure of Government to notify reasonable amount in line with inflation and higher cost of living, despite Supreme Court directions for such notification.

S.149: Liability of owner of offending vehicle to pay compensation when driver having no valid DL. It was held that entire compensation shall be paid to appellants by R-2 insurance company which can recover the same from R-1 owner of offending vehicle (motorcycle) by initiating appropriate proceeding as driver had no valid driving licence. **Kurvan Ansari alias Kurvan Ali and another v. Shyam Kishore Murmu and another, (2022) 1 SCC 317**

S. 166 - Fatal Accident: Compensation - In absence of documentary evidence on record, some amount of guesswork is required to be done but at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of deceased, same does not justify adoption of lowest tier of minimum wage while computing the income.

It was held that parents though living separately were entitled to compensation as dependants, and furthermore entitled to parental consortium. Finding of the Tribunal that the parents cannot be treated as dependants runs contrary to the settled position of law. **Chandra Alias Chanda alias Chandraram and another v. Mukesh Kumar Yadav and others, (2022) 1 SCC 198**

S. 173: Growing number of appeals by claimants, insurers and vehicle owners against award passed by Tribunal resulting in large pendency of appeals before various High Courts. Idea of "Motor Vehicle Appellate Tribunals" mooted and detailed suggestions given. Department of Justice, Ministry of Law and Justice, Government of India to examine this matter.

Ss. 166 and 173: Compensation - Determination of Adding 40% to income of deceased under head of future prospects, where deceased had fixed salary. Compliance with, as deceased was under 40 yrs- High Court reducing compensation without assigning reasons. Supreme Court enhanced compensation as per settled principles.

Appeal is continuation of proceedings of original court/Tribunal. It is valuable right of appellant. During this stage, all questions of fact and law are open for reconsideration. Therefore, appellate court required to address all questions before it and decide the case by giving reasons. **Rasmita Biswal and others v. Divisional Manager, National Insurance Company Limited and another, (2022) 3 SCC 767**

Negotiable Instruments Act, 1881

S.138—Dishonour of cheque—legally enforceable debt

The term debt also includes a sum of money promised to be paid on a future day by reason of a present obligation. A post-dated cheque issued after the debt has been incurred would be covered by the definition of 'debt'. However, if the sum payable depends on a contingent event, then it takes the color of a debt only after the contingency has occurred.

The test to determine if the Managing Director or a Director must be charged for the offence committed by the Company is to determine if the conditions in Section 141 of the NI Act have been fulfilled i.e., whether the individual was in-charge of and responsible for the affairs of the company during the commission of the offence. **Sunil Todi vs. State of Gujarat, AIR 2022 SC 147**

S. 138—Code of Criminal Procedure, 1973, Sec. 482

In this case, the question before this Court is whether parallel prosecutions arising from a single transaction under Section 138 of the NI Act can be sustained. In this case, a set of cheques were dishonoured, leading to filing of the first complaint under Section 138 of the NI Act. The parties thereafter entered into a deed of compromise to settle the matter. While the first complaint was pending, the cheques issued pursuant to the compromise deed were dishonoured leading to the second complaint under Section 138 of the NI Act.

The Hon'ble Supreme Court observed that a complainant enters into a settlement with open eyes and undertakes the risk of the accused failing to honour the cheques issued pursuant to the settlement, based on certain benefits that the settlement agreement postulates. Once parties have voluntarily entered into such an agreement and agree to abide by the consequences of non-compliance of the settlement agreement, they cannot be allowed to reverse the effects of the agreement by pursuing both the original complaint and the subsequent complaint arising from such non-compliance. The settlement agreement subsumes the original complaint. Non-compliance of the terms of the settlement agreement or dishonour of cheques issued subsequent to it, would then give rise to a fresh cause of action attracting liability under Section 138 of the NI Act and other remedies under civil law and criminal law.

The Hon'ble Supreme Court held that thus, in our view, a complainant cannot pursue two parallel prosecutions for the same underlying transaction. Once a settlement agreement has been entered into by the parties, the proceedings in the original complaint cannot be sustained and a fresh cause of action accrues to the complainant under the terms of the settlement deed.

Once a settlement agreement has been entered into between the parties, the parties are bound by the terms of the agreement and any violation of the same may

result in consequential action in civil and criminal law. **M/s. Gimpex Private Ltd. vs. Manoj Goel, 2022 (118) ACC 651**

Ss. 138/141- Proceeding against corporate debtor is covered by S. 14(1)(a) IBC. Hence, corporate debtor cannot be proceeded against under S. 138 of the NI Act. Hence, proceedings initiated against appellant under S. 138 of the NI Act, quashed.

Held, question as to nature of liability of corporate debtor in respect of proceedings initiated under S. 138 of the NI Act after issuance of moratorium, was considered by three-Judge Bench of Supreme Court in P. Mohanraj, (2021) 6 SCC 258, and it was held that Ss. 138/141 NI Act proceeding against corporate debtor is covered by S. 14(1)(a) IBC. **Naga Leathers Private Limited v. Dynamic Marketing Partnership represented by its partner and another, (2022) 2 SCC 271**

Accused proposing a contention to rebut said presumption for first time before High Court without even stating it before trial court or Sessions Court. Such contention being without any proper explanation, held, untenable. High Court going to validity of agreement for sale in proceedings arising out of S. 138 of the NI Act, 1881. On facts, judgment of conviction passed by Magistrate restored with modified fine amount.

As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the NI Act, 1881 can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the NI Act enjoins on the court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumptions.

The principles in regard to the presumptions that may be raised under Sections 118 and 139 of the NI Act, 1881 and the rebuttal thereof, can be summarized as under:

1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.
3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.
5. It is not necessary for the accused to come in the witness box to support his defence.

S. 138 vis-à-vis offences under Penal Code, 1860: Gravity of complaint under S. 138 of the NI Act cannot be equated with offences under Penal Code, 1860. **Triyambak S Hegde v. Sripad, (2022) 1 SCC 742**

Ss. 138 and 141—Criminal Procedure Code, Sec. 482—Application for quashing proceedings

In this case Hon'ble Supreme Court referred to decision P. Mohanraj & Others v. Shah Brothers Ispat Private Ltd., (2021) 6 SCC 258.

The Hon'ble Supreme Court differentiated the present case in hand and observed that in that case, apart from the corporate debtor, certain natural persons who were stated to be in-charge of and responsible for the affairs of the corporate debtor were also arrayed as accused and, as such, the proceedings under Section 138/141 of the Act were allowed to be continued as against such natural persons.

However, in the instant case, the complaint was filed only against the corporate entity and none of the natural persons who were stated to be the in-charge of and responsible for the affairs of the corporate entity were arrayed as accused.

The decision rendered by this Court in P. Mohanraj (supra) has since then been followed by another three-Judge Bench of this Court in Gimpex Private Ltd. v. Manoj Goel, 2021 SCC Online SC 925 : 2021 (12) SCALE 269.

It must therefore be held that the corporate debtor, namely, the appellant herein cannot now be proceeded against under Section 138 of the Act. Consequently, the proceedings initiated against the appellant deserve to be quashed.

Since no natural person was arrayed as accused, the exception carved out in the decision of this Court in P. Mohanraj (supra) does not arise in the instant case. **M/s. Nag Leathers Pvt. Ltd. vs. M/s. Dynamic Marketing partnership, 2022 (118) ACC 955**

Protection of Children from Sexual Offences Act, 2012

Ss. 5, 6—Evidence Act, Ss. 118, 45—Aggravated penetrative sexual assault on minor—Testimony of victim—Corroborative medical evidence--

The Trial Court convicted the accused for the offences punishable under Sections 376(2)(i) of IPC and Section 5/6 of the POCSO Act. It is the case on behalf of the accused that at the most it can be said to be an attempt to commit penetrative sexual assault and therefore at the most it can be said to be the case of sexual assault under Section 7 of the POCSO Act punishable under Section 8 of the POCSO Act. Therefore, it is the case on behalf of the accused that as it is neither a case of penetrative sexual assault nor aggravated penetrative sexual assault, therefore the punishment of life imprisonment imposed was not warranted and at the highest he could have been punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

While appreciating the aforesaid submissions the relevant provisions of the POCSO Act are required to be referred to and considered. Section 3 of the POCSO Act defines 'penetrative sexual assault'. As per Section 3 of the Act, a person is said to commit 'penetrative sexual assault' if (b) he inserts, to any extent, any object of a part of the body, not being the penis, into the vagina……. Section 4 provides 'punishment for penetrative sexual assault'. Section 5 of the Act defines 'aggravated penetrative sexual assault' and as per Section 5(m) whoever commits penetrative sexual assault on a child below twelve years it is aggravated penetrative sexual assault. Section 6 provides 'punishment for aggravated penetrative sexual assault.' In the present case, it has been established and proved that the accused penetrated his finger in the vagina and because of that the victim girl felt pain and irritation in urination as well as pain on her body and there was redness and swelling around the vagina found by the doctor. We are of the opinion that therefore the case would fall under Section 3(b) of the POCSO Act and it can be said to be penetrative sexual assault and considering Section 5(m) of the POCSO Act as such penetrative sexual assault was committed on a girl child aged four years (below twelve years) the same can be said to be 'aggravated penetrative sexual assault' punishable under Section 6 of the POCSO Act. Therefore, both, the Trial Court as well as the High Court have rightly convicted the accused for the offences under Section 5 of the POCSO Act punishable under Section 6 of the POCSO Act.

Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act. By awarding a suitable punishment commensurate with the act of sexual assault,

sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure.

In the case of Nipun Saxena v. Union of India, (2019) 2 SCC 703, it is observed by this Court that a minor who is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social ostracization and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even reported as very often, the perpetrator of the crime is a member of the family of the victim or a close friend. Therefore, the child needs extra protection. Therefore, no leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law. 10.1 In the present case it is to be noted that the accused was aged approximately 65 years of age at the time of commission of offence. He was a neighbour of the victim girl. He took advantage of the absence of her parents, when her mother went to fetch water and her father had gone to work. He is found to have committed aggravated penetrative sexual assault (as observed hereinabove) on a girl child aged four years, which demonstrates the mental state or mindset of the accused. As a neighbour, in fact, it was the duty of the accused to protect the victim girl when alone rather than exploiting her innocence and vulnerability. The victim was barely a four years girl. The accused – appellant was the neighbour. The accused instead of showing fatherly love, affection and protection to the child against the evils of the society, rather made her the victim of lust. It is a case where trust has been betrayed and social values are impaired. Therefore, the accused as such does not deserve any sympathy and/or any leniency.

However, the punishment provided for the offence under Section 6, as it stood prior to its amendment and at the time of commission of the offence in the instant case for aggravated penetrative sexual assault was rigour imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine. Now as per the amended Section 6 with effect from 16.08.2019, the minimum punishment provided is twenty years and which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death. Therefore, at the relevant time the minimum punishment provided for the offence under Section 6 of the POCSO Act, 2012 was ten years RI and which may extend to imprisonment for life. It is reported that today the accused is aged 7075 years of age and it is also reported that he is

suffering from Tuberculosis (TB). Therefore, considering such mitigating circumstances we are of the opinion that if the life sentence is converted to fifteen years RI and the fine imposed by the Trial Court confirmed by the High Court to be maintained, it can be said to be an adequate punishment commensurate with the offence committed by the accused. **Nawabuddin vs. State of Uttarakhand, AIR 2022 SC 910**

S. 7—Sexual assault—Meaning—Act of touching sexual part of body or any other act involving physical contact

From the bare reading of S.7 of the Act, which pertains to the "sexual assault", it appears that it is in two parts. The first part of the Section mentions about the act of touching the specific sexual parts of the body with sexual intent. The second part mentions about "any other act" done with sexual intent which involves physical contact without penetration both the said words have been interchange ably used in S.7 by the legislature. Words "touch" and "physical contact", have been interchangeably used in Section 7 by the legislature. The word "Touch" has been used specifically with regard to the sexual parts of the body, whereas the word "physical con tact" has been used for any other act. Therefore, the act of touching the sexual part of body or any other act involving physical con tact, if done with "sexual intent" would amount to "sexual assault" within the meaning of S.7 of the POCSO Act. Principle of "ejusdem generis" should be applied only as an aid to the construction of the statute. It should not be applied where it would defeat the very legislative intent. As per the settled legal position, if the specific words used in the section exhaust a class, it has to be construed that the legislative intent was to use the general word beyond the class denoted by the specific words. So far as S.7 of the POCSO Act is concerned, the first part thereof exhausts a class of act of sexual assault using specific words, and the other part uses the general act beyond the class denoted by the specific words. In other words, whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such per son or any other person, would be commit ting an offence of "sexual assault". Similarly, whoever does any other act with sexual intent which involves physical contact without penetration, would also be committing the offence of "sexual assault" under S.7 of the POCSO Act. In view of the discussion made earlier, the prosecution was not required to prove a "skin to skin" contact for the purpose of proving the charge of sexual assault under S.7 of the Act. The surrounding circumstances like the accused having taken the victim to his house, the accused having lied to the mother of the victim that the victim was not in his house, the mother having found her daughter in the room on the first floor of the house of the accused and the victim having narrated the incident to her mother, were proved by the prosecution, rather the said facts had remained unchallenged at the instance of

the accused. Such basic facts having been proved by the prosecution, the Court was entitled to raise the statutory presumption about the culpable mental state of the accused as permitted to be raised under S.30 of the said Act. The said presumption has not been rebutted by the accused, by proving that he had no such mental state. The allegation of sexual intent as contemplated under S.7 of the Act, therefore, had also stood proved by the prosecution. The Court, therefore, is of the opinion that the prosecution had duly proved not only the sexual intent on the part of the accused but had also proved the alleged acts that he had pressed the breast of the victim, at tempted to remove her salwar and had also exercised force by pressing her mouth. All these acts were the acts of "sexual assault" as contemplated under S.7, punishable under S.8 of the POCSO Act. **Attorney General for India vs. Satish, AIR 2022 SC 13**

Protection of Women from Domestic Violence Act, 2005

Crimes Against Women and Children Protection of Women from Domestic Violence Act, 2005-Ss. 19(1)(f) and 2(s)- Alternate equivalent accommodation - Extent to which required to be equivalent - Held, "similar" does not mean identical Direction of court to husband to pay monthly rent of alternate suitable accommodation for wife which should be "similar" to accommodation of husband, held, does not mean that it has to be identical in terms of area, facilities and luxuries - Word "similar" has to be construed as providing same degree of luxury and comfort as is available in accommodation to which it is to be similar. **Jaidev Rajnikant Shroff v. Poonam Jaidev Shroff, (2022) 1 SCC 683**

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

S. 3(1)(x) read with Sec. 34 IPC

In this case Hon'ble Supreme Court observed that where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily private or civil in nature, or where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a 'special statute' would not refrain this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 Cr.P.C.

Court may hasten to add that in cases such as the present, the Courts ought to be even more vigilant to ensure that the complainant victim has entered into the compromise on the volition of his/her free will and not on account of any duress. It cannot be understated that since members of the Scheduled Caste and Scheduled Tribe belong to the weaker sections of our country, they are more prone to acts of coercion, and therefore ought to be accorded a higher level of protection. If the Courts find even a hint of compulsion or force, no relief can be given to the accused party. What factors the Courts should consider, would depend on the facts and circumstances of each case. **Ramawatar vs. State of M.P., 2022 (118) ACC 992**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

One Time Settlement Scheme (OTS)

Having heard learned counsel for the respective parties at length, the following issues/ questions are posed for consideration of this Court:

(i)Whether benefit under the OTS Scheme can be prayed as a matter of right?:

(ii) Whether the High Court in exercise of powers under Article 226 of the Constitution of India can issue a writ of mandamus directing the Bank to positively consider the grant of benefit under the OTS Scheme and that too de hors the eligibility criteria mentioned under the OTS Schmen?

Therefore, as per the guidelines issued, the grant of benefit of OTS Scheme cannot be prayed as a matter of right and the same is subject to fulfilling the eligibility criteria mentioned in the scheme. The defaulters who are ineligible under the OTS Scheme are mentioned in clause 2, reproduced hereinabove. A willful defaulter in repayment of loan and a person who has not paid even a single installment after taking the loan and will not be able to pay the loan will be considered in the category of "defaulter" and shall not be eligible for grant of benefit under the OTS Scheme. Similarly, a person whose account is declared as "NPA" shall also not be eligible. As per the guidelines, the Bank is required to constitute a Settlement Advisory Committee for the purpose of examining the applications received and thereafter the said Committee has to take a decision after considering whether a defaulter is entitled to the benefit of OTS of not after considering the eligibility as per the OTS Scheme. While making recommendations, the Settlement Advisory Committee has to consider whether efforts have been made to recover the loan amount and the possibility of recovery has been minimized, meaning thereby if there is possibility of recovery of the amount, either by initiating appropriate proceedings or by auctioning the property mortgaged and/or the properties given as a security either by the borrower and/or

by guarantor, the application submitted by the borrower for grant of benefit under the OTS Scheme can be rejected.

Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs. 100crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realized by selling the mortgaged/secured properties. If it is held that the borrower can still, as matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/ secured properties, either from the borrower and/ or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such dishonesty.

The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/ bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/ secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/ bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove. **The Bijnor Urban Co-operative Bank Limited, Bijnore and others vs. Meenal Agawal and others, 2022(1) ADJ 258(SC)**

Service Laws

Tenure appointment: What is and freedom of employer in this regard?

Definition of direct recruitment would mean recruitment through a process stipulated under the applicable Rules. Therefore, by no stretch of imagination, can one interpret that all direct recruitments are to be made by regular employment in absence of any statutory bar under the applicable Rules.

Doctrines and Maxims - Approbate and Reprobate/Qui Approbat Non Reprobat - Concept of – Explained

Doctrines and Maxims-Fairness - Applicability of, in employer and employee relationship explained

Contract and Specific Relief - Contract Act, 1872- Ss. 7, 8 and 3 - Formation of contract through offer and acceptance Requirements of unqualified acceptance of offer was held to take in its sweep the said acceptance along with the knowledge of the terms of the offer. **Union of India and others v. N Murugesan and others, (2022) 2 SCC 25**

Compassionate appointment: Consideration of - It has been held that for appointment on compassionate ground, policy prevalent at time of death of deceased employee only is required to be considered and not subsequent policy. **State of Madhya Pradesh and others v. Ashish Awasthi, (2022) 2 SCC 157**

Departmental Enquiry Employee's right of representation & choice of representation explained in detail.

Administrative Law - Natural Justice - Breach of natural justice - Prejudice-Necessity to demonstrate **Chairman, State Bank of India and another v. M J James, (2022) 2 SCC 301**

Appointment - Invalid appointment/Wrong Appointment/Illegal Appointment: Appellants who had participated in selection process for post of English Stenographers appointed on leave vacancies for period of one month against posts of Hindi Stenographers, in terms of select list dated 14-7-1987, since there were no vacancies for post of English Stenographers - Their appointment letters specifically stating that their appointments would be terminated once regular employees resume duties Pursuant to fresh examination conducted for posts of Hindi Stenographers on 24-9-1998, R-1 to R-3 appointed on substantive posts of Hindi Stenographers Appellants failing typing/speed test conducted for post of Hindi Stenographers - Despite that services of R-1 to R-3 terminated and appellants appointed on 5-6-1990 against posts held by them. Hence held, they are not entitled to any pensionary benefits. **Wahab Uddin and others v. Meenakshi Gahlot and others, (2022) 2 SCC 372**

Departmental Enquiry - Right to be represented by counsel of one's choice. Held, there is no absolute right in favour of delinquent officer to be

represented by counsel of his choice in departmental proceedings and same can be restricted by employer. Only requirement is that delinquent officer must get fair opportunity to represent his case. **Rajasthan Marudhara Gramin Bank (RMGB) v. Ramesh Chandra Meena and another, (2022) 3 SCC 44**

Determination of seniority: Ad hoc/ Fortuitous appointees/Promotees - Whether such regularized employees could be granted seniority over employees who were appointed on substantive basis after undergoing regular selection process, but whose date of substantive appointment fell after the date of initial appointment of the above said regularized ad hoc employees.

Held, employees who were appointed on ad hoc basis and qualified typing test at later stage, in absence of scheme of rules for determining seniority cannot be placed senior to employees who were appointed on substantive basis after undergoing regular selection process. **Shyam Sunder Oberoi and other v. District and Sessions Judge, TIS Hazari Courts, Delhi and others, (2022) 3 SCC 197**

Promotion - Retrospective promotion - Entitlement to, if any- Decision not to grant promotion from the earlier date by the competent approving authority, though recommendation had been made by recommending authority. Authority with power to accord approval to recommendation for promotion, held, is competent authority for grant of promotion and not the recommending authority.

Promotion: In Judicial Review proceedings, Courts are concerned with decision making process and not decision itself. On facts held, in absence of any reason for interfering with process of selection for promotion to post of Head Constable, Single Judge as well as the Division Bench of High Court were justified in refraining from going into individual comparative merit. **Sushil Kumar v. State of Haryana and Others, (2022) 3 SCC 203**

Appointment - Cancellation/Refusal of appointment: Requirement of submitting NOC from erstwhile employer at time of interview. Imposition of costs of Rs 50,000 against employer on failure to process appellant's application for NOC within reasonable time (which had led to wrongful of denial of appointment of appellant by Single Judge of High Court Maintained. **Narendra Singh v. State of Harya and Others, (2022) 3 SCC 286**

Specific Relief Act

S. 31—Cancellation of sale deed in respect of agricultural property—Suit for—Maintainability

As far as the law regarding the maintainability of a 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. 1st Additional District Judge and others reported in (2001) 3 SCC 24 (AIR 2001 SC 1250) so also in the case of Kamla Prasad and others v. Krishna Kant Pathak and others reported in (2007) 4 SCC 213: (2007 AIR SCW 1403). The Apex Court while considering the aforesaid issue has noticed the relevant law and the same has also been considered by this Court in the case of Jai Prakash Singh v. Bachchu Lal and others reported in 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 involve, 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:

In this connection, the learned counsel for the appellant rightly relied upon a decision of this Court in Shri Ram 1st ADJ [(2001) 3 SCC 24: (AIR 2001 SC 1250)]: (AIR 2001 SC 1250). 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, 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 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 cloud. He does not require declaration of his title to the land.

The Court, however, proceeded to observe: (Shri Ram case [(2001) 3 SCC 24]: (AIR 2001 SC 1250), SCC p. 28, para 7).

> "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 required to seek 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." **Gomti Prasad vs. Shiv Murat, AIR 2022 All 44**

S. 34—Suit for partition of tenancy rights—Maintainability—Joint tenants have right to claim partition in tenancy right—Suit for partition of tenancy rights, maintainable

The Allahabad High Court way back in 1878 in the case of Mohammad Bakhsh and other vs. Mana and others 1896 ILR 18 All 334 has held that tenancy rights between joint tenants can be subject to the partition. Delhil High Court in R.F.A. No. 73 of 2010 decided on 13.8.2015, in case of Dilip Kumar v. Om Parkash and others relying on earlier decisions Iresh Duggal v. Virender Kumar Seth MANU/ DE/3068/2014 and Bharat Insulation Co. v. Suraj Prakash MANU/DE/1761/2015 has held that there is no bar in any law whatsoever to partition the tenancy rights.

So the law is clear on this point. Joint tenants have right to partition in the tenancy rights. What will be the mode of partition may depend upon the nature of tenanted property which can be looked into in final decree proceedings. If due to its smaller size or otherwise the property is not devisable by metes and bounds and has observed that even if the tenancy pre mises, owing to its small size or otherwise owing to the restrictions placed by the land lord are not divisible by metes and bounds, the same can always be partitioned by one or more of the several legal heirs appropriating the tenancy rights to himself/themselves to the exclusions of others in consideration of payment of ovality or otherwise to the other legal heirs. **L.D. Sindhi vs. G.P. Sen, AIR 2022 All 34**

Ss. 34, 31—Suit for declaration—Cancellation of sale deed—

It is settled legal position that registration of document is always subject to adjudication of rights of the parties by the competent civil court. **Amudhavali vs. P. Rukumani, AIR 2022 SC 267**

Succession Act, 1925

S. 63 Genuineness of Will Determination of Evidence of meeting of the requirements of S. 63 r/w S. 68 of the Evidence Act -Held, must inspire confidence and be credible-Requirements of S. 63 cannot be fulfilled merely upon showing of mechanical or technical compliance with the stipulations specified therein.

S.100 of Civil Procedure Code, 1908: Second appeal- Scope - Detailed factual enquiry-Permissibility of - **State of Haryana v. Harman Singh through legal Representatives and others, (2022) 2 SCC 238**

Ss. 218, 220, 63(c) — Evidence Act, Secs. 63, 68—Letters of Administration—Grant of

Supreme Court referred to the following judgments on proof of wills:

(a) One of the celebrated decisions of this Court on proof of a will, reported in AIR 1959 SC 443 is in the case of H.Venkatachala Iyenger vs. B.N.Thimmajamma, wherein this Court has clearly distinguished the nature of proof required for a testament as opposed to any other document. The Court has stated that the following three aspects must be proved by a propounder:-

"(i) that the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and

(ii) when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of propounder, and

(iii) if a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion. In other words, the onus on the propounded can be taken to be discharged on proof of the essential facts indicated therein."

(b) In Jaswant Kaur v. Amrit Kaur and others [1977 1 SCC 369], this Court pointed out that when a will is allegedly shrouded in suspicion, its proof ceases to be a simple list between the plaintiff and the defendant. What generally is an adversarial proceeding, becomes in such cases, a matter of the Court's conscience and then, the true question which arises for consideration is, whether, the evidence let in by the propounder of the will is such as would satisfy the conscience of the Court that the will was duly executed by the testator. It is impossible to reach such a satisfaction unless the party which sets up the will offers cogent and convincing explanation with regard to any suspicious circumstance surrounding the making of the will. **Murthy vs. C. Saradambal, AIR 2022 SC 167**

Tenancy and Land Laws

Ceiling on Land-U.P. Imposition of Ceiling on Land Holdings Act, 1960 (1 of 1961) Ss. 3(17) and 3(9) - Sub-lessee of original government lessee - Right to acquire status of tenure-holder by implication in view of definitions of "holding" contained in S. 3(9) and "tenure-holder" in S. 3(17). Terms of original government lease/government grant and terms of the sub-lease itself as to acquisition of independent tenancy rights by the sub-lessee. **Hardev Singh v. Prescribed Authority, Kashipur and another, (2022) 3 SCC 21**

Transfer of Property Act

S. 54—Sale deed—Without payment of consideration—Effects

A sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property. **Kewal Krishan vs. Rajesh Kumar, AIR 2022 SC 564**

S. 111(g)—Oaths Act, S. 3(2)—Meaning and effect-

In M. Veerabhadra Rao Vs. Tek Chand6, this Court was considering an affidavit attested by an Advocate in terms of Section 3(2) of the Oaths Act, 1969. The conduct of appellant to attest an affidavit without oath and the attestation on the representation of the respondent that it bears his signatures, came up for consideration. In these circumstances, this Court held as under:

> "17. The expression 'affidavit' has been commonly understood to mean a sworn statement in writing made especially under oath or on affirmation before an authorised Magistrate or officer. Affidavit has been defined in sub-clause (3) of Section 3 of the General Clauses Act, 1897 to include 'affirmation and declaration in the case of person by law allowed to affirm or declare instead of swearing.' The essential ingredients of an affidavit are that the statements or declarations are made by the deponent relevant to the subject matter and in order to add sanctity to it, he swears or affirms the truth of the statements made in the presence of a person who in law is authorised either to administer oath or to accept the affirmation……"

Therefore, affidavits filed were not mere sheet of paper but a solemn statement made before a person authorized to administer oath or to 6 1984(Supp) SCC 571 accept affirmation. The plaintiff had breached such solemn statement made on oath. **New Okhla Industrial Development Authority vs. Ravindra Kumar Singhvi (Dead) By LRs., AIR 2022 SC 928**

U.P. Bottling of Foreign Liquor Rules, 1969

Rules 7(11), 17, 18, 19, 28, 29

Questions for determination

In view of rival submissions, the following three major questions arise for determination in this case:

A. As to whether demand of excise duty on the liquor lost in fire is authorised by law and has rightly been raised as per the applicable provisions of the Act of 1910, the Excise Manual and the Rules of 1969?

B. As to whether the fire incident in question had been an event beyond human control and no negligence could be imputed on the respondent company?

C. What would be the effect of the fact that the respondent company had taken insurance coverage only of the value of liquor (and not that of excise duty thereupon) and then, had received the insurance claim towards the value of liquor?

In summation of what has been discussed hereinabove, we hold, -

(i). The demand raised by the appellants against the respondent company, of excise duty on the liquor lost in fire, is authorised by law and has rightly been raised as per the applicable provisions of the Act of 1910, the Excise Manual and the Rules of 1969.

(ii). The fire incident in question cannot be said to be that of an event beyond human control and the High Court has been in error in holding that no negligence could be imputed on the respondent company.

(iii). The fact that the respondent company had taken insurance coverage only of the value of liquor (and not that of excise duty thereupon) and then, had received the insurance claim towards the value of liquor also operates against the respondent company and fortifies the conclusion about negligence of the respondent company. **State of U.P. and others vs. M/s. Mcdowell and Company Limited, 2022(2) ADJ 115(SC)**

U.P. Motor Vehicles Taxation Act, 1997

S. 12

Before the High Court, the following question was referred to the Full Bench:-

"1. Whether in view of Sections 2(g), 2(h), 4, 9, 10, 12, 13, 14 and 20 of the Act, 1997 read with Sections 39, 50 and 51 of the Act, 1988 and other relevant provisions of the said enactments and the Rules of 1998 and 1989, a Financier of a motor vehicle/ transport vehicle in respect of which a hire-purchase, lease or hypothecation agreement has been entered, is liable to tax

from the date of taking possession of the said vehicle under the said agreements, even if, its name is not entered in the Certificate of Registration or not? If not, who is liable in this regard?

In view of the above discussion and for the reasons stated above, it is held that a financier of a motor vehicle/transport vehicle in respect of which a hire-purchase or lease or hypothecation agreement has been entered, is liable to tax from the date of taking possession of the said vehicle under the said agreement. If, after the payment of tax, the vehicle is not used for a month or more, then such an owner may apply for refund under Section 12 of the Act, 1997 and has to comply with all the requirements for seeking the refund as mentioned in Section 12, and on fulfilling and/or complying with all the conditions mentioned in Section 12(1), he may get the refund to the extent provided in sub-section (1) of Section 12, as even under Section 12(1), the owner / operator shall not be entitled to the full refund but shall be entitled to the refund of an amount equal to one-third of the rate of quarterly tax or one twelfth of the yearly tax, as the case may be, payable in respect of such vehicle for each thirty days of such period for which such tax has been paid. However, only in a case, which falls under sub-section (2) of Section 12 and subject to surrender of the necessary documents as mentioned in sub-section (2) of Section 12, the liability to pay the tax shall not arise, otherwise the liability to pay the tax by such owner/operator shall continue. **Mahindra and Mahindra Financial Services Ltd. vs. State of U.P. and others, 2022(3) ADJ 560(SC)**

U.P. Sub Inspector and Inspector (Civil Police) Service (First Amendment) Rules, 2015

Rule 15

In conclusion, the exercise undertaken by the Board in adopting the process of normalization at the initial stage, that is to say, at the level of Rule 15(b) of Recruitment Rules was quite consistent with the requirements of law. The power exercised by the Board was well within its jurisdiction and as emphasized by the High Court there were no allegations of mala fides or absence of bona fides at any juncture of the process. One more facet of the matter is the note of caution expressed by this Court in paragraph 20 of its decision in Sunil Kumar and others vs. Bihar Public Service Commission and others, (2016)2 SCC 495. As observed by this Court, the decisions made by expert bodies, including the Public Services Commissions, should not be lightly interfered with, unless instances of arbitrary and mala fide exercise of power are made out. **State of Uttar Pradesh and others vs. Atul Kumar Dwivedi, 2022(2) ADJ 178(SC)**

Part 2 – High Court

Arbitration and Conciliation Act, 1996

Ss. 20 and 42, 34.

The issue to be decided by this Court is whether the Commercial Court at Gautam Budh Nagar has jurisdiction to hear the case u/s 34 of the Arbitration and Conciliation Act, 1996 regarding the arbitral award dated 16.02.2019 passed by sole arbitrator, having its venue at New Delhi, which has been specified in the arbitration agreement, but not the seat of the arbitration. The other issues are regarding the application of provision of Section 42 of the Act aforesaid to the execution of final award after conclusion of arbitration proceedings in terms of Section 32 of the Act and whether execution application for enforcement of arbitral award passed at New Delhi can be filed at Gautam Budh Nagar which has no supervisory jurisdiction over the Arbitral Tribunal.

This petition first of all involves resolution of a controversy that has gained considerable importance in arbitration proceedings regarding the "Venue-Seat" issue.

It is notable that the act does not define the term "seat" or "venue". Section 20 of the Act merely defines the "place of arbitration" which is often used interchangeably with the terms "seat" and "venue". This use of the terms "seat" and "venue" interchangeably often leads to controversy which has been resolved at number of times by the Hon'ble Supreme Court but it keeps on arising in different factual sittings of different cases and becomes subject matter of decisions by the courts repeatedly.

19. The term "seat" is of utmost importance as it connotes the situs of arbitration. The term "venue" is often confused with the term "seat" but it is more a place often chosen as convenient location by the parties to carry out arbitration proceedings but should not be confused with "seat". The term "seat" carries more weight than "venue" or "place".

From the above consideration of the judgement of the Hon'ble Supreme Court regarding the "seat" and "venue" controversy, this Court finds that the judgement of the Hon'ble Supreme Court in the case of BALCO (supra) still holds good. The judgment in the case of Hardy Exploration (supra) are of two coordinate Benches of three Hon'ble Judges and their ratios are contrary to each other. While Hardy Exploration (supra) stipulated that a chosen venue could not by itself assume the status of seat of arbitration in the absence of additional indica, BGS

SGS SOMA JV (supra) prescribed that a chosen seat of arbitration proceedings would become the seat of arbitration in the absence of any "significant contrary indica". The recent judgment in the case of M/s. Inox Renewables Ltd. (supra) follows BGS SGS SOMA JV (supra).

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 under Section 11of 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 under Section 34 of the Act. The award passed at New Delhi can be executed in the Court at Gautam Buddha Nagar in view of the Apex Court in the case of Sundaram Finance Limited (supra) also. **Hasmukh Prajapati vs. Jai Prakash Associates Ltd., 2022(3) ADJ 183] (Allahabad High Court)**

Civil Procedure Code

S. 96 and Order XLI, Rules 23 and 25-Partition Act, 1893 – Section 4-Appeal against final decree-Remanded with observation to the Trial Court to make valuation of shares, issue additional commission in assess the valuation and on the basis of commission report and the opportunity of evidence be given to both parties in determining the valuation of the plaintiffs' share - Legality of.

Trial Court has only got the report of Amin about the value of the disputed property which has construction as well-Trial Court without giving opportunity of evidence to the parties determined the valuation of the property solely on the basis of Amin report-Additional Amin report is required in the matter and parties have also to be given opportunity of producing evidence on the point of valuation – Order of remand passed by the Appellate Court is well justified – In the case on the points involved evidence will be required., so it will be in from of a re-trial – Order of remand is just and roper- No interference warranted – Appeal dismissed.

From the material on record it appears that the Trial Court has only got the report of Amin about the value of the disputed property which has construction as

well. The plaintiff has filed detailed objection against it and some of the objections are factual in nature. Learned Trial Court without taking into consideration the relevant basis of valuation and without giving any opportunity of evidence to the parties has determined the valuation of the property solely on the basis of Amin report. It is also clear that additional Amin report is required in the matter and parties have also to be given opportunity of producing evidence on the point of valuation as observed by the learned Appellate Court. There was no sufficient evidence before the First Appellate Court to determine the issues involved and hence, the order of remand passed by the First Appellate Court is well justified. The Order XLI, Rule 23-A, CPC also provide that if the suit is decided otherwise on preliminary point and decree reversed in appeal and retrial is necessary the Appellate Court have the same powers as it has under Rule 23. In this case on the points involved, evidence will be required, also it will be in form of a re-trial. **Ram Kumar Awasthi v. Rajeshwar and others, 2022 (154) RD 516 – Alld. HC**

Order I, Rule 10(2) and section 151-Transposition –A separate concept which could be permitted b y the Court in exercise of powers under Order I, Rule 19(2) or under section 151, CPC.

Civil Procedure Code, 1908 – Order 1, Rule 10(2) read with Order XXII-Once, the party is available on record in any capacity, the same can be brought on record and the provisions of abatement would not operate-Finding of Trial Court affirmed by Revision Court-Effect of the application is only to bring on record the admitted legal heirs of Smt. Laldei-No interference warranted.

Apparently, what this Court finds is that the private respondents No. 3 to 5 ought to have moved separate application for seeking the substitution in R.S. No. 175/85, Merely, because they have been impleaded in suit No. 112/85 would not necessarily imply that they would be transposed. Transposition is a separate concept which could be permitted by the Court in exercise of powers under Order I, Rule 10(2), CPC or under its inherent powers under section 151, CPC from the perusal of the application for transposition which has been brought on record as Annexure-6, apparently it does not appear to be happily worded. Nevertheless, the said application has been treated by the Court and the private respondents have been permitted to be impleaded in place of the de eased Lal Dei in Regular Suit No. 175/85, Be that as it may. The object of Order XXII, CPC is not to adversely affect the rights of the parties and but to implead the legal heirs for the purpose of a suit to be decided on merits. **Smt. Vinamata Devi v. District Judge, Faizabad, 2022 (154) RD 405– Alld. HC- Lucknow Bench**

Order VI, Rule 17 proviso.

The short question, which emerges for consideration is, “whether post commencement of trial of suit, an application under Order VI, Rule 17 CPC

simplicitor without disclosing any reason as to the delay caused in moving the same can be entertained ignoring the proviso to Order VI, Rule 17 CPC."

Thus, from the conjoint reading of the amended provisions of Order VI, Rule 17 CPC and the law laid down by Apex Court in the aforesaid cases, it is abundantly clear that the Trial Court has to be cautious while granting or rejecting an amendment once the trial commences. Though, it is a settled law that the Court should be liberal in granting amendment so as to avoid unnecessary complication and multiplicity of litigations, but once the trial has commenced, the party making an application for amendment, has to spell out clearly the cause which had prevented it from bringing the amendment prior to the commencement of trial and also disclosing the reason that despite due diligence it was not in the notice of the party and only when the said fact came into the knowledge of the party claiming amendment, that such application was filed.

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. **A.K. Dubey and another vs. Exide Industries Ltd. and others, 2022(2) ADJ 280 (Alld. High Court)**

Order VII, Rule 11 – Election Petition – Manner and stage of filing an application under Order VII, Rule 11, CPC – Held, it can be filed at any stage of proceedings – No need to file delay condonation application.

Election Petition – Verification of pleadings – Defect therein-Held, a curable defect and same can be cured - Election petition cannot be rejected on this ground.

Election Petition - Allegation of corrupt practice-Mandatory for petitioner to file an affidavit in support of said allegations.

The law thus is settled that an application under Order VII, Rule 11 can be filed at any stage of the proceedings. There is no limitation applicable in filing of an application under the said rule. The defendant can also file such an application even after filing of the written statement. So far as the judgments of the Supreme Court relied upon by the petitioner in the case of K.Venkateswara Rao and another v. Bekkam Narsimha Reddy and others, wherein the Supreme Court has held in para 14: 'in our opinion however the Limitation act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act.'. and Hukumdeo Narain Yadav v. Lalit Narain Mishra, (1974) 2 SCC 133, in Para-25 of which the Supreme Court again held that the provisions of section 5 of the Limitation Act do not govern the filing of election petitions or their trial and in this view, it is necessary to consider whether there are any merits in the application for condodnation of delay, both of which are again followed by the Supreme Court in

G.V. Sreerama Reddy and another v. Returning Officer and others, (2009) 8 SCC 736**,** are concerned, suffice is to say that since the law is long settled and again reiterated in R.K. Roja (supra) that there is no time limit provided for filing an application under Order VII, Rule 11 of the CPC and the Court is bound to decide the same before proceeding with the trial of the case, thus, there is no force in the submission of the petitioner that the application of respondent under Order VII, Rule 11, CPC should be rejected on ground of delay. There was no need for the respondent to file the delay condonation application along with his application filed under Order VII, Rule 11, CPC. Even otherwise the applications are filed within time finally allowed by the Court by order dated 13.9.2021 and thus, on facts also, there is no delay in filing the applications by the respondent. Accordingly, C.M. Application No. 118050 of 2021 stands disposed of.

So far as ground (iii) of corrupt practice is concerned, it is strongly submitted on behalf of respondent that in Para 6(32) and Ground 7® of the election petition allegations of corrupt practice are made, and thus, it was mandatory for the petitioner to also file an affidavit in support of the said allegations, as mandated under section 83(1) of the RP Act. Para 6 (32) and Ground 7 ® of the election petition read as follows:

"6(32). That the petitioner made a serious and detailed compliant through E-mail against the misconduct of R.O. Suresh Kumar, ARO Mahendra Pal Singh and Election Observer Udai Kumar Singh for taking illegal gratification of Rs. 3 crore from a Candidate of B.S.P.-S.P. Led. Party for putting only one EVM in place of Two EVM with respect to 20 candidates which led the R.O. for Improper rejection of Nomination papers of present petitioner and Eight others to conclude 1 EVM in place of 2, the E-mail was sent to Chief Election Commissioner Election Constitution of India New Delhi on 6th May at 6.36 a.m. and the same was forwarded to the following Authorities:

(a) Chief Electoral Officer, U.P.
(b) Supreme Court of India
(c) Sr. Judge Hon'ble Justice Pankaj Kumar Jaiswal Lucknow Bench of Allahabad High Court.

A copy of complaint dt. 6.5.2019 is annexed herewith as Annexure No. 12 t this Election Petition. (Page Nos. 67 to 71).

"Ground-7(R). Because the Returning Officer with the illegal gratification of Rs. 3 Cr. From the B.S.P.-SP led candidate, improperly rejected the nomination papers of present petitioner and 7 other candidates so that in that election only One EVM may be utilized in place of 2 EVM and SC/ST voters may not confuse and ultimately, B.S.P.-S.P. led candidate may win the election from 55 Ambedkar Nagar Parliamentary Constituency". **Dr. Lal Bahadur v. Ritesh Pandey, 20022 (154) RD 811 – Alld. HC-Lucknow Bench**

Order Rule 11 and Order XXXIX, Rules 1 and 2-Temporary injunction – Rejection of plaint – Refusal to hear application filed under Order VII, Rule 11, CPC before hearing and disposal of application for temporary injunction – Legality – One an application filed under Order VII, Rule 11, CPC – Court has to dispose same before first and only thereafter to proceed with injunction application – Trial Court committed a manifest and grave error of law by passing impugned order – Set aside – Direction issued – Petition allowed.

Considering the facts and circumstances of the case and also in the interest of justice, the Court is of the opinion that the order passed by the Court below dated 12.7.2021 is liable to be set aside and is hereby set aside. The Court below is directed to pass appropriate orders on the application filed under Order VII, Rule 11(d) of CPC most expeditiously, preferably within a period of three months from the date of presentation of a copy of this order. It is made clear that the Court below shall pass an order on the application for interim injunction only after order is passed on the application filed under Order VII, Rule 11(d) of CPC. **Smt. Achana Kanaujia and another v. Pooja Educational and Social Development Trust and others, 2002 (154) RD 55 – Alld. HC**

O.XXVI, R.9 – Identification of land in dispute – Survey report – Sustainability – Identification of land can be done qua map and position of a disputed land has to be established as per map-Before conducting survey and fixed point is to be established by commission-Since without ascertaining any fixed point survey was conducted – Therefore, impugned survey report set aside - Now survey Commissioner appointed to conduct survey as consent by parties to submit report - Ordered accordingly.

Insofar as the issuance of Commission is concerned, the Court does not find any irregularity in it, although the detailed directions should have been avoided to the Commission. The simple issue is identification of the disputed land alone and not other land. Beyond which the directions are definitely beyond the jurisdiction and not necessary for disposal of the suit.

Insofar as the impugned order dated 25.3.2021 is concerned, the Commission report has been accepted which purportedly surveyed the disputed land, measured it and submitted a report. But, the report does not reveal that before conducting the survey any fixed point was established by the Commission. For this reason, the Commission report ought to have been rejected straightway. Therefore, impugned order dated 25.3.2021 deserves to be set aside and as stated, the impugned order dated 23.1.2021 deserves to be modified. **Sumitra Devi and another v. Dinesh and others, 2022 (154) RD 505 – Uttarakhand HC)**

O.32, R.15—Suit on behalf of persons with unsound mind—Inquiry by court—Stage at which, can be conducted—Suit for cancellation of sale deed

A perusal of the provision of Rule 15 to Order 32 post 1977 amendment shows that it provides that the court can conduct the inquiry regarding unsoundness of mind of any party to the suit before or during the pendency of suit. In the present case the court has ad judged the mental incapacity of the plaintiff on account of unsoundness of mind during the pendency of suit by framing issue No.8. In view of the amended provision of Rule 15 of Order 32 CPC this cannot be said to be against the provision of law. The amended provision authorised the court clearly to decide this issue even during the trial, if the court had not done so prior to commencement of the trial. The trial court relied upon the judgment of this court in the case of K. Kumar (supra) where this court held that where a suit is instituted by a minor through next friend for protection his interest against a person acting against his interest then no permission for being appointed as guardian is required. However, if the suit is instituted against the minor then the permission of the court is required for appointment of next friend/guardian of the minor. It goes without saying as per Order 32, Rule 15, CPC the Rules 1 to 14 of Order 32, CPC applicable to minors apply to person of unsound mind also. **Dashrath Singh vs. Gaya Din, AIR 2022 All 1**

O. XLI, R.17

The substantial question of law framed by this Court is decided in favour of the appellant and it is held that the Explanation to Order XLI Rule 17 CPC also applies in cases where the counsel for the appellant, though physically present in the Court when the appeal is called on for hearing, refuses to argue the appeal or for any other reason is not able to address the Court and in such situations the appellate Court has no jurisdiction to decide the appeal on merits. **Janki Prasad vs. Sanjay Kumar and others, 2022(1) ADJ 312(LB)., Allahbad High Court**

Constitution of India, 1950

Art. 22 - Preventive Detention

It may be noted at this juncture, that in a catena of decisions on the issue, it has been settled that even if a person is in custody, detention order can validly be passed. The legal proposition is that a person can be detained under the National Security Act even if he is languishing in jail. However, to record satisfaction, which obviously is a subjective one, that such a person is to be detained it is necessary that the authority passing the detention order must be aware of the fact that; (1) the detenu is actually in custody; (2) there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity, and thus to demonstrate that it was felt essential to

detain such person to prevent him from so doing. **Kamlesh Pathak vs. Union of India and others, 2022(3) ADJ 195, (Allahabad High Court)**

Arts. 226 and 227- Arbitration and Conciliation Act, 1996- Section 36

Having regard to the foregoing discussion the legal position which thus emerges is that judicial orders of civil court would not be amenable to writ jurisdiction under Article 226 and that challenge there against can be raised under Article 227.

Applying the aforestated legal principles to the facts of the present case, an order passed by the executing court in proceedings for enforcement of an arbitral award under Section 36 of the Act 1996, being a judicial order passed by a civil court of plenary jurisdiction, the same would not be amenable to a writ of certiorari under Article 226 of the Constitution of India. **M/S. Magma Leasing Ltd. vs. Badri Vishal and others, 2022(1) ADJ 382, (Alld. H.C.)**

Criminal Procedure Code

DNA Test

The DNA evidence, no doubt has the ability to increase the accuracy of verdicts in criminal trials. But this does not mean that we should be complacent about its use and presentation. DNA will create a comprehensive data-base eventually resulting in a human databank of DNA publicly accessible and treamendously utilized in criminal investigations.

Further, in the context of the present case, the Court is of the view that the DNA Test or Narcoanalysis Test, as prayed by the applicant, is of no relevance in the case of rape. The DNA Test can be said to be a conclusive evidence regarding rape, but the said DNA test will not conclude that the applicant had not committed rape on the victim, even the test come negative, it cannot be ruled out that the rape has not been committed, therefore there is no force in the argument of the applicant's counsel. **Adesh Kumar vs. State of U.P. and another, 2022(1) ADJ 628. (Alld.H.C.)**

S. 145 – Constitution of India, 1950-Article 226 – Petition to direct S.D.M. to decide application filed under section 145, CrPC expeditiously – Maintainability – Pendency of civil suit in respect of same property – Effect of – Civil Court is only Court to decide right, title and interest of parties to have rightful possession over property-While Sub-Divisional Magistrate under section 145, CrPC can only decide possession of party on date of dispute –

During pendency of civil suit with regard to right, title and interest and right to possession over property is pending-Criminal proceeding neither can be initiated nor decided prior to decision of Civil Court – Since civil suit is pending in respect of property-Therefore, Sub-Divisional Magistrate cannot be directed to proceed and conclude matter – Petition dismissed.

It would be lawful for the petitioner to seek remedy before the Civil Court itself as he himself is party to the Original Suit No. 66 of 2021 pending in the Court of Civil Judge, Senior Division, Balrampur. The Sub-Divisional Magistrate, Tehsil Utraula, Balrampur cannot be directed as sought in the petition to proceed under section 145, CrPC and conclude it this way or that way.

Civil Court, is the only Court to decide the right, title and interest of the parties to have rightful possession over the property so far as Sub- Divisional Magistrate's Court (Criminal Court) working under section 145, Cr. P.C. is concerned, it can only decide possession of the party on the date of dispute. During the pendency of the civil suit with regard to the right, title and interest and right to possession over the property is pending, Criminal proceeding neither can be initiated nor decided prior to the decision of the Civil Court. **Sharvan Kumar Kaushal v. Sub-Divisional Magistrate and others, 2022 (154) RD 224 – Alld. HC – Lucknow Bench**

Ss. 173(8) and 397/401—Indian Penal Code, 1860, Secs. 120-B, 409, 420, 468 and 471—Prevention of Corruption Act, 1988, Sec. 13(2) read with section 13(1)(d)—Further investigation—Rejection of application of accused-revisionist for further investigation—Legality

The revisionist filed an application on the ground that the charge-sheet has been filed without waiting for the CFSL report. Also the CFSL expert has requested for other specimens to be provided to him to submit a definite opinion. Therefore, it can be deemed that no fair investigation was carried out by the Investigating Agency. Only the CFSL report can prove the alleged offences against the revisionist, therefore, a request was made that the learned Trial Court should direct further investigation by sending other specimen of the accused handwriting for a definite opinion by the CFSL expert.

Learned Counsel for the revisionist, on the other hand, has placed reliance upon the judgment rendered by the Hon’ble Supreme Court in Vinubhai Haribhai Malviya and others vs. State of Gujarat and another, 2019 (17) SCC 1, was rejected by Trial Court.

The Hon’ble Court observed that this Court has considered paragraph 25 of the Judgment which has been relied upon by the learned Counsel for the revisionist and finds that there is no specific direction issued by the Hon’ble Supreme court that even the accused can file an application under section 173(8) for further investigation.

Further Hon'ble High Court held that therefore, at that stage, where the trial had to be still initiated, no application under section 173(8)(B) by the accused could have been entertained. **Ramesh Chandra Mishra vs. Union of India, 2022 (118) ACC 565**

S. 190

It is a position of law that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must take notice of the accusations and apply his mind to the allegations made in the police report. However a Magistrate is not required to pass a detailed reasoned order at the time of taking cognizance of the charge-sheet. But it does not mean that an order of taking cognizance can be passed justify filing up the blanks on a printed proforma judicial order cannot be allowed to be passed in such manner.

Before parting with the judgment, I am of the view that considering the nature of the issue which arose in the instant case, it would be just and appropriate to direct all the District Judges, and Chief Judicial Magistrates Chief Metropolitan Magistrates to ensure that the Judicial Magistrates/ Judge shall not pass the cognizance order on printed proforma while taking cognizance under Section 190 of the Code. **Pawan Kumar vs. State of U.P. and others, 2022(1) ADJ 606. (Alld.H.C.)**

S.190

To simplify the same it can be safely said that the Magistrate has to apply his independent mind so as to find out whether the material collected by Investigating Officer is sufficient to proceed further and whether the same constitutes violation of law so as to call a person to appear before criminal court to face trial. Logically the word cognizable and non-cognizable offence have been employed in the New Code so as to suggest that it is the Magistrate who exercises its powers u/s 190 to proceed against a person while summoning him for the purpose of investigation into two categories being cognizable and non-cognizable. The New Code nowhere contemplates the situation whereby wherein under the Magistrate concerned is to act as a post office. Whenever, any information of a cognizable offence is received or the same is suspected, the police authority so available with the police officer authorizes him to enter into the investigation of the same but wherein the information relates to non cognizable offence he has no power to investigate it without the order of the competent Magistrate. The said provision itself finds place in Section 155 of the New Code.

Coming back to the case at hand it will clearly reveal that the order under challenge summoning the applicants is nothing but on a printed proforma wherein the blanks have been filled by the pen. The said procedure so adopted by the court

below is no where either provided under or contemplated in New Code. Nonetheless, in case such type of order are allowed to be made a part of the process of criminal jurisprudence it will tantamount to be a situation whereby wherein under the order of summoning the accused would be said to be final as no superior court of law can find out as to what contemplated in the mind of the Magistrate who passed the order.

Even otherwise, the complete set of procedure has been earmarked in the New Code for the cases arising out of the FIR as well as complaint cases. The only safeguard which is available in criminal jurisprudence at the stage of ordering for investigation is to find out as to whether offence either cognizable or non-cognizable are made out or not. The Magistrate has been empowered under law to pass orders which are not only the legal but also must contain any of the material so as to show that there has been application of mind by the Magistrate. Particularly, when the orders for summoning the individuals is a serious matter, which is prone to challenge in appropriate court of law. **Gangaram and others vs. State of U.P. and another, 2022(2) ADJ 88, Allahabad High Court**

S. 190(1).

Having regard to the foregoing discussion, it would be seen that cognizance of offence is the first and foremost step towards trial. The Code has not defined or specifically explained the expression "taking cognizance of an offence". However, it has been consistently held in various judicial pronouncements that cognizance takes place at a point when a Magistrate first takes judicial notice of an offence, whether on a complaint, or on a police report, or upon information of a person other than a police officer. Cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence.

"Cognizance" has been held to merely mean "become aware of" and when used with reference to a Court or a Judge, it connotes "to take notice of judicially". It indicates the point when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone. "Taking cognizance" does not involve any formal action and it occurs as soon as a Magistrate applies his mind to the suspected commission of an offence.

The expression "taking cognizance" has been held to be of an indefinite import, and a consistent view has been taken that it was neither practical nor desirable to precisely define as to what is meant by "taking cognizance". The question as to whether the Magistrate has taken cognizance of an offence would depend upon the circumstances of the particular case, including the mode in which the action is sought to be instituted and the nature of preliminary action.

It is well-settled that before a Magistrate can be said to have been taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be stated that he has taken cognizance of the offence.

The term "cognizance" though not statutorily defined, yet judicial pronouncements give it a definite meaning and connotation and broadly it can be held to mean "taking judicial notice" by a competent Court of a cause or matter presented before it so as to decide whether there is basis for initiating proceedings for judicial determination.

Since cognizance is take prior to commencement of criminal proceedings, taking of cognizance would thus be a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. The question as to whether a Magistrate has taken cognizance of an offence would therefore depend on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.

The scope of consideration by the Court at this stage would be as to whether material produced before Court prima facie discloses commission of offence and a detailed enquiry and sifting of evidence is not to be undertaken at his stage. The issuance of process is at a subsequent stage when after considering the material placed before it the Court decides to proceed against the offenders against whom a prima facie case is made out.

The guilt or innocence of the accused is to be determined in the trial, and therefore, at the stage of cognizance, the Court, need not undertake an elaborate enquiry in sifting and weighing the material, nor is it necessary to delve deep into the various aspects; all that the Court has to consider is whether the material on record prima facie discloses commission of an offence and nothing further need be enquired into at this stage.

The Court can take into consideration not only the police report but also on other materials on record, and it would not be required to pass a reasoned order. It has been consistently held that there is no legal requirement that the Magistrate should pass a speaking order indicating reasons, at the stage of taking cognizance. A detailed order may be required to be passed by the Magistrate for culminating the proceedings but the same would be quite unnecessary at the various interlocutory stages, such as issuing process, remanding the accused to custody, framing of charges and passing over to next stages in the trial.

At a stage where it is to be decided s to whether process should be issued, the Magistrate would not be required to enter into a detailed discussion on merits or demerits of the case and it would suffice if the evidence led by the complainant in support of the allegations is taken into consideration. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence can be held adequate for supporting the conviction can be determined only at the trial and not at the stage of issuing process, where the Magistrate is to be mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused; at this stage, the Magistrate would therefore not be required to record reasons.

There being no legal requirement under sub-section (1) of Section 204 of the Code to record reasons at the stage of issuance of process, the question whether the reasons assigned by the Magistrate while issuing process, are good or bad, sufficient or insufficient, would not be required to be examined in a challenge raised against the order; all that may be seen whether there was material before the Magistrate to take a view that there was sufficient ground for proceeding against the persons to whom processes had been issued under Section 204.

A distinction may be drawn between taking cognizance based upon charge-sheet filed by the police under Section 190(1)(b) of the Code and taking cognizance based on a complaint under Section 190(1)(a). Under Section 190(1)(b), a police report and the documents filed alongwith it are placed before the Magistrate whereas under Section 190(1)(a), he has only a complaint before him. Therefore, insofar as taking cognizance based on a police report is concerned, the Magistrate would have the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation.

In such cases, the investigating officer collects the necessary evidence during the investigation and the evidence and materials so collected are sifted at the level of the investigating officer and thereafter charge-sheet is filed. The Court has thus the advantage of the police report alongwith the materials placed before it by the police. Under Section 190(1)(b), where the Magistrate takes cognizance of an offence upon a police report and is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. Such an order being based upon consideration of the police report and other documents, the Magistrate would not be required to meticulously examine and to evaluate the evidence and the record detailed reasons. The fat that after investigation of the case, the police has filed a charge-sheet alongwith the material thereon, may be considered as sufficient ground for proceeding for issuance of summons under Section 204 of the Code.

It may therefore be concluded that in the absence of any legal requirement for the Magistrate to have given detailed reasons in an order taking cognizance and issuing process the same cannot be held to e vitiated only on the ground that the order is not a reasoned order.

Keeping in mind the principle enunciated under Section 465 of the Code, challenges to interlocutory orders such as a cognizance order or a summons order by raising a plea of irregularity or infraction of a procedural provision may not constitute a ground for interference by a superior Court unless such irregularity or infraction has caused irreparable prejudice and has thereby occasioned a failure of justice- the Court would have to keep in mind that challenges to interlocutory orders that do not go to the root of the case are major cause for delay in the trial of criminal cases. **Badri Prasad and others vs. State of U.P. and another, 2022(1) ADJ 39(Alld.H.C.).**

S. 218/223—Joint/separate trial

The principles that emerge from the decisions of this Court on retrial can be formulated as under:

(i) The Appellate Court may direct a retrial only in 'exceptional' circumstances to avert a miscarriage of justice;

(ii) Mere lapses in the investigation are not sufficient to warrant a direction for retrial. Only if the lapses are so grave so as to prejudice the rights of the parties, can a retrial be directed;

(iii) A determination of whether a 'shoddy' investigation/trial has prejudiced the party, must be based on the facts of each case pursuant to a thorough reading of the evidence;

(iv) It is not sufficient if the accused/ prosecution makes a facial argument that there has been a miscarriage of justice warranting a retrial. It is incumbent on the Appellant Court directing a retrial to provide a reasoned order on the nature of the miscarriage of justice caused with reference to the evidence and investigatory process;

(v) If a matter is directed for re-trial, the evidence and record of the previous trial is completely wiped out; and

(vi) The following are some instances, not intended to be exhaustive, of when the Court could order a retrial on the ground of miscarriage of justice :

a) The trial court has proceeded with the trial in the absence of jurisdiction;

b) The trial has been vitiated by an illegality or irregularity based on a misconception of the nature of the proceedings; and

c) The prosecutor has been disabled or prevented from adducing evidence as regards the nature of the charge, resulting in the trial being rendered a farce, sham or charade. **Nasib Singh vs. State of Punjab, 2022 (118) ACC 676**

S. 220

After looking into the factual aspects of both case crimes, it is borne out from the record that there are common weapons used in the commission of two offences and thus the offence registered in Case Crime No. 196 of 2020 is forming the part of same transaction in furtherance of Case Crime No. 189 of 2020. From a perusal of the record, it appears that both crime numbers i.e. Case Crime No. 189 of 2020 and 196 of 2020, are emanating from 'same transaction' or 'event' or 'sequence of events'. In case these two trials are directed to be tried separately then it would result in adducing two sets of evidence during the course of trial which would result in harassing the parties. The two trials for the same transaction shall not serve the fruitful purpose. **Shivam Awasthi vs. State of U.P. and annother, 2022(3) ADJ 657 (Allahabad High Court)**

Ss. 227, 228 and 482—Discharge application—Rejection of—Legality

In this case, Hon'ble High Court held that while disposing of the discharge application, the Court below may not appreciate the defence of the accused as the stage of trial. At the same time, it is also incumbent upon the learned Court below to consider and dispose of the contents and contentions of the discharge application and peruse the material available on record as produced by the Investigating Officers.

The material available on record e.g. statements of various persons recorded under section 161 Cr.P.C. etc. should have been considered by the Court below carefully inasmuch as the accused person has got legal right to file discharge application and such legal right must be addressed and disposed of by speaking and reasoned order within the four corners of the law. **Siyaram @ Shiva Ram vs. State of U.P., 2022 (118) ACC 877**

S. 245 - Issue of Discharge - Dowry Prohibition Act –

There were allegation on accused husband and in laws harassed the victim both mentally and physically for insufficient dowry. While harassment they also extended life threats.

The FIR was filed subsequent to divorce and decree of divorce has attained finality thus Section 498A of IPC are not attracted. It was held that on date of institution of FIR THERE was no relationship of husband and wife between accused and informant. So accused cannot be prosecuted for offence of matrimonial cruelty and demand of dowry. It was held that accused was entitled to be discharged.

Discussing the Sections 406, 506 IPC and the issue of discharge Hon'ble court held that the offences of criminal breach of trust and criminal intimidation are, prima facie made out from the allegations made and the facts stated in FIR.

Matter requires to proceed entirely on the basis of allegation made in FIR, complaint or documents accompanying the same. It was also held that High Court cannot however examine correctness or otherwise of allegation as same requires detailed consideration of evidence. Thus, accused was not entitled to be discharge in above sections. (1985 AIR SC 628 and AIR 2021 SC 1918 were relied on). **Bahadur Singh Rautela v. State of U.P., 2022 Cri.L.J. (NOC) 109 (All.): AIR Online 2021 All 5722.**

S.311 - Recalling of witness

The application to recall the witnesses was rejected. Hence it was challenged before Hon'ble Court. The matter was related to the offences under section 8, 9 prevention of Corruption Act. It was held that though application seeking recall of witness can be allowed at any stage, but same is always subject to valid grounds and reasons. It was held that application preferred by accused does not give any specific details of questions sought to be raised in cross examination of witness. In application only bald and vague assertion was made that certain question relating to occurrence of incident were left to be asked. It was held that ground so taken do not disclose any of the conditions necessary for recalling witness. Merely on asking of party application to recall witness cannot be allowed without sufficient reasons. It was held that order denying recall of witness does not suffer from any manifest illegality and cannot be interfered with. (AIR 1968 SC 178 & AIR 1991 SC 1346 was relied) **2022 Cri.L.J. (NOC) 122 (All.) : AIR Online 2021 All 5722.**

Ss. 313, 281

While discussing the principles of examination of accused under Section 313Cr.P.C. Hon'ble Allahabad High Court held that there must be fair examination of accused under the Code of Criminal Procedure. The offence was of murder and accused was merely apprised as to who have testified against him and what document was produced by prosecution. Examination of accused was not on respect of circumstances that appear against him. There were some important circumstance that accused was a foreign national, accused had been singing in bangla, his wife did not understand Hindi language, these circumstances were sufficient to put the trial judge on guard to ensure that the incriminating circumstances appearing in the prosecution evidence were meticulously put and explained to the accused therefore the examination of accused was not in respect on circumstances that appear against him. Such omission caused serious prejudice to accused. On reaching such conclusion, circumstances that were not put to accused would have to be eschewed from consideration. Analysis of evidence to find out whether it would lead to conviction of accused or not would be an exercise in futility. It was also held that accused has already served 30 years 4 month and 3 days in prison, any fresh exercise to cure defect, after such a long gap, would be

travesty of justice. Hence conviction was set aside. **Ishaque v. State of U.P., 2022 Cri.L.J. 556: AIR Online 2021 All 4507.**

S. 378

Thus, it is a settled principle that while exercising appellate powers, even if two reasonable views/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. **State of U.P. vs. Navratan Lal and others, 2022(2) ADJ 34 (DB), Allahabad High Court**

Ss. 397/401 and 125—Order granting maintenance—Legality and propriety

In this case, the Hon'ble High Court referred to the law laid down by Hon'ble Supreme Court in case of Badshah vs. Urmila Badshah Godse, (2014) 1 SCC 188, and held that the Hon'ble Apex Court has clearly mandated that maintenance in all cases will be awarded from the date of the filing of the application for maintenance. **Naveen Agrawal vs. State of U.P., 2022 (118) ACC 782.**

S. 439

In a matter allegations were that accused along with other co-accused formed unlawful assembly with weapons and assaulted person from complainant side resulting death of one person and causing injury to another four person. Presence of accused and other co-accused was not disputed. It was stated by Hon'ble High Court that effect of cross case and alleged death and injuries cause to persons of accused side cannot be the sole ground to grant bail to accused. It was also held that delay in lodging FIR is prima facie explained. It was also held that even if there was no specific overact attributed to accused, yet being member of unlawful assembly, he would be guilty of offence committed by any of member of said unlawful assembly in prosecution of common object of such assembly.Hence, accused was not found entitled for bail. **Deepak Yadav v. State of U.P., 2022 Cri.L.J. (NOC) 37 (All) : AIR Online 2021 All 912.**

S. 439—Narcotic Drugs and Psychotropic Substances Act, 1985—Secs. 8(c), 8-A r/w secs. 20(b), 21, 22, 27-A, 27-B, 28 and 29—Bail—Cancellation of—Application for- Sustainability

In this case, the High Court of Karnataka has released the respondents on bail for the offences punishable under sections 8(c), 8-A read with sections 20(b), 21, 22, 27-A, 27-B, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, as case may be, against which the aggrieved NCB, Bengaluru Zonal Unit approached the Supreme Court.

The Hon'ble Supreme Court reiterated that Tofan Singh vs. State of Tamil Nadu, 2021 (114) ACC 265 (SC), that a confessional statement recorded under section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail.

The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless. **State by (NCB), Bengaluru vs. Pallulabid Ahmad Arimutta, 2022 (118) ACC 957**

S. 482-Indian Penal Code, 1860- Sections 379-Mines and Minerals (Development and Regulation) Act, 1957- Sections 4 and 21

The present application under Section 482 of the Code of Criminal Procedure, 1973 (The Code) has been filed seeking to quash the entire proceedings as well as the Cognizance Order dated 5.9.2019 passed by the Additional Chief Judicial Magistrate, Court No. 5, Prayagraj in Case No. 1841 of 2019 (State vs. Bhawarjeet Singh and others), arising out of Case Crime No. 367/2018, under Section 379 Indian Penal Code, 1860 (Penal Code) and Section 4 and 21 Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act), Police Station Sankargarh, District Prayagraj.

It is pointed out that proceedings in the present case were initated pursuant to an FIR dated 25.11.2018 lodged under Section 379, 411 of the Penal Code and Section 4,21 of the MMDR Act and a police report under Section 173(2) of the Code dated 24.12.2018 filed whereupon cognizance was taken by the learned Magistrate on 5.9.2019 and the applicant has been summoned.

Having regard to the aforesaid facts and circumstances and following the decision in the case of Ram Bahal vs. State of U.P. and another (supra) and the legal propositions summarized therein, the proceedings, insofar as they relate to the offences under the Penal Code in respect of which cognizance has been taken by the Magistrate and process/summons have been issued, cannot be faulted with and the challenge raised in regard to the same cannot be sustained and is accordingly rejected.

However, insofar as the offences under the MMDR Act are concerned, the procedure under Section 22 having not been followed and in the absence of a complaint by the authorized officer, the cognizance taken by the Magistrate cannot be legally sustained and the proceedings in this regard are set aside and quashed. It would be open to the authorized officer to initiate proceedings in this regard as per the procedure under Section 22 of the MMDR Act and to lodge a complaint before the concerned Magistrate alongwith report submitted by the investigating officer

whereupon the Magistrate concerned may take cognizance after following due procedure and issue process/ summons. **Pradeep Singh vs. State of U.P. and another, 2022(2) ADJ 109, Allahabad High Court**

S. 482—IPC, Secs. 397 and 411—Mines and Minerals (Development and Regulation) Act, 1957, Secs. 4, 21 and 22—Quashing of cognizance order—Application for—Matter relating to illegal mining—

In this case, Hon'ble High Court held that the proceedings, insofar as they relate to the offences under the Penal Code in respect of which cognizance has been taken by the Magistrate and process/summons have been issued, cannot be faulted with and the challenge raised in regard to the same cannot be sustained and is accordingly rejected.

However, insofar as the offences under the MMDR Act are concerned, the procedure under section 22 having not been followed and in the absence of a complaint by the authorized officer, the cognizance taken by the Magistrate cannot be legally sustained and the proceedings in this regard are set aside and quashed. It would be open to the authorized officer to initiate proceedings in this regard as per the procedure under section 22 of the MMDR Act and to lodge a complaint before the concerned Magistrate alongwith report submitted by the investigating officer whereupon the Magistrate concerned may take cognizance after following due procedure and issue process/summons. **[Pradeep Singh vs. State of U.P., 2022 (118) ACC 400]**

Ss. 482, 125 and 128—Quashing of proceedings of execution case

In this case, Hon'ble High Court observed that the language of a proviso is normally to be construed in relation to the subject matter covered by the section to which it is appended and a proviso would not travel beyond the section to which it is a proviso. It has consistently been held as a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

As a logical corollary it may be stated that the proviso would assume the tenor and colour of the substantive enactment and the correct way to understand the proviso is to read it in a context and not in isolation. The proviso can be held to operate within the ambit of the section to which it is a proviso and it cannot deal with any other field than the field which the section itself deals with.

It would be the duty of the Court while construing a proviso to give it a meaning so as to bring it within the ambit and purview of the section itself, by reading it in a manner so as to confine it to the section which precedes it.

Applying the aforesaid principles of statutory construction, the proviso to sub-section (3) of Section 125 would have to be held to be confined to the section which precedes it. The limitation of one year provided in terms thereof would have

to be read in relation to issuance of a warrant for recovery of an amount due in terms of an order of maintenance passed under sub-section (1) of Section 125. The aforesaid limitation of one year under the proviso to Section 125 (3) cannot be held to travel beyond or stretch to an extent so as to being within its ambit the powers relating to enforcement of an order of maintenance under Section 128 of the Code.

Hon'ble High Court held that the proceeding for enforcement of the order under Section 128, therefore, cannot be assailed on the ground that the same would be barred by limitation as provided under the proviso to Section 125(3) of the Code. **[Mohammad Usman @ Bhai Lal vs. State of U.P., 2022 (118) ACC 52]**

Ss. 482, 227 and 228—Prevention of Damages to Public Property Act, 1984, Sec. 3—Quashing of order framing charge—Application for

The Hon'ble High Court reiterated that the ambit and scope of exercise of power under Sections 227 and 228 of the Code, are fairly well settled. It has been consistently held that the standard of test and judgment which is to be finally applied before recording of finding regarding the quilt or otherwise of the accused is not exactly to be applied at the stage of framing of charge. The test to be applied at this stage would be whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. The Court has clearly to sift the elements in order to find out whether or not there is sufficient ground for proceeding against the accused and if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 of the Code, if not, he will discharge the accused. At the stage of framing of charge or considering dis charge of the accused, no mini trial in contemplated and only probative value of material has to be gone into, to see if there is a prima facie case for proceeding against the accused. **[Ram Nayan Singh vs. State of U.P., 2022 (118) ACC 396]**

Dowry Prohibition Act

Issue of Discharge

There were allegation on accused husband and in laws harassed the victim both mentally and physically for insufficient dowry. While harassment they also extended life threats.

The FIR was filed subsequent to divorce and decree of divorce has attained finality thus Section 498A of IPC are not attracted. It was held that on date of institution of FIR THERE was no relationship of husband and wife between accused and informant. So accused cannot be prosecuted for offence of matrimonial cruelty and demand of dowry. It was held that accused was entitled to be discharged.

Discussing the Sections 406, 506 IPC and the issue of discharge Hon'ble court held that the offences of criminal breach of trust and criminal intimidation are, prima facie made out from the allegations made and the facts stated in FIR. Matter requires to proceed entirely on the basis of allegation made in FIR, complaint or documents accompanying the same. It was also held that High Court cannot however examine correctness or otherwise of allegation as same requires detailed consideration of evidence. Thus, accused was not entitled to be discharge in above sections. (1985 AIR SC 628 and AIR 2021 SC 1918 were relied on). **Bahadur Singh Rautela v. State of U.P., 2022 Cri.L.J. (NOC) 109 (All.) : AIR Online 2021 All 5722.**

Essential Commodities Act

Licence –Fair Price Shop-Cancellation of.

Proceedings for cancellation on a charge of short distribution or short measurement is a stigmatic order, that visits a fair price shop dealer with adverse civil consequences. It impacts his right to livelihood. This Court cannot fail to notice that both the authorities below have proceeded on a presumption about proof of the charges, just because the Supply Inspector has brought them. Both the authorities below seem to believe that whatever the State say against the license holder is to be presumed true, unless rebutted by cogent evidence adduced by the license holder.

The State ought to have been required to adduce evidence *aliunde* in support of the allegations that are carried in charge-sheet and culled out into four charges. For instance, if the Supply Inspector has made imputations in his report that the petitioner short supplied kerosene to certain cardholders or food grains to others, whose names he has mentioned in his report, he ought to have called them to testify at the inquiry, at least some of those whom he has named in the report, to prove the charges before the Sub-Divisional Officer. The petitioner would have opportunity to cross-examine those cardholders. If that practice of a viva voce examination-in-chief, for some reason, be not countenanced by the procedure for holding such inquiries prescribed under some statutory rule or even a Government Order, in that event, affidavits of those cardholders ought to have been filed by the State to prove its charges against the petitioner. The petitioner could then have requested some of those deponents to be summoned for cross-examination in respect of whatever they deposed on facts, in support of the charges.

The State cannot be presumed to have come before the Sub-Divisional Officer with pre-established case, merely because it is said in the charge-sheet that some statements of cardholders have been recorded by the Supply Inspector. The burden to prove those charges would always be on the State. At the same time, it does not mean that the charges against the holder of fir price shop license have to

be proved beyond reasonable doubt y the State, like a criminal trial. Ideally, the standard of proof, in the opinion of this Court, would be preponderance of probability or the civil standard. **[Ram Kali vs. State of U.P. and others, 2022(1) ADJ 389(LB).] Allahabad High Court**

Licence –Fair Price Shop-Cancellation of.

Secondly once the complainants are not found the card holders of the petitioner's shop, they cannot be treated as aggrieved person. In light of the settled law, this Court is of the firm view that only aggrieved person can file complaint and in the present case complainants are not the aggrieved person. **[Mahipal vs. State of U.P. and others, 2022(1) ADJ 557.] (Allahabad High Court)**

Fair Price Shop – Appointment of dealer on Compassionate Ground-Daughter in law.

Although the aforesaid Full Bench judgment pertains to right of a widowed daughter in law and in the present case the petitioner is not a widowed daughter in law but in the considered opinion of this Court, the same would not have any difference whatsoever and the rigor of the Full Bench would be applicable in the present case as well. The reason for the said opinion of this Court is self evident from the reasoning indicated in the Full Bench decision itself in which it has been stated that the daughter in law upon death of her husband does not cease to be part of family. Applying the same logic in the case of daughter in law which has not been widowed, it can be seen that the later would have a better claim than a widowed daughter in law since she continues to be a part of family as much as a widowed daughter in law. As such no distinction can be carved out between a daughter in law whose husband is alive and a widowed daughter in law.

Upon applicability of aforesaid judgment, it is apparent that petitioner's application for compassionate appointment of the fair price shop in question has been rejected only on the ground that she does not come within the definition of 'family' as per paragraph IV(X) of the government order dated 5th August, 2019 this aspect of the matter having already been covered by the judgments of this Court indicated herein above, the ground for rejection of petitioner's application for compassionate appointment is clearly unsustainable.

In view of aforesaid, the impugned order dated 12th January, 2022 is quashed by issuance a writ in the nature of Certiorari at the admission stage itself. **[Smt. Sharma Devi vs. State of U.P. and others, 2022(3) ADJ 646] (Allahabad High Court)**

Evidence Act

Appreciation of Evidence

It was alleged that accused persons opened fire and caused death of deceased and his son by using fire arms. The issue raised was sudden provocation, inconsistency between ocular evidence of informant and daughter of deceased regarding opening of fire, the issue was also regarding contradiction of oral testimony of daughter regarding taking of deceased to hospital by Jeep or Tractor. It was alleged that credibility of her evidence does not leaved to discovery of truth.

It was held by Hon'ble Allahabad High Court that in this case provocation for sudden fight and quarrel triggered by deceased who protested by advancing toward accused and heat of passion multiply on his opening first fire. This fact was established on prudent reading of ocular testimony of informant. Accused persons did have knowledge of fatality of fire arm injury, but sudden provocation and aggression suppressed the aliment of intention much less than common intention. Thus it was held that the case false within field of exception IV appended to Section 300 IPC and benefit of Section 304 part I become applicable. Hence, conviction under section 302 IPC was altered to conviction under Section 304 part I IPC.

The plea regarding self defence in the offence of culpable homicide not amounting to murder was taken. It was perused on records by the Hon'ble Court. It was held that plea of self defence could be raised in the trial court at any time and it is the duty of trial court and appellate court both not to ignore any relevant aspect of case that has bearing upon the accused been guilty. Hence, in the present case the conviction of accused under Section 302 IPC was altered under Section 304 part I IPC. **Ashwani Kumar v. State of U.P., 2022 Cri.L.J. 724 : AIR Online 2021 All 5781.**

Burden of Proof –Non est factum- by an illiterate and rustic woman.

"(V) Whether in case of an illiterate and rustic woman, who raises a plea of *non est factum*, the burden of proof is reversed and lies upon the other side, who propound the document?"

The foremost substantial question of law, that is required to be answered, is the one numbered as (V).

The reversal of burden in case of illiterate and rustic woman may be a rule that is dependent on dynamic social conditions. The kind of illiterate and rustic women, who are entitled to the same protection as pardanashin women in contemporary time, may be a dying breed with more empowerment of women in rural areas as well, but this case has arisen in the decade of eighties of the last century, when conditions were not very different from what obtained in the context when the rule was invented and applied. It is also clear by the distinction noticed in Mahendra Singh that a plea of fraud and misrepresentation by a defendant is generically different from a plea of non est factum. Once an illiterate and rustic woman urges a plea of non est factum, the underlying fraud or misrepresentation

pleaded is not material. What is material is non est factum, which means no more than this that handicapped by her utter illiteracy and lack of acquaintance with the ways of the world, she was incapable of understanding the nature of the transaction that she went about and affixed her mark to. Once that plea is urged, the burden of proof would certainly lie on the beneficiary of the document executed by an illiterate and rustic woman to affirmatively show that she understood clearly the nature of transaction and what she was undertaking to do by her solemn deed. This burden of proof cast upon the beneficiary of the transaction, embodied in the document, can be discharged not only by leading evidence to show that the document was explained to her and she understood it, but by other evidence, direct and circumstantial, as held in Mst. Kharbuja Kuer vs. Jangbahadur Rai and others, AIR 1963 SC 1203. The relevant part has been extracted in the decision of this Court in Mahendra Singh Case.

This Court is conscious of the fact that it is not our province to appreciate the niceties of evidence, or for that matter, much of evidence. The evidence is to be examined in the context of the substantial questions of law that arise for consideration and the way the case of parties, on the evidence led, has been decided by the Courts below. It has been held, so far as substantial question of law No. (V) is concerned, that burden would be upon the party who takes from an illiterate and rustic woman under her deed, and not upon the woman who impugns her deed on the ground that she never understood its nature or contents, handicapped by her illiteracy and lack of acquaintance with the ways of the world. It has also been held that to discharge this burden, not only direct evidence may be led to show that the document, that an illiterate and rustic women executed, was read over and explained to her but other evidence, particularly circumstances, can also be shown, that point to the fact, one way or the other, whether a woman, who is handicapped in the manner under reference, did understand the contents and nature of the transaction embodied in her deed.

Before proceeding to scrutinize the judgments of the Courts below on the principles indicated, by which evidence should be evaluated in the face of a plea of non est factum by an illiterate woman executing a document, the decision of this Court in Ramesh Chand (supra) relied upon by Mr. Kesari to say that burden of proof would not shift upon the beneficiary of the document, requires consideration. This Court in Ramesh Chand was concerned about a plea relating to burden of proof being shifted upon the defendant, on account of the plaintiff's illiteracy, where the plaintiff challenged his deed on the ground of fraud. This Court neither considered the issue of shifting of burden upon the other side in the con text of a plea of non est factum by an illiterate woman, who was the executant, nor decided anything in relation to the aforesaid principle. For one, the plaintiff in Ramesh Chand was a man, who, though illiterate, may have been subject to a slight variation regarding reversal of burden, even if he had pleaded non est factum. But

more than that non est factum was never pleaded or considered. It was a plea of fraud that was raised and in the context of plea of fraud, it was held by my esteemed Brother Vivek Agarwal, J. that bur den of proof would not shift to the defendant merely on account of the plaintiff's illiteracy. The decision in Ramesh Chand is, therefore, clearly distinguishable on principle and has no application here. **[Vishram Shukla vs. Smt. Rajdei and others, 2022(3) ADJ 303] (Allahabad HighCourt)**

S. 114—Date of birth—Entry of date of birth in register of school first attended—Legal value

In this case, Hon'ble High Court observed that it is absolutely clear that alleged detenue stated before the court of Magistrate in her statement under Section 164 Cr.P.C. that she has studied only upto Class in Prathamik Vidyalaya, Sarawan, where her date of birth is entered an 5.4 2001. The case diary being a document required under law to be prepared by the police officer while investigating a case is a document prepared in its routine course of business by the police official who is a public officer. The acts and proceeding entered by such officer is case diary unless contrary is proved, shall be presumed to be correct.

Further the Hon'ble High Court observed that the in rules of Juvenile Justice Act, 2015, Aadhar Card is not enumerated as a document recognized for the determination of age. Even Aadhar Card is not notified by any official gazette to be a document recognized for determination of age, as such, the Aadhar Card to setup the age of minority on the basis of date of birth entered therein, is of no weight. Moreover, in the presence of a recognized documents the certificate issued from the school first attended having date of birth 5.4.2001, the Adhar Card is of no evidentiary value to prima facie establish the age of the alleged detenue. **[Km. Hashmi thru. Her Father-Natural Guardian Usman, 2022 (118) ACC 456]**

Income Tax Act, 1961

S. 279.

From a bare perusal of sub-section (2) Section 279, it is evident that any offence under Chapter XXII of the Act, 1961 may be compounded by the authorized officer either before or after the institution of the proceedings. No limitation for submission or consideration of compounding application has been provided under sub-section (2) of Section 279 of the Act, 1961. Therefore, the Central Board of Direct Taxes by a circular can neither provide limitation for the purposes of sub-section (2) nor can restrict the operation of sub-section (2) of Section 279 of the Act, 1961, in purported exercise of its power to issue circular under the second Explanation appended to Section 279 of the Act, 1961. It has not

been disputed before us by the learned counsel for the respondent or in the impugned show-cause notice that the criminal case in question is still pending.

A circular is subordinate to the principle Act or Rules, it cannot override or restrict the application of specific provision enacted by legislature. A circular cannot travel beyond the scope of the powers conferred by the Act or the Rules. Circulars containing instructions or directions cannot curtail a statutory provision as aforesaid by prescribing a period of limitation where none has been provided by either the Act, 1961 or the Rules. The authority to issue instructions or directions by the Board stems from the second Explanation appended to Section 279 of the Act, 1961. It is well settled that the Explanation merely explains the main section and is not meant to carve out a particular exception to the contents of the main section (Sonia Bhatia vs. State of U.P., (1981) 2 SCC 585 at page 597).

However, in the present case a specific limitation has been provided by para 7(ii) of the compounding guidelines contained in the circular dated 14.6.2019 in purported exercise of power under the second Explanation to Section 279(2) of the Act, 1961. The second Explanation merely enables the Board to issue instructions or directions to other Income Tax authorities for the proper composition of offences under that Section. That is to say the instructions or directions may prescribe the methodology and manner of composition of offences to clarify any obscurity or vagueness in the main provisions to make it consistent with the dominant object of bringing closure to such cases which may be pending interminably in our Court system. Such instructions or directions that are prescribed by the Explanation cannot take away a statutory right with which an assessee has been clothed, or set at naught the working of the provision of compounding of offences. **[M/s. GP Engineering Works Kachhwa and others vs. Union of India and others, 2022(3) ADJ 345(DB)] (Allahabad High Court)**

Indian Penal Code

Ss. 100, 148, 149 and 302—Right of private defence—Conviction—Sustainability

In this case, Hon'ble High Court discussed the law on private defence. In this appeal before Hon'ble High Court, the Learned Counsel for the appellants contended that Ram Gopal the brother of complainant and deceased was Pradhan of Gaon Sabha Wazirabad and be illegally allotted a plot to his brother Jagmohan. This allotment was cancelled but Jagmohan and h is brothers were trying to forcibly take possession of the disputed land and raised construction on it, when objected by the accused and Hargyan they assaulted them with lathi and tabbal causing grievous injuries. The accused also defended themselves and in exercise of such right injuries were caused to Harnam causing his death. The act of the accused is covered by the right of private defence of person. The complainant party

has no right of private defence of property as they have no right or title on the disputed land. The learned Trial Court has failed to appreciate the evidence in its right perspective and findings recorded by it are erroneous and bad in law.

The Hon'ble High Court based on the facts of the case observed that it is quite clear that complainant party was forcibly trying to occupy the disputed land and when objected they started to assault, Complainant party and in that assault apart from lathi, sharp-edged weapon was also used causing injuries on three accused persons namely Krishna Pal, Ghasita and Topia and a non accused Hargyan. In this assault accused have suffered some injuries on the vital part of their body and Hargyan has suffered a grievous injury. So accused were within their right of private defence of person and injuries inflicted on Harnam is in the exercise of their right of private defence. In the circumstances of the case it is also clear that there was apprehension that the death otherwise will be a consequence of such assault and grievous injury was inflicted on one of the person from the accused side, so section 100 of IPC is fully applicable on the facts of the present case and the right of private defence of person extends to causing death.

Further Hon'ble High Court held that the learned Trial Court has committed error in holding accused guilty for charges under sections 148 and 302 read with section 149 IPC. From the evidence on record it is clear that prosecution has failed to prove its case and accused are entitled for acquittal. **[Mahabir vs. State of U.P., 2022 (118) ACC 1]**

S. 302—Conviction—Sustainability

The Hon'ble High Court noticed that the prosecution story as culled out from the first information report, Ex. Ka-13 is that the accused/appellant, Bal ram, elder brother of husband of the deceased, had beaten Bindoo, the de ceased on 14.2.2012 at about 05:00 PM in the evening due to some altercation between the ladies. On 15.2.2012 in the morning at about 04:00 AM when the deceased-Bindoo returned after attending nature's call, the accused/appellant, Balram and one Aafta Devi poured kerosene oil on the deceased and there after set her ablaze by igniting match stick. According to the first information report, Ex Kia13, the specific time of occurrence is about 04:00 AM.

However, altogether different version of the occurrence has been narrated by the de ceased, Smt. Bindoo in her dying declaration, Ex. Ka-2. In the dying declaration, Ex. Ka-2, she has stated to have been set ablaze by the accused-appellant in the intervening night of 14/15.02.2012 at about 11-12 PM. The deceased, in her dying declaration, Ex. Ka-2, has also stated that Smt. Kismalti W/o Kaushal, her younger mother-in-law tried to put off fire by throwing a blanket upon her. Thus, according to the dying declaration, Ex. Ka-2, at the time of alleged occurrence, Smt. Renu, PW-2, the real sister of deceased, was not present and Smt. Kismalti W/o Kaushal who is said to have been present and who is said to have

attempted to put off fire by throwing blanket upon the deceased, has not been examined from the side of prosecution without assigning any reason there for. She was an important witness for ascertaining the true manner and time of the occurrence, however, the prosecution has chosen not to produce Smt. Kismalti without assigning any reason therefor, despite the fact that she has been shown to be a witness in the charge sheet, Ex. Ka-10.

The Hon'ble Court safely concluded that the prosecution has projected two versions of the same incident which are mutually irreconcilable. Therefore, the court's considered view that the prosecution, in the instant case, has been unable to answer as to which of the two prosecution stories is believable. The prosecution has, thus, failed to prove its case beyond reasonable doubt. The learned Trial Court has failed to consider and appreciate the material contradictions appearing in the prosecution case. The learned Trial Court has also failed to appreciate and consider the evidence led by the prosecution and defence in its right perspective and, thus, has erred in convicting and sentencing the appellant, who is entitled to the benefit of doubt. Therefore, the impugned judgment and order passed by the learned Trial Court is not sustainable in the eyes of law and the same is liable to be set aside. **[Balram vs. State of U.P., 2022 (118) ACC 40]**

S. 302—Arms Act, 1959, S. 25—Conviction—Sustainability

In this case Hon'ble High Court referred to the judgment of Hon'ble Supreme Court in Bhagwan Dass vs. State (NCT) of Delhi, 2011 (74) ACC 211 (SC) and observed that the judgment of Bhagwan Das relied upon by the trial is distinguishable on facts. In Bhagwan Das case mother of accused turned hostile during trial and she resiled from her earlier statement recorded under section 161 Cr.P.C. during investigation. Hon'ble Supreme Court accepted her statement recorded under section 161 Cr.P.C. only due to the fact that accused was her son and in view of the Apex Court she obviously wanted to save her son. In the present case, appellant is not even related to any of the witnesses of facts produced by prosecution including PW-1 (informant), PW-2 (mother of deceased) and PW-3, PW-4 and PW-5.

The law is well settled that the statements recorded under section 161 Cr.P.C. can only be used for the purpose of contradiction and it is not a substantive piece of evidence and such statements cannot be used against the accused persons.
The Hon'ble High Court held that thus law with regard to use of the statement recorded by the Investigating Officer during investigation under section 161 Cr.P.C. is well settled that on the basis of such statements, accused cannot be convicted. **[Sanjay Sharma vs. State of U.P., 2022 (118) ACC 491]**

Ss. 302/149, 147 and 323—Conviction—Sustainability

In this case the question before Hon'ble High Court, what whether the surviving appellants were part of the unlawful assembly which had a common object of causing injury to the deceased.

In the present case, Hon'ble High Court held that there is no evidence on record, which can prove the common object of all the accused persons including the surviving appellants to commit the murder of deceased Dhirendra Singh, neither the surviving appellants nor the other co-accused persons, except Harnath Singh, could have had knowledge or awareness that Harnath Singh would open fire from his gun upon Dhirendra Singh. Therefore, in these prevailing circumstances, the conviction of surviving appellants, namely, Brijendra Singh and Saleem under Section 302 IPC with the aid of Section 149 IPC cannot be sustained. **[Harnath Singh vs. State of U.P., 2022 (118) ACC 746]**

S. 302—Murder—Conviction and sentence—Legality—Conviction of accused on basis of oral testimony

In this case, Hon'ble High Court observed that the recovery of the Tamancha was from an open place and, therefore, provision of section 27 of the Evidence Act could not have been applied by the Trial Court against the accused which was found from an open place near Ken River. The factum of this recovery was not proved by the witnesses of fact. The police official accepted fact that in the cross-examination time of recovery is not mentioned.

Witnesses who have been examined are interested and partisan witnesses. If the incident had occurred at the place which is narrated which is an open place, there would have been other witnesses of fact. The medical evidence vis-à-vis ocular version of witnesses, there are lot of contradictions and omissions.

Further the Hon'ble Court observed that the appreciation of evidence, in the case in hand, also proves that there is material non-corroboration. Genesis and genuineness of the F.I.R. is also absent.

The Hon'ble High Court concluded that accused could not have been convicted on the basis of scanty evidence Ground of the prosecution is that the witnesses did not come forward as they were scared of the accused, this would prove fatal to the prosecution as the entire area was of a particular community even though no independent witness was examined though the incident occurred in broad day light and in a open space.

The medical evidence is in favour of the accused that firearm injury is not from very close range but at least from 8-10 ft. The tenor of injury in the post-mortem report will also go to the aid of the accused.

In view of the above, benefit of doubt was given to the accused. **[Munna Singh vs. State of U.P., 2022 (118) ACC 774]**

Ss. 302, 304, Part I, 498-A and 304-B/302—Dowry Prohibition Act, Sec. 3/4—Conviction—Sustainability

In this case, the Hon'ble High Court observed that the findings of the fact with regard to sustaining of burn injuries on the basis of the testimony of the hospital witnesses as well as dying declaration cannot be faulted with. Death of the deceased was homicidal death. The fact that it was an homicidal death takes this court to most vex question whether it will fall within the four-corners of murder or culpable homicide not amounting to murder.

Over all scrutiny of the facts and circumstances coupled with the medical evidence and the opinion of the Medical Officer and considering the numbers of law laid down by the courts of law in the above referred cases, we are considered opinion that in the case at hand the offence would be punishable under Section 304(1) IPC.

Upshot from the aforesaid discussion and inescapable position emerges that the death caused by the accused of the victim/deceased was on account of septicemia and further accused had no intention to cause the death of the deceased. The injuries were though sufficient in ordinarily course of nature to have cause death however accused had no intention to do away with deceased. Hence the incident falls under Ex.1 and 4 to Section 300 IPC, while considering the Section 299 IPC offence committed will fall under Section 304(1) IPC. **[Smt. Sudha vs. State of U.P., 2022 (118) ACC 799]**

Ss. 376 and 506—Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989—Sec. 3(2)(v)—Conviction—Sustainability

In this case the Hon'ble High Court observed that In view of the decision in Patan Jamal Vali (supra), the sine qua non is that the victim should be a person, who belongs to scheduled caste or scheduled tribe and that the offence under the Indian Penal Code is committed against such person on the basis that such person belongs to the same caste and the offender does not belong to the same caste. If this is proved, then only conviction under Section 3(2)(V) of the Act, 1989 can be invoked.

The evidence goes to show that there was no utterance by accused, which would prove that the ingredients of Section 3(2)(V) of the SC/ST Act are fulfilled. The judgment in Patan Jamal Vali (supra) applies to facts in this case, and therefore, when the prosecutrix and her witnesses are silent on the factum of the incident occurring due to shed being of caste, which falls within the purview of

SC/ST Act, the conviction cannot be sustained. **[Bala Prasad Kurmi vs. State of U.P., 2022 (118) ACC 609]**

Land Acquisition Act

Reopening concluded proceedings after coming to know of relief granted to others in a similar case – Filing of appeal beyond limitation by 28 years and 225 days – Condonation of delay in filing appeal – Sustainability – Appellants kept sleeping over their rights for about 29 years – Allegedly elected to wake up on basis of some judgment of High Court relating to a different acquisition and village – Since appellants remained dormant and not vigilant – Therefore, inordinate delay in filing appeal without there being any sufficient cause – Cannot be condoned – Appeal dismissed with cost of Rs. 5000.

In any case, the appellants kept sleeping over their rights for about 29 years and allegedly elected to wake up on the basis of some judgment of the High Court relating to a different acquisition and the village, and therefore, at this belated stage, the impugned judgment cannot be made amenable to judicial review. The appellant wants to re-agitate the claims which they had not pursued for about 29 years and remained dormant and not vigilant and, therefore, the inordinate delay of 28 years and 355 days in filing the appeal without their being any sufficient cause, cannot be condoned.

In similar circumstances, the Court has considered in detail the question of condonation of delay and filing of such types of appeal after expiry of 27-28 years of limitation and dismissed the appeal by judgment dated 9.12.2016 passed in First Appeal No. 126 of 2016 (Hari Singh v. State of U.P.)

In view of the aforesaid, the application for leave to appeal as well as the delay condonation application is rejected. Consequently, this appeal is also dismissed with cost of Rs. 5000/-, which shall be deposited by the appellant within a month from today with the Legal Cell Authority, High Court, Allahabad. Appeal Dismissed. **Fundan and others v. State of U.P., 2022 (154) RD 717 – Alld. HC**

Partition Act, 1893

S. 4 - Transfer of Property Act, 1882 –S.44.

The instant second appeal was admitted on the following two substntil questions of law which read as under:

"i. Whether the valuation of share of the stranger in house of the shareholder must be made by the Court on the date of judgment determining the respective

shares of the transferee and the co-share? If yes, its effect on the decree passed by the lower appellate Court.

ii. Whether the "Undertaking" must be unconditional? and if yes whether the absence of any finding recorded by lower appellate Court in favour of the present respondent that he gave un-conditional 'undertaking to buy' the benefit of Sec. 4, partition Act could have been extended? and, if not, its effect?"

Having considered the foresaid submissions and from the perusal of the record, it is no doubt true that an undertaking as contemplated under Section 4 of the Partition Act must be unconditional.

This Court in light of the discussion made in the preceding paragraphs finds that actually in terms of Section 4, the duty is cast upon the Court to determine the valuation of the share of the stranger purchaser.

However, the share of the appellant which is required to be valued and ascertained in terms of Section 4 of the Partition Act is to be done in such a manner as the Court may thinks fit. Sec tion-4 of the Partition Act does not use the word market value. Thus, while determining the valuation, it is the duty incumbent upon the Court to ensure that the valuation upon which the stranger purchaser is compelled to sell his share is not undervalued in the sense that the stranger purchaser is not penalized so also the co-sharer who is exercising his rights to purchase the share of the stranger purchaser should not make a wind fall. It is in the aforesaid context that the Court has to be extremely cautious in determining the value and also adopting a reasonable and well accepted mode balancing the equities and rights 1 of the respective parties.

The whole idea regarding the valuation being that the share must be valued as far as possible as at such price which can be fairly fetched in the free market without being influenced by any distressing circumstances which may suppress the value of the property in question. It is also to be seen that no artificial escalation is to be factored to give undue advantage to stranger purchaser nor any suppression of value is to be countered to the advantage of the co-sharer intending to buy as in any case the sale under Section 4 of the Partition Act is under compulsion of a Court decree and for that reason it should not be artificially undervalued to deprive the stranger purchaser of fair valuation of his share.

It is in this backdrop, this Court is of the view that even though the date on which the right to purchase crystallizes i.e. on the date, the party makes an application and undertaking to buy the share of the stranger purchaser be taken as the threshold date on which the valuation of share of the property may be ascertained but at the same time it must be seen in context and proximity of time with the date on which the order regarding sale is passed by the Court and the surroundings circumstances of each and every case to provide for such reasonable appreciation to ensure that the stranger purchaser may not be put to any unnecessary loss on account of delay in time between the date of making the

application and the date on which he receives the money for the sale in favour of the co-sharer.

Now, by taking the valuation of the share strictly on the date of the preliminary decree, for the aforesaid reasons it may then affect the right of the co-sharer too who though may have filed an undertaking to buy at the earliest yet for reasons beyond his control, the order of sale is passed after considerable time and in the meantime the prices if rise then the co-sharer will be required to pay the enhanced amount. It is in this context that the balance has to be fine tuned to render justice between the parties while noticing the natural accretion to the value of the property and its effect on the rights of the co-sharer and the stranger purchaser, as the case may, also considering the rise or fall in the rates of real estates as applicable on the facts of each case and subject to evidence led by the parties.

In light of the detailed discussions, it would be seen that no straight jacket method can be adopted uniformally in all cases for valuation. The broader principles as noticed above will have to be kept in mind considering the facts and circumstances of each case. Ordinarily, the date of valuation would be the date when the right to purchase accrues, in other words, 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 the undertaking in pleadings. Upon such application, the Court must make an earnest endevour to arrive at the valuation soon as possible. While doing so the Court will be competent to notice the conduct of the parties, the cooperation, readiness and willingness to honour their respective contentions as well as other factors which may affect the escalation or downfall in the valuation of the share. **[Yogesh Kesarwani and another vs. Devi Shankar Shukla, 2022(3) ADJ 321 (LB)] (Allahabad HighCourt)**

Protection of Children from Sexual Offences Act, 2012

Ss. 7, 11, 29, 30 – Indian Penal Code - Ss. 342, 354, 363

Hon'ble Apex Court while explaining sexual assault under Protection Of Children From Sexual Offences Act, held that act of touching sexual part of body or any other act involving physical contact, if done with "sexual intent" would amount to sexual assault within meaning of Section 7 of Act.

'Touch' and 'physical contact' cannot be construed as 'skin to skin contact' for constituting an offence of sexual assault because most important ingredient is sexual intent and not skin to skin contact with child. The word 'sexual assault' means according to maxim *'Ut Res Magis Valeat Quam Pereat'*

Sexual assault with intention relates to the explanation to section 30 of POCSO which clarifies that culpable mental state includes intention, though sexual intent would be a question of fact, special court can raise presumption regarding existence of culpable mental state on part of accused.

While appreciating the evidence, Hon'ble Apex Court held, that accused allegedly took minor victim to his house, presses her breast and tried to remove her salwar. There was trustworthy testimony of victim and her mother proved prosecution story. Basic facts proved by prosecution remain unchallenged by accused. Hence Court was entitled to raise statutory presumption about culpable mental state of accused. Prosecution not only proved sexual intent but also alleged acts. It was not required to prove skin to skin contact. Thus the acquittal of accused on ground of absence of direct physical contact i.e. skin to skin with sexual intent is not sustainable. Hon'ble Court held that accused is liable to convicted.

Hon'ble Apex Court while explaining aggravated sexual assault held that, accused allegedly entered into house of five year minor victim, holding her hands and showing his penis by opening zip of pant. If alleged act of accused is proved by prosecution it was certainly be acts falling within the preview of sexual assault and since victim is below 12 years it is aggravated sexual assault, it was held by Hon'ble Court that there is no reason for High Court not to treat such acts as acts of sexual assault within meaning of section 7 of POCSO Act. Hence, the order was acquittal of set aside. **Attorney General for India v. Satish and another, 2022 Cr.L.J. 1: AIR Online 2021 SC 1041.**

Ss. 5 & 6 - POCSO, Delay in lodging in FIR, Circumstantial Evidence, Last Seen Theory

Hon'ble Allahabad High Court, in a matter related to Section 302, 363, 376AB, POCSO Section 5, 6 held that there were allegation of kidnapping, sexual assault and murder of minor. It was alleged that accused enticed away under age victim to maize fields, sexually assaulted her and later on killed her. On careful scrutiny of testimony of child witness it could not be concluded that victim was last seen alive in company of accused just prior to her death. Statement of other witness was equally inconsequential, as the witness also failed to disclose time when he saw victim with accused. Third witness was a shopkeeper and he made material improvement in his statement during course of cross examination, his testimony did not inspire confidence. Mother of victim was not examine. It was held that last seen evidence was not sufficient to conclude that accused was with deceased on evening/night of incident. The chain of circumstances was also incomplete.

The reliability of child witness was also discussed. The child witness was aged 6 years and deposed that she saw victim and accused together. Accused sent her back after getting her a toffee while he took away victim with him. Child witness was administered oath without being questioned by the court to record its opinion whether witness understands the duty of speaking the truth. The merit of evidence was evaluated applying presumption that judicial and official act was regularly performed. Witness did not disclosed from whose shop the accused got

her a toffee, even the time when she was allegedly with the deceased and the accused cannot be fix from her testimony. Although she was not subjected to multiple questions in her cross examination, nothing was found in her statement to conclude that the deceased was last seen alive in the company of accused.

Discussing the delay in lodging of FIR, it was held that information about discovery of body of victim in a maize field was received early in morning were as, FIR was lodged after police arrived at spot. It was assumed that police on receipt of informal information of discovery of body arrived even before FIR WAS registered and there were 100-150 people at the spot, who were protesting the crime. It could be understood that there must have been immense pressure on police to solve the case. Accused was named on mere suspicion, and not an evidence, to solve out the case, particularly, when neither a missing report nor FIR was lodged till after expiry of few hours from discovery of body. Informant or his wife could have explained delay in lodging missing report and FIR, moreover they were not examined, and such delay is fatal to prosecution case.

Circumstantial evidence regarding kidnapping, sexual assault and murder of minor was also discussed. There was lack of evidence on record that during search for victim, person with whom accused was staying was questioned by any of the fellow villagers with regard to whereabouts of accused. Though child witness stated that in evening her mother made search for her sister victim, her father not said to have joined her mother in that effort. Father of victim informant expired and could not be examined, the mother of victim was also not examine, there were no eye witness on account of rape or murder no witness saw accused near spot where body were found, either with or without victim, on or about probable time of death. Thus evidence could not complete chain of circumstances to prove guilt of accused.

Accused after the incident went back to his native village because he was residing in connection with his work where incident took place. This fact by itself is not sufficient to record conviction. There were noting in record to show that any villager noticed accused leaving village in night of incident or soon thereafter. The accused had not evaded arrest, raids or summons/warrants, merely because accused was arrested on next day from his own village is not a determinative factor to infer a guilty mind. Last seen theory comes in to play were time gap between point of time when accused and deceased were last seen alive and when deceased is found dead is so small that possibility of any person other than accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that deceased was last seen with accused when there is long gap and possibility of other person coming in between exists. Hence, reference to affirm the death penalty was rejected and accused was entitled to acquittal. **Bal Govind alias Govinda v. State of U.P., 2022 Cri.L.J. 425 : AIR Online 2021 All 3744**

Indian Penal Code

Self Defence

The question as to whether the plea of self defence or an exception, when it was not asserted during the course of trial, remains open or not. In this regard reference maybe made to a decision of the Apex Court in Aher Raja Ladha vs. The State of Gujarat, 1970 SCC (Cri) 541, wherein the plea though advanced at the stage of committal was not pursued in trial, yet the Apex Court held that the trial Court and the High Court were wrong in refusing to examine the plea of self defence taken. This Court may observe that the plea of self defence on an exception appended to Section-300 IPC on the strength of evidence available on record is open to be raised at the appellate stage for it is the duty of the trial Court and the appellate Court both not to ignore any relevant aspect of the case that has a bearing upon his being held guilty.

The Court may note that the prosecution as a matter of routine does not lay emphasis on the production of independent witnesses during the course of trial or fails to record their statements during investigation. Such a lapse on the part of investigating agency must be viewed seriously by the Courts of law and time is not far when the Courts may have to invoke the suo motu powers to summon such witnesses for which there ought to exist a witness protection law. **[Ashwani Kumar vs. State of U.P., 2022(2) ADJ 23 (LB)(DB).] Allahabad High Court.**

S. 302 IPC, Evidence Act.

Hon'ble Allahabad High Court Lucknow Bench while discussing the reliability of dying declaration held that prosecution projected two versions of the same incidents which are mutually irreconcilable. The question was regarding different version in dying declaration and FIR. Allegation were that accused poured kerosene oil on deceased and set here ablaze on account of brawl between ladies, resulting in death. Material differences were with regard to time of occurrence, manner of occurrence and the person who allegedly committed the crime in question in two versions. The deceased were conscious and was in fit state of mind to make dying declaration. The dying declaration of deceased were showing that the accused poured kerosene on victim and set here ablaze. Her younger mother in law tried to put of fire by throwing blanket upon her. However, said witness was not examined by prosecution. Whereas son of deceased who was sleeping next to her stating that deceased herself poured kerosene and set herself ablaze. As per version of FIR sister of deceased was present at place of occurrence though no one has mentioned her presence in their testimony. Investigating officer stated that no burnt up residue of bed sheets mattress or coat were recovered from

site of occurrence. Hence it was held that accused were entitled for benefit of doubt. **Balram v. State of U.P, 2022 Cri.L.J. 248 : AIR Online 2021 All 3299**

Ss. 302 and 201—Arms Act, 1959, Sec. 25—Conviction—Sustainability

In this case, the Hon'ble High Court observed that in view of the facts and circumstances stated the prosecution case is based on testimony of alleged eye witness P.Ws. 2 & 3 which is not found reliable in absence of the testimony of witnesses of last seen, Krishna Pal & Sardar Singh whose names were mentioned in FIR but the names of P.Ws. 2 & 3 were not mentioned in FIR nor their names were told by Krishnapal and Sardar Singh to P.W.-1 as such the prosecution case is doubtful.

The motive of the incident had also not been proved by the prosecution.

With respect to recovery, it is relevant to mention the recovery and arrest, accordingly, that after about 14 days of incident from an open space in absence of any public witness of recovery, is highly doubtful and may not be relied upon.

The Hon'ble High Court came to the conclusion that prosecution has failed to prove charges levelled against accused persons under sections 302/34, 201 IPC and section 25 of the Arms Act by any reliable, cogent and independent evidence to the hilt beyond reasonable doubt. **[Sokendra vs. State of U.P., 2022 (118) ACC 388]**

Ss. 366, 313 IPC, Confirmation of Death Sentence, Section 302, 307, 376, 376A, 376AB, 377, 201 IPC and Section 5, 6 of POCSO Act.

The matter was regarding confirmation of death sentence in a case of rape and multiple murders as well as rape of a minor girl. The forensic report in respect of DNA match between indiscriminating articles recovered from the scene of crime as well as at instance of accused and blood sample of accused not put to accused under section 313 Cr.P.C. In as much it was obtained after the statement under section 313 Cr.P.C. was recorded. It was held that not putting forensic report to accused caused prejudice to him as he could neither tender his explanation to it nor could get opportunity to lead evidence in rebuttal. It was also held that neither the ceased article nor portion of it was produced in the court, seizure having not being admitted, and forensic report in respect thereto, is a waste paper. It was also held that person who prepared DNA report was not examined as a prosecution witness, yet, DNA matching report taken into consideration as a corroboratory material to record conviction is serious miscarriage of justice. Hence, application for confirmation of death sentence was rejected and directions were issued to trial court for de novo consideration from stage of examination of accused under section 313 Cr.P.C. **Najeenuddin v. State of U.P., 2022 Cri.L.J. 870 :AIR Online 2022 All 389.**

Ss. 452 and 376—Conviction—Sustainability

In this case Hon'ble High Court held that law, as a tool to maintain order and peace, should effectively meet challenges confronting the society, as society could not long endure and develop under serious threats of crime and disharmony. It is therefore, necessary to avoid undue leniency in imposition of sentence. Thus, the criminal justice jurisprudence adopted in the country is not retributive but reformative and corrective. At the same time, undue harshness should also be avoided keeping in view the reformative approach underlying in our criminal justice system.

Keeping in view the facts and circumstances of the case and also keeping in view criminal jurisprudence in our country which is reformative and corrective and not retributive, this Court considers that no accused person is incapable of being reformed and therefore, all measures should be applied to give them an opportunity of reformation in order to bring them in the social stream.

'Reformative theory of punishment' is to be adopted and for that reason, it is necessary to impose punishment keeping in view the 'doctrine of proportionality'. It appears from perusal of impugned judgment that sentence awarded by learned Trial Court for life term is very harsh keeping in view the entirety of facts and circumstances of the case and gravity of offence. Hon'ble Apex Court, has held that undue harshness should be avoided taking into account the reformative approach underlying in criminal justice system. **[Ram Prakash @ Pappu Yadav vs. State of U.P., 2022 (118) ACC 369]**

Juvenile Justice (Care and Protection of Children) Act

Claim of juvenility

The offence alleged was of murder and the issue raised was about the age which was brought before trial court after about 2 years of arrest of accused. As per medical examination report accused was found to be aged about 20 years at time of his arrest. The claim was regarding the juvenility of accused at the time of offence. The said medical examination and ossification test report was not challenged by accused at any stage. The accused produced birth certificate issued by gram panchayat which was on basis of self declaration of father of accused and identity card issued by national institute of open schooling. Said document were irregular, unreliable, flimsy and doubtful. It was held that said document came into existence only after arrest of accused. It was also held that reliance on medical examination was the correct recourse by trial court. Hence, accused cannot be declared as juvenile. **Vishal alias Johny v. State (NCT of Delhi), 2022 Cri.L.J. 490: AIR Online 2021 Del 2295.**

Motor Vehicles Act, 1988

S. 166-U.P. Motor Vehicle Rules, 1998- Rule 220-A.

Thus, for the above reasons, in the opinion of this Court, for the purposes of awarding compensation in each head, the judgments of the Hon'ble Apex Court in which principles have been settled on the issue of providing /awarding compensation and the Rules of 1998, both should be considered and whichever provides "better benefits" should be applied.

From the aforesaid, it is evident that in a case of notional income also, the compensation should be calculated/ awarded after considering the "future prospects". **[Smt. Anita and others vs. Iffco Tokio General insurance Co. Ltd. and another, 2022(1) ADJ 266(LB)] Allahbad High Court**

S.173- Motor accident- Compensation.

The Tribunal has computed the income of the deceased to be Rs. 22,000/- per month ignoring the documentary evidence about the payment which the deceased was getting before the accident. The Tribunal had assessed the income of the deceased Rs. 22,000/- on the basis of the Income-tax Return Form 16. The Income-tax Return Form-16, which is paper no.73-C concerns the assessment year 2013-14 annual salary of the deceased is shown Rs.2,82,068/-. On the basis of the Form-16, how the Tribunal has computed monthly income of the deceased to be Rs. 22,000/- is beyond comprehension. The Tribunal has again halved half of the total income after having computed the same on the ground that 50% liability of the deceased has been discharged as they have got their daughter married, this finding is untenable. The Tribunal should have computed the income of the deceased on the basis of income which he was getting after retirement in Defence Security Corps department, therefore, the monthly income of the deceased would be Rs. 37,039.00. **[Smt. Girija Singh @ Girija Devi and others vs. National Insurance Company Ltd. and others, 2022(2) ADJ 106 (DB)] Allahabad High Court**

Ss. 173 and 163-A.

In United India Insurance Co. Ltd. vs. Sunil Kumar and another (supra), a three-Judge Bench, of their Lordships has answered a question referred by a two-Judge Bench, for decision by a larger Bench, disagreeing with the principle in National Insurance Company Ltd. vs. Sinitha and others (supra). In United Insurance Co. Ltd. vs. Sunil Kumar and another (supra), the question referred was noted thus:

> "1. Unable to agree with the reasoning and the conclusion of a two judge bench of this Court in National Insurance Company Limited vs. Sinitha and others, (2012)2 SCC 356, a coordinate bench of this Court by

order dated 29th October, 2013 has referred the instant matter for a resolution of what appears to be the following question of law.

"Whether in a claim proceeding under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") it is open for the Insurer to raise the defence/ plea of negligence?"

The question was answered in United India Insurance Co. Ltd. vs. Sunil Kumar and another (supra), which is as under:

"……..8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163-A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163-A of the Act to permit the insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.

For the aforesaid reasons, we answer the question arising y holding that in a proceeding under Section 163-A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim."

The view in United India Insurance Co. Ltd. vs. Sunil Kumar and another (supra) has been followed by a subsequent three-Judge Bench in Shivaji and another vs. Divisional Manager, United India Insurance Co. Ltd. and others, AIR 2018 SC 3705.

In view of the aforesaid position of law, that has now come to be settled, this Court is of the opinion that the impugned award is not open to be assailed on the g round that the claimant was a tort feasor or one guilty of negligence on his part, and therefore, could not maintain a petition under Section 163-A of the Act. **[United India Insurance Co. Ltd. Station Road, Sitapur vs. Sri Niyamatullah and another, 2022(1) ADJ 132(LB).] Allahbad High Court**

Narcotic Drugs and Psychotropic Substances Act, 1985

S. 8

In view of the foregoing discussion, we hold that in view of the fact that as per the composition of Phensedyl New Cough Linctus pleaded in the Writ Petitions, the prescription dosage of Phensedyl Cough Syrup is 5 ml and each dosage unit thereof contains 10 mg of Codeine Phosphate IP, besides Chlorpheniramine Maleate I.P., Phensedyl New Cough Linctus contains merely 0.2% Codeine, and this has not been disputed and rather has been admitted by the learned Counsel for the Respondent NCB that there is no dispute that the drug in question fulfils the first condition for falling within the exception to Entry 35 of the Notification dated 14.11.1985 issued by the Central Government containing the list of Narcotic Drugs, i.e. being "compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5% in undivided preparations", Phensedyl New Cough Linctus is not a Narcotic Drug and any dealing in this drug would not be subject to the provisions of the NDPS Act. **[Vibhor Rana vs. Union of India, 2022(1) ADJ 447(DB).] (Alld.H.C.)**

National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

S.14(1)

It is further to be seen that the power with respect to appointment of a guardian pertaining to a person who is suffering from mental retardation is to be governed by the Act No. 44 of 1999. Under Section 14 of the aforesaid Act, the power to appoint guardian in respect of a person suffering from disability is provided. The aforesaid provision provides that the parent of the person with disability or his relative can make an application to a Local Level Committee for appointment of guardian of the person with disability. The Local Level Committee is constituted under Section 13 of the Act No. 44 of 1999. The members of the Local Level Committee include an officer not below the rank of District Magistrate of the district, a representative of a registered organization and a person with disability as defined in Clause F of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

The power envisaged under Section 14 of the Act No. 44 of 1999 with regard to appointment of guardian is to be exercised in accordance with the procedure prescribed under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 2000. Under Rule 16 of the Rules of 2000, it is provided that the application for appointment of guardian for a person with disability shall be made to the Local Level Committee in Form-A. The Form-A is appended to the aforesaid Rules of 2000 for which a pre

scribed format has been provided which also provides certain documents to be submitted along-with the application and the application is to be signed by two witnesses.

It is further to be seen that under Regulation No. 13 of the 2001 Regulations, detailed guidelines has been prescribed for receiving the processing of formation of application for appointment of guardian. It is also provided under. the aforesaid Regulations, the areas in respect of which the guardianship for personal care and maintenance to the person with disability is to cover.

A bare perusal of the applications dated 24th June, 2021 and 12th July, 2021 preferred by the petitioner before the District Magistrate, Bijnor for appointment of guardian in respect of Sri Sandeep Kumar Sharma would demonstrate that although the aforesaid application do not provide the provision under which the aforesaid application has been preferred by the petitioner. However, it is trite of law that non-mentioning of a provision of law in the application itself will not invalidate the proceedings if the power for exercise of the jurisdiction under the Act is otherwise available to the District Magistrate. The Apex Court in the case of High Court of Gujarat vs. Gujarat Kishan Mazdoor Panchayat, (2003) 4 SCC 712, has held that non-mentioning or wrong mentioning of a provision of law would not in validate an order if a source therefore can be found out either under general law or a statute law. In view of the aforesaid, the technicalities that the application does not disclose the provisions under which it is filed, will be of no consequence.

It is also to be seen that the application under the Rules and Regulations are required to be filed in a prescribed format alongwith the documents and the witnesses. However, in the present case, the application filed by the petitioner before the District Magistrate, Bijnor seems to be not in proper form as the application is not supported by certificate of disability nor the same is signed by two witnesses.

It is also to be seen that the application is not in the prescribed form. However, the afore said issues are technical issues and the wheels of substantive justice cannot be stopped only on the ground that the application of the petitioner before the District Magistrate is not in the prescribed form. The Rules and Regulations framed under the Act No. 44 of 1999 are for the purpose of carrying out the objects of the Act and one of the objects under the Act is to appoint guardian in respect of a person with disability and as such, the petitioner though has invoked the jurisdiction of District Magistrate, Bijnor by filing an appli cation under Section 14 of the Act No. 44 of 1999. However, the aforesaid application is not in the prescribed form and the aforesaid defect is a defect which is curable.

It is to be noted that under the Act No. 44 of 1999 there is no provision which restricts the right of the petitioner to cure the defect in respect of the form in which the application under Section 14 of the Act is to be filed for appointment of guardian. The Act No. 44 of 1999 is a beneficial legislation for the benefit of the

person with disabilities including mental retardation and for the benefit of the aforesaid person various provisions have been made under the Act and the Rules framed thereunder. Once the Act No. 44 of 1999 is said to be beneficial legislation, the application filed by the petitioner although not in prescribed form, as prescribed under the Rules, however, the same will not denude the authority from proceeding under the Act No. 44 of 1999 and this Court can always direct the petitioner to b cure the defect and prefer an application in accordance with form prescribed under the Rules. It is to be noted that a person with disability, including mental retardation, cannot be permitted to be without a guardian. The law envasages protection and care to the aforesaid person with disability, including mental retardation and the same is in consequence with fundamental right under Article 21 of the Constitution of India. The person with disability, including mental retardation, is entitled under law to care and protection by the mainstream of life, care and protection. The defect of the application not being in proper form is a curable defect and the same can be cured by the petitioner at any stage. **[Vinay Kumar Sharma vs. State of U.P. and others, 2022(1) ADJ 438 (DB).] (Alld. H.C.)**

Practice and Procedure

Vakalatnama – Defect in filing of power by not signing of the same by Counsel-Is a curable defect – Therefore, order impugned passed by Revisional Court – Set aside – Petition allowed.

The Supreme Court as well as this Court by its judgment passed in the years 2006 and 2010 have specifically held that mere defect in filing of power by not signing the same by Counsel is not a defect which cannot be cured.

In view of the law settled by the Supreme Court in the case of Uday Shankar Triyar (supra) and this Court in the case of Gauri Shanker (supra), the view taken by the Revisional Court is not more sustainable in law.

In view thereof, the judgment and order dated 13.11.1992 passed by the Revisional Court is set aside. The order of the Court below dated 8.5.1987, by which restoration in Misc. Case No. 12 of 1985 was allowed, is maintained. Since it might be one of the oldest suits before the Court concerned, it shall proceed with the same expeditiously, without granting any unnecessary adjournments including on the ground of strike of lawyers. **Smt. Saeeda Ashraf and another v. Vth Additional District Judge, Faizabad and others, 2022 (154) RD 228 – Alld. HC-Lucknow Bench**

Protection of Children from Sexual Offences Act, 2012

S. 33

The POCSO Act being a special enactment the procedure prescribed therein would be required to be followed. The applicability of the provisions of the Code as per the deeming clause g under Section 31 of the Act is only to the extent provided therein and in view of Section 42-A the provisions of the Act shall have an overriding effect on the provisions of any such law to the extent of inconsistency. This leads to an inference that unless a different procedure is provided under the POCSO Act, the provisions under the Code would be applicable; however, in case of any inconsistency, the provisions of the POCSO Act would have an overriding effect.

Section 33 (1) of the Act which empowers the Special Court to take cognizance of any offence, without the accused being committed to it for trial, marks a departure from the general procedure under the Code and in particular Section 193 thereof which stipulates that the Court of Session cannot take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by the Magistrate under the Code.

Sub-section (1) of Section 33 would therefore have the effect of waiving the otherwise mandatory requirement of Section 193 of the Code and in a way it lifts the embargo under Section 193. The procedure provided under Sec tion 33 (1) with regard to the power of the Special Court to take cognizance, without any committal of the accused, to the extent of any inconsistency, would override the general provisions under the Code, by virtue of the provisions under Section 42-A read with Section 31of the POCSO Act. **[Ravi and others vs. State of U.P. and others, 2022(3) ADJ 229] (Allahabad High Court)**

Prevention of Corruption Act, 1988

Ss. 19(3), 4(4)

After hearing the rival submissions made at the Bar, the Court has got an opportunity to formulate the legal issue, as follows:

Carrying the two rejections on the earlier occasions, as contemplated u/s 19 of the P.C.Act, which is *sine qua non* for any criminal proceedings against the propose offender, the sanction was accorded third time on 22.6.2017, after change in the establishment of the State of U.P. in the year 2017. Without having any new material on record against the applicant, the third sanctioning order is fallacious and untenable in the eyes of law. Thus the sanction order dated 22.6.2017 is now the pivotal issue of the controversy involved. It is urged that till such time i.e. sanctioning order dated 22.6.2017 its sanctity is not established by the legal pronouncement, entire subsequent proceeding is an exercise in futility, and as such, proceedings/prosecution against the applicant should be halted, till the writ petition is decided.

Shri Faraz Kazmi, learned counsel representing the State, reiterated his earlier submission that no doubt the legality and propriety of the third sanction letter dated 22.6.2017 is under challenge by means of Crl. Misc. Writ Petition 5877 of 2021, still it would not act as embargo in the present proceedings, because while taking cognizance of the offence the Magistrate is required to take cognizance of the offence relying upon the sufficiency or insufficiency of the material collected during investigation, coupled with the sanction letter issued by the Government of U.P. Magistrate is not supposed to give his legal verdict upon the legality and validity of the sanction letter nor he is required to evaluate the sanction and its propriety or its sufficiency or insufficiency.

It’s true that the writ court is seized with the matter with regard to the legality and propriety of the third sanctioning letter dated 22.6.2017 and it's not proper on my part to express my views over that issue. The Court is required to evaluate (a) as to whether the cognizance order dated 8.4.2021 is legally sustainable and (b) can the Court halt the further proceedings of the present case until the writ is decided?

The scope of sanction to prosecute is to ensure that a public servant may not be harassed or victimized. The sanction is an important attribute which was to be scroopllosly insisted upon to ensure the fair prosecution. Grant of sanction is a sacrosanct act and is intended to provide a safeguard to a public servant against frivolous and vexatious litigations. Grant of sanction is only an administrative functioning and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence. The satisfaction of the sanctioning authority is essential to validate an order granting sanction. It is incumbent upon the prosecution to prove that a valid sanction has been granted by the sanctioning authority after being satisfied that a case of sanction has been made out. What is required by the learned Magistrate to just see the letter accorded by the sanctioning authority is on record or not? At the stage of cognizance it is beyond the domain and scope of the Magistrate to express or adjudicate the sanction letter. The sanction order may expressly show that the sanctioning authority has perused the material before it and, after consideration of circumstances, has granted sanction for prosecution. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved, that would not vitiate the order of sanction.

The adequacy of material placed before the sanctioning authority cannot be gone into by the court, as it does not sit in appeal over the sanction order. An order of sanction should not be construed in a pedantic manner and there should not be a hyper technical approach to test its validity. When there is an order of sanction by the competent authority indicating application of mind, the same should not be

lightly dealt with. The flimsy technicalities cannot be allowed to become tools in the hands of an accused. **[State of Maharashtra v. Mahesh G. Jain, (2014) 1 SCC (Crl) 515].**

Coupled with the provisions of Section 19(3) of the Act where there is specific embargo for granting any stay order on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it has resulted into failure of justice.

Learned counsel for the applicant has miserably failed to bring on record even a single instance regarding "failure of justice" having been occasioned to the appellant. It is not a case of absence of sanction, but in this case sanction has been granted vide order dated 22.6.2017 and same is subject matter of challenge in writ jurisdiction. The authenticity or validity of this sanction could be adjudged either by the Division Bench in writ petition or at the stage of the trial, but there could not be any good reason to stall the proceedings of the case or vitiate the cognizance order in absence of any material on record which may result into "failure of justice" to the applicant. More particularly, when the legislature in its wisdom by its Section 4(4) of the Act has given a time bound period to conclude the trial of the case within a period of two years (four years maximum), stay of the proceedings would amount a luxury in favour of applicant. **[Dr. Abhai Ranjan vs. State of U.P. and another, 2022(2) ADJ 40.] Allahabad High Court**

Right to Children to Free and compulsory Education Act, 2009

S.27

Thus, when words used in Section 27 of the Act 2009 'relating to' are construed in terms of the law laid down by Division Bench of Madras High Court, then there is no iota of doubt that the word 'relating to' has to be given a comprehensive meaning and will include all the works relating to election where elections are notified or not and cannot be given retrospective meaning as has been sought to be given by a co-ordinate Bench in case of Shri Krishan vs. State of U.P. and 4 others (Writ–A No. 18683 of 2019) and thus where elections are notified or not, duties of a teacher can be deployed in terms of the provisions contained in Section 27 of the Act of 2009 even for works in relations to election which in my opinion includes preparation of electoral rolls as provided under Article 324 of the Constitution of India. Therefore, no fault can be attributed to the deployment of the petitioners in relations to the election work. **[Kanika Banshiwal and others vs. State of U.P. and others, 2022(2) ADJ 152.] Allahabad High Court**

Service Laws

Gratuity –Forfeiture and adjustment towards NPA Loan Accounts

It is settled that the Gratuity and pension are not bounties and an employee gets these benefits by his long continuous fulfilled unblemished service as such it is hard earned benefit of an employee and is in the nature of property. The right of property cannot be taken away without due process of law as per provisions of Article 300-A of the Constitution of India. Nothing has been brought before this Court to show any provision of law for withholding, forfeiting or adjustment of amount of gratuity towards NPA loan accounts that too without any proof of misconduct or loss by the petitioner during his period of service. Therefore the same could not have been adjusted towards NPA loan accounts or withheld/ forfeited merely on the basis of a resolution of the respondent No. 2 passed against the petitioner or any executive instructions. **[Anil Kumar Puri vs. District Co-operative Bank Ltd., Sitapur & Anr., 2022(1) ADJ 445(LB).] Allahabad High Court.**

Stamp Act, 1899

S. 47A

Now, coming to the issues aforesaid, this Court finds that the issues, under consideration, have already been answered by this Court in the judgments relied upon by the learned counsel for the petitioner. As per the judgment passed in the case of *Institute of the Fraanciscan Clarist Sisters (supra),* the report of Tehsildar concerned cannot be relied upon for passing the order under Section 47(A) of the Stamp Act. The judgment of Full Bench says that the value of the land can be assessed, if the land(s) surrounding the property in question has been put to commercial use, whereas, in the instant case, as appears from the boundaries given in the sale-deed, the land in issue is in fact is surrounded by the agricultural land as also Nala. Further, in the judgments referred hereinabove, it has been held that the potential value of the land cannot be considered for levying the Stamp Duty. **[The Seksaria Behta Sugar Factory Ltd. vs. State of U.P. and other, 2022(1) ADJ 228(LB).] Allahbad High Court**

Succession Act, 1925

S. 388(2)

Thus, there is not an iota of doubt that once jurisdiction to take 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 388 of 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. **[Avade Ram Shukla Chela vs. Viraganand Chela of Sri Sita Ram Das Onkar Nath and another, 2022(1) ADJ 319(LB).] Allahbad High Court.**

Transgender Persons (Protection of Rights) Act, 2019

S. 7

The very purpose of bringing in force the Act is to provide equality and respect to the transgender persons. The Act is a socially beneficial legislation and therefore, this Act cannot be given an interpretation which would defeat the very purpose for which the same is brought in force. It has to be interpreted in a manner that solemn purpose for which it is legislated is achieved. The purpose is to give recognition to transgender persons as they perceived themselves and, in case, they undergo a gender reassignment procedure, to provide them appropriate changed certificates and identity documents. Therefore, Section 7 of the Act cannot be given a meaning confined in the manner argued by learned Standing Counsel. Section 7 is required to be interpreted in a manner that the transgender persons who are issued a certificate under Section 6 or persons like petitioner who had undergone the gender re-assignment procedure prior to coming into force of the Act, both are held entitled to apply before the District Magistrate for issuance of a certificate indicating change in gender. Only on the basis of such a certificate issued by the District Magistrate under Section 7 of the Act the transgender person can apply for change of their birth certificate and other official documents relating to their identity. Denying such a right to persons who had already undergone the gender re-assignment procedure would frustrate the very purpose of the Act, as large number of persons would be left out discriminated in the society. **[Shivanya Pandey vs. State of U.P. and others, 2022(1) ADJ 160(LB).] Allahbad High Court**

U.P. Consolidation of Holdings Act, 1953

Ss. 11, 53-B- Limitation Act, 1963- Section 5

Hon'ble Rajesh Bindal, C.J.- on a reference made by learned Single Judge for consideration of the issue, as extracted below, the matter has been placed before the Division Bench:

"If an order has been challenged before the consolidation authority is barred by the period of limitation as provided under the statute (in the present case before the appellate authority/ Settlement Officer Consolidation-1, Hardoi) alongwith an application for condonation of delay then in that circumstances whether the application for condonation of delay under Section 5 of the Limitation Act should be decided first or the same can been decided alongwith merit of the case?"

As far as the issue regarding hearing of the application seeking condonation of delay and the appeal simultaneously is concerned, in our view, firstly the application has be considered. Only thereafter, the appeal can be considered on merits but there is nothing in law which requires hearing of appeal on merits to be postponed mandatorily after acceptance of the application seeking condonation of delay. Both can be taken up on the same day. However, the appeal has to be heard on merits only after the application seeking condonation of delay has been accepted.

In view of the aforesaid discussion, we answer the question referred to the Division Bench that an application seeking condonation of delay has to be decided first before the appeal is taken up for hearing on merits. However, it can be on the same day and there is no requirement of adjourning the hearing of appeal on merits after acceptance of the application seeking condonation of delay. **[Ram Prakash vs. Deputy Director of Consolidation, Hardoi and others, 2022(3) ADJ 1 (LB)(DB)] (Allahabad High Court)**

S. 19(1)(e)

From reading of Section 19(1)(e) and considering the case of the parties, it is clear that consolidation authorities cannot pass arbitrary order in order to make the chak compact without any rhyme or reasons. Good and strong reasons in support of the order will have to be assigned by the concerned authorities so that tenure holder may not be deprived from his original road side plot in the name of compactness of the chak. It is no doubt correct that during chak allotment proceedings, the allotment cannot be made in such a manner which may satisfy every tenure holder but the consolidation authorities are required to make adjustment in a manner that mandate of the Act / Rules is not flouted. **[Om Pal vs. Deputy Director of Consolidation, Muzaffar Nagar and others, 2022(2) ADJ 572] (Allahabad High Court)**

S. 48

In my considered opinion, Explanation (3) gives the Deputy Director of Consolidation power to re-appreciate the evidence, both oral and documentary and to record its own findings of fact and of law, contrary to those recorded by any subordinate authority. Any interpretation to the contrary would necessarily entail reading something into the provision which is not contained therein. Moreover, it

would be travesty of justice if the Deputy Director of consolidation is held competent to appreciate the oral and documentary evidence and upset the findings recorded by the subordinate authority and yet, is required to remand the matter back for fresh consideration. Such interpretation in my considered opinion, could not have been the object behind including the amendment in the Act and thereby prolonging the litigation between the parties. It needs to be borne in mind that the litigation generated by the U.P. Consolidation of Holdings Act is largely, forced litigation. If a Court is competent to re-appreciate the oral and documentary evidence and interfere with the findings recorded by the subordinate Courts, it necessarily implies that such Court also has the power to substitute its own finding after such re-appreciation of the oral and documentary evidence. There exists nothing in the Act or the amendment itself to support any view to the contrary. **[Keshav and another vs. D.D.C. Azamgarh and others, 2022(2) ADJ 149] Allahabad High Court**

U.P. Fundamental Rules

Rule 153 Vol. II Part II to IV of Financial Handbook- Maternity Leave.

I am in respectful agreement with their Lordships of the Division Bench in State of Uttarakhand vs. Urmila Masih that in the case of establishments to which the Maternity Act does not apply, there is no question of conflict with the leave rules of the employers of such establishments and the Maternity Act, so as to bring in Section 27 of the said Act that gives it overriding effect. There is clearly no conflict between the second proviso to Rule 153 of the Rules and the Maternity Act, which does not apply to the establishment of the Basic Education Board or its maintained schools. The petitioner, therefore, cannot claim any right founded on the provisions of the Maternity Act in derogation of Rule 153 of the Rules. The submissions of learned Counsel for the petitioner that assert rights based on Section 27 of the Maternity Act must, therefore, be rejected.

In view of what has been said above, the answer to the question involved is that the restriction on the Right to Maternity Leave of a female government servant, with regard to the birth of her child, would be reckoned with reference to the number of children living at the time she applies for maternity leave, irrespective of the fact whether the two children living were born before or after she entered government service. **[Renu Chaudhary vs. State of U.P. and others, 2022(2) ADJ 14] Allahabad High Court**

U.P. Imposition of Ceiling on Land Holdings Act, 1960

S. 11 and 12

The questions, which arise for consideration in this writ petition, are as under:

(i)whether, when the petitioners were not given notice by the Prescribed Authority and, notice was issued to their father only, the judgment and orders passed in proceedings against their father would operate as constructive *res judicata* against the petitioners?; and

(ii)whether the petitioners were entitled to receive separate notice inasmuch as their names were recorded in the revenue record against the land in question in 1378 to 1380 Fasali (1971 to 1973), whereas the notice was issued to their father only on 16.3.1947?

Thus from the reading of Sections 9 to 12 of the Act, 1960, it is evident that every tenure holder is required to be issued notice for determining surplus land. In case the order is passed in his absence, declaring tenure holder's land as surplus, he has an opportunity to file objection under Section 11(2) of the Act, 1960. The Prescribed Authority is required to adjudicate the objections, giving full opportunity of hearing and opportunity of leading evidence by the tenure holder. There cannot be any dispute that the petitioners' names were recorded in the revenue record when notice was issued to their father, therefore, the petitioners were required to be issued notice under Section 10(2) of the Act, 1960 separately than their father. The petitioners were not party in the earlier proceedings instituted against their father and, therefore, the judgment and order passed against their father would not be binding upon them and would not operate *res judicata* in subsequent proceedings initiated by the petitioners by filing objections under Section 11(2) of the Act, 1960. **[Suresh Chandra Tewari and others vs. State of U.P. and others, 2022(3) ADJ 586(LB)] (Allahabad High Court)**

U.P. Panchayat Raj Act, 1947

Ss. 27(2), 2(q)(ii)- U.P. Panchayat Raj Rules, 1947- Rules, 256, 257, 258, 259, 260.

The matter has been placed before this Court for consideration of the following questions of law, on account of doubt expressed by learned Single Judge on the view expressed earlier by a Single Judge of this Court in writ-C No. 24902 of 2019 (Uday Pratap Singh @ Harikesh v. State of U.P. and others) decided on 30-09-2019:

"(1) Whether in view of the U.P. Panchayat Raj (Amendment) Rules, 1969 by which Chapter-XIII with the heading 'SURCHARGE' was inserted in the U.P. Panchyat Raj Rules, 1947 in exercise of powers under Section 110 by the State Government, which have been notified in the Gaette on 31.5.1969, the District

Magistrate is the 'Prescribed Authority' for imposing surcharge on Pradhan, Up-Pradhan and Members under Section 27(2) in terms of Section 2(q)(ii) of the U.P. Panchayat Raj Act, 1947 or not?, and whether the District Panchayat Raj Officer is the Prescribed Authority for imposing surcharge upon the Officers or servants of the Gaon Sabha or not?

(2) Whether the decision rendered by a Single Judge Bench in Writ-C No. 24902 of 2019; Uday Pratap Singh @ Harikesh v. State of U.P. and others and connected petitions on 30.09.2019 lays down the law correctly with regard to Question No. 1 framed above?"

For the reason mentioned above, the question No.1, as referred to be considered by Division Bench, is answered in positive. In view of the U.P. Panchayat Raj (Amendment) Rules, 1969, by which Champter-XIII with the heading 'SURCHARGE' was inserted in the U.P. Panchayat Raj Rules, 1947 in exercise of powers under Section 110 by the State Government as notified in the Official Gazette on May 31, 1969, the District Magistrate is the 'Prescribed Authority' for imposing surcharge on Pradhan Up-Pradhan and Members under Section 27(2) and the District Panchayat Raj Officer is the Prescribed Authority for imposing surcharge upon the Officers or servants of the Gaon Sabha.

As for as the question No. 2 is concerned, the answer thereof is in negative. The decision rendered by learned Single Judge of this Court in Uday Pratap Singh @ Harikesh v. State of U.P. and others whereby a bunch of petitions were decided, does not lay down the law correctly. **[Ram Vilas vs. Commissioner Devi Patan Mandal Gonda and others, 2022(1) ADJ 1(LB)(DB).] Allahbad High Court.**

U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991

Rule 14(1)

Now, the legal position is well-settled that departmental proceeding and the criminal proceeding can continue simultaneously as the object and purpose of the criminal proceeding and disciplinary proceeding are different and they operate in a different field. In the disciplinary proceedings, the rule of the preponderance of probabilities is applied whereas, in the criminal proceeding, the principle of strict standard of proof beyond a reasonable doubt is applicable.

The nature of evidence in both criminal and disciplinary proceedings is different. The only exception to this rule that can be culled out from the law elucidated by the Apex Court on the issue of the continuance of disciplinary proceeding and criminal proceeding simultaneously is that disciplinary proceedings may be stayed where criminal charges against the delinquent employee are grave and involves complicated question of facts and law, and

continuance of disciplinary proceeding is likely to prejudice the defence of the employee before the criminal Court. The gravity of the charge is not by itself enough to determine the question of continuance of departmental and criminal proceedings simultaneously unless the charge involves complicated questions of law and fact.

Now, coming to the second limb of argument that whether disciplinary proceeding and the criminal proceeding can proceed simultaneously where both proceedings have been initiated on the same set of charges and evidence in both the proceedings are identical and shall prejudice the criminal proceeding since petitioner would have to disclose the defenced which he wants to take in the criminal proceeding. In the opinion of the Court, the said submission is also misconceived for two reasons; firstly, as detailed above, the charge against the petitioner in the criminal proceeding and disciplinary proceeding are not identical as there is one additional charge in the disciplinary proceeding which has been delineated above. Secondly, to succeed, the petitioner has to demonstrate that charge against the petitioner is grave and involves complicated questions of fact and law, and further if the disciplinary proceeding is continued that would prejudice the criminal trial of the petitioner. **[Rinku Singh vs. State of U.P. and others, 2022(2) ADJ 83]**

U.P. State Technical Universities Act, 2000

S. 29- Maternity Benefit Act: Education-Maternity leave for completing course

D. Issues for consideration

The issues which arise for consideration are as under:

I. Whether the right of reproductive choice of a woman is a fundamental right if so the implications of the same on the current controversy?

II. Whether the petitioner can be denied maternity benefits solely on the footing that no provision exists in the statutes or Ordinances or Regulations of the University to provide such relaxation?

III. What is the nature of maternity benefits and relief which can be granted to the petitioner at this state?

The rights of the petitioner to reproductive choices, marriage, procreation and motherhood are entrenched as fundamental rights by the law laid down by constitutional Courts.

The questions framed for consideration are answered s under:

I. The petitioner is entitled to an additional chance to appear in the examinations which she could not clear in the admissible time frame due to her pregnancy and post natal recovery period.

II. The petitioner cannot be denied maternity benefits on the foot that the University Ordinances or University Regulations do not provide such relaxation. The University is under obligation of law to frame the requisite Regulations/ appropriate legal instruments for grant of maternity benefits to students which embrace the pregnancy period and post natal recovery time. The University is also liable to consider the grant of maternity benefits to the petitioner in light of the said Regulations.

III. The relief to which the petitioner is entitled to set out below.**[Saumya Tiwari vs. State of U.P. and other, 2022(1) ADJ 191(Alld.HC).]**

Waqf Act, 1995

S. 83(5)- Code of Civil Procedure, 1908- Section 37

Now, having said so, this Court is of the opinion that the order passed by the Civil Court on 17.2.2018 transferring the records of the execution case No. 04 of 2001 to the U.P. Waqf Tribunal merely on the basis of the orders of the Registrar General and the District Judge on the Administrative side which were general orders and not specifically with regard to execution of any decree without any application of judicial mind, was incorrect and unsustainable. Generally speaking no doubt after coming into force of the Waqf Act, 1995 all matters where there is a dispute relating to Waqf have to be transferred to the Waqf Tribunal for adjudication, but, in a case where the decree has been passed and execution is going on before the Civil Court, the question to be considered was as to whether the Tribunal has power to execute such decree which as stated hereinabove it does not have, but, this aspect of the matter was not considered. No doubt the order dated 17.2.2018 was not challenged by the respondents herein but then the question involved herein is one of the jurisdiction and merely because it was not, it cannot confer jurisdiction upon the Tribunal to execute the decree dated 20.1.2001. In this view of the matter we hold that the Tribunal was justified and correct in transferring the records of Execution Case No. 4 of 1981 back to the Civil Court for execution by its order dated 20.6.2018, which does not suffer from any error.

The Court asked the learned counsel as to what is the practice for the parties in the Waqf Tribunal whether the decisions taken by it are executed by it or sent to the Civil Court learned counsel very fairly informed the Court that they are sent to the Civil Court for execution but also stated that the Civil Court does not execute the same for some reason. The Court has now cleared the legal position, therefore, hopefully this will be adhered.

Section 37 will not come in the way of execution of decisions taken by the Waqf Tribunal which has the force of decree of a Civil Court under Sub-section (7) of Section 83 in view of the specific stipulation contained in Section 83(8) of the Act, 1995 which has been discussed hereinabove and the Civil Court will be obliged to execute such decisions of the Waqf Tribunal, if they are sent for execution. **[Ashiq Abbas Khan (Waqf No. 34-A) vs. U.P. Sunni Central Board of Waqfs, Llucnow and others, 2022(1) ADJ 253(L.B.)] Allahbad High Court**

U.P. Zamindari Abolition and Land Reforms Act, 1950

Ss. 157-AA, 166, 167, 131-B.

The question which thus arises in the present case is as to whether in a case where the transferor and the transferee both are members of Scheduled Caste, would the restrictions contained under Section 157-AA of the ZA & LR Act, be attracted.

The restrictions contained under Section 157-AA and the requirement of the permission of the Assistant Collector in a case where transfer is sought to be made by a person belonging to Scheduled Caste having become a bhumidhar with transferable rights under Section 131-B, in favour of a person who also belongs to a Scheduled Caste, having been held to be mandatory any transfer made in contravention thereof shall by virtue of the provisions contained under Section 166 be rendered void and the consequences of such a void transfer, as provided under Section 167, would ensue. **[Dulari and others vs. Board of Revenue U.P. at Allahabad and another, 2022(3) ADJ 632] (Allahabad High Court)**

U.P. Zamindari Abolition and Land Reforms Rules, 1952

R. 285-I.

The questions raised by the parties for consideration of this Court thus are:

(i) Whether the objections of the petitioners to the auction sale are barred by limitation or the commissioner/any superior Court has power to condone the delay in filing the objections;

A perusal of the provisions of U.P.Z.A. & L.R. Act and the Rules framed there under shows that the same provide complete procedure for the complete manner of recovery, including, holding of auction sale, objections to sale and disposal of such objections including consequences of not filing the objections. Thus, the said Act and Rules fill within the category of special local Act under Section 29(2) of the Limitation Act for the purpose of recovery proceedings held under the same. Schedule to the Limitation Act by entry 127 provides limitation of sixty days for filing an application to set aside a sale in execution of a decree. By

entry 137 it provides limitation of three years for any other application for which no period of limitation is provided elsewhere while rule 285-I only provides a period of thirty days for filing objections against auction sale. Thus the special act not only provides the period of limitation for filing objections to the auction sale separately, the period of limitation provided by the special act is also different from the provided by the Limitation Act. Further, Rule 285-I provides that objections to the sale can be filed within a period of thirty days from the date of sale before the commissioner, only on grounds of irregularity or mistake in publishing or conducting the sale. If the objections are not filed under Rule 285-I within thirty days from the date of sale, under Rule 285-J the collector is bound to confirm the sale and such an order of confirmation of sale shall be final. Rule 285-K makes the position further clear by providing that thereafter all claims on ground of irregularity or mistake in publishing or conducting the sale shall be barred and only remedy available is to file a suit on ground of fraud. From the aforesaid, it is clear that U.P.Z.A. & L.R. Act and Rules, for the purposes of recovery of sums recoverable as arrears of land revenue, is a complete code in itself, which specifically excludes the applicability of Sections 4 to 24 of the Limitation Act. **[Smt. Parvinder Kaur and others vs. Board of Revenue of U.P., Lucknow and others, 2022(2) ADJ 561(LB)] (Allahabad High Court)**