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CONSTITUTIONAL, CIVIL, CRIMINAL AND REVENUE LAWS

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

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Arbitration and Conciliation Act, 1996

It has been held that held, though Ss. 114 and 114-A TPA provide certain protection to the lessee/tenant before being ejected from the leased property, the same cannot be construed as a statutory protection nor as a hard and fast rule in all cases to waive the forfeiture. In so far as eviction or tenancy relating to matters governed by special statutes are concerned where the tenant enjoys statutory protection against eviction where under the court/forum is specified and conferred jurisdiction under the statute, the dispute is non-arbitrable. However, if the special statutes do not apply to the premises/property and the lease/tenancy created there as on the date when the cause of action arises to seek for eviction or such other relief and in such transaction if the parties are governed by an arbitration clause; the dispute between the parties is arbitrable and there shall be no impediment whatsoever to invoke the arbitration clause.

It has further been held that if in the arbitration proceedings the landlord has sought for an award of ejectment on the ground that the lease has been forfeited since the tenant has failed to under pay the rent and breached the express condition for payment of rent or such other breach and in such proceedings the tenant pays or tenders the rent to the lessor or remedies such other breach, it would be open for the arbitrator to take note of Ss. 114 and 114-A TPA and pass appropriate award in the nature as a court would have considered that aspect while exercising the discretion. (**Suresh Shah v. Hipad Technology India Pvt. Ltd., (2021) 1 SCC 529)**

Fourfold Test to determine when an agreement is not arbitrable

Hon'ble Supreme Court propounded a fourfold test and held that the subject-matter of a dispute in an arbitration agreement is not arbitrable when: (1) the cause of action and subject-matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem; (2) the cause of action and subject matter of the dispute affects third-party rights, have require centralised adjudication, and mutual adjudication would not be appropriate and enforceable; (3) the cause of action and subject-matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; (4) the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

The aforesaid fourfold test has to be applied with care and caution. These tests are not watertight compartments: they dovetail and overlap, albeit when applied holistically and pragmatically, will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject matter is non-arbitrable. Only when the answer is in the affirmative that the subject-matter of the dispute would be non-arbitrable.

Held, a judgment in rem determines the status of a person or thing as distinct from the particular interest in it of a party to the litigation and such a judgment is conclusive evidence for and against all persons whether parties, privies or strangers to the matter actually decided and such a judgment settles the destiny of the res itself and binds all persons claiming an interest in the property inconsistent with the judgment even though pronounced in their absence. On the

other hand, a judgment in personam, although it may concern a res, merely determines the rights of the litigants inter se to the res. Also, use of expressions "rights in rem" and "rights in personam" may not be correct for determining non-arbitrability because of the interplay between rights in rem and rights in personam, and many a time, a right in rem results in an enforceable right in personam. Held, exclusion of actions in rem from arbitration, exposits the intrinsic limits of arbitration as a private dispute resolution mechanism, which is only binding on the parties to the arbitration agreement.

It was further held that Arbitral Tribunals not being courts of law or established under the auspices of the State cannot act judicially so as to affect those who are not bound by the arbitration clause and arbitration is unsuitable when it has erga omnes effect, that is, it affects the rights and liabilities of persons who are not bound by the arbitration agreement. Further, arbitration as a decentralised mode of dispute resolution is unsuitable when the subject matter or a dispute in the factual background, requires collective adjudication before one court or forum. An agreement between two or more parties would not be efficacious in situations when the subject matter or the dispute affects rights and interests of third parties or without presence of others, an effective and enforceable award is not possible.

Sovereign functions of the State being inalienable and non delegable are non-arbitrable as the State alone has the exclusive right and duty to perform such functions. Further, sovereign functions for the purpose of A&C Act would extend to exercise of executive power in different fields including commerce and economic, legislation in all forms, taxation, eminent domain and police powers which includes maintenance of law and order, internal security, grant of pardon, etc. as distinguished from commercial activities, economic adventures and welfare activities. Likewise, decisions and adjudicatory functions of the State that have public interest element like the legitimacy of marriage, citizenship, winding up of companies, grant of patents, etc. are non-arbitrable, unless the statute in relation to a regulatory or adjudicatory mechanism either expressly or by clear implication permits arbitration.

Moreover, it has also been held that the general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non- arbitrability. Further, the court has been conferred power of second look on aspects of non arbitrability post the award in terms of sub-clauses (i), (i) or (iv) of S. 34(2)(a) or sub-clause (i) of S. 34(2)(b) of the A&C Act.

Held, the issue of non-arbitrability can be raised at three stages: firstly, before the court on an application for reference under S. 11 or for stay of a pending judicial proceedings and reference under S. 8 of the A&C Act. Secondly, before the Arbitral Tribunal during the course of the arbitration proceedings. Or, thirdly before the court at the stage of the challenge to the award or its enforcement.

An arbitration agreement exists only when it is valid and legal and a void and unenforceable understanding is no agreement to do anything. Thus, existence of an arbitration agreement means an arbitration agreement that meets and satisfies the statutory requirements of both the A&C Act and the Contract Act and when it is enforceable in law. Further, existence and

validity are intertwined, and arbitration agreement does not exist if it is illegal or does not satisfy mandatory legal requirements and an invalid agreement is no agreement. Hence, the court is not powerless and would not act beyond jurisdiction, if it rejects an application for reference, when the arbitration clause is prima facie found not to exist and/or is not valid.

Statutes unfailingly have a public purpose or policy which is the basis and purpose behind the legislation. Application of mandatory law to the merits of the case does not imply that the right to arbitrate is taken away. Mandatory law may require a particular substantive rule to be applied, but this would not preclude arbitration. Implied non-arbitrability requires prohibition against waiver of jurisdiction, which happens when a statute gives special rights or obligations and creates or stipulates an exclusive forum for adjudication and enforcement.

An arbitrator, like the court, is equally bound by the public policy behind the statute while examining the claim on merits. The public policy in case of non-arbitrability would relate to conferment of exclusive jurisdiction on the court or the special forum set up by law for decision making. Non-arbitrability question cannot be answered by examining whether the statute has a public policy objective which invariably every statute would have. There is a general presumption in favour of arbitrability, which is not excluded simply because the dispute is permeated by applicability of mandatory law. Question of non-arbitrability has to be examined in the framework of the fourfold test postulated herein.

Violation of public policy by the arbitrator could well result in setting aside the award on the ground of failure to follow the fundamental policy of law in India, but not on the ground that the subject matter of the dispute was non-arbitrable.

Furthermore, public policy on the basis of which a statute can expressly or by implication restrict or prohibit arbitrability of disputes can be determined at any of the three stages: at referral stage; by arbitrator; or as a ground to set aside award under S. 34(2)(b)(i). On the other hand conflict with the public - policy of India can only be employed as a ground to set aside award and cannot be resorted to at the referral stage.

"Legal relationship" contemplated in S. 7 means a relationship which gives rise to legal obligations and duties and, therefore, confers a right. These rights may be contractual or even non-contractual. Non-contractual disputes would require a separate or submission arbitration agreement based on the cause of action arising in tort, restitution, breach of statutory duty or some other non-contractual cause of action. (**Vidya Drolia and others v. Durga Trading Corporation, (2021) 2 SCC 1)**

Code of Civil Procedure, 1908

Sec. 9– Jurisdiction of Civil Court where suit is simpliciter for injunction based upon possession of property

The Civil Court has plenary jurisdiction to entertain all disputes except in cases where the jurisdiction of the Civil Court is either expressly or impliedly barred in terms of Section 9 of the Code.

Since there is no implied or express bar of jurisdiction of the Civil Court in terms of Section 9 of the Code, the Civil Court has plenary jurisdiction to decide all disputes between the parties. The issue of jurisdiction of the civil court has been considered by this Court in South Delhi Municipal Corporation & Anr. v. Today Homes and Infrastructure Pvt. Ltd. etc.(1993) 3 SCC 161) wherein this Court held as under:

"11. Any person having a grievance that he had been wronged or his right has been affected can approach a civil court on the principle of ' ubi jus ibi remedium' - where there is a right, there is a remedy. As no internal remedy had been provided in different statutes creating rights or liabilities, the ordinary civil courts had to examine the grievances in the light of those statutes. With the advent of a 'Welfare State', it was realised that enactments creating liabilities in respect of payment of taxes, obligations after vesting of estates and conferring rights on a class of citizens, should be complete codes by themselves. With that object in view, forums were created under the Acts themselves where grievances could be entertained on behalf of the persons aggrieved (Shiv Kumar Chadha v. Municipal Corporation of Delhi." [**Kirpa Ram D Tr Lrs vs. Surender Deo Gaur, AIR 2021 SC 57]**

Installation of CCTV Camera at police station

Honourable Supreme Court issued direction to install CCTV camera at each and every police station across the country. [**Paramvir Singh vs. Baljit Singh, AIR 2021 SC 64]**

Civil Procedure Code, 1908- Section 92- Maintainability of suit- Suit by plaintiff-Trust for mandatory injunction directing the defendant to vacate the management of Mandir, building and other property- Defendant admitted that he was working as Sewadar- Suit was partly allowed- Appeal filed by the plaintiff was however allowed-Defendant filed Second Appeal- During pendency defendant died and one Ram Niwas was allowed to be impleaded – High Court however decided that suit was not maintainable in view of section 92 of C.P.C.- Hence, the instant appeal by plaintiff-Trust- Held, the present suit was by the Trust against a Sevadar, therefore, the procedure prescribed under section 92, C.P.C. would not be applicable in a suit by a Trust Since trust itself was the plaintiff, the finding of High Court was erroneous and not sustainable- Hence, set aside- Finding of High Court regarding the fact that Ram Niwas could offer his services but he has not proved that he was Chela of deceased Baba Gopal Das (defendant) warranted no interference- Appeal allowed.

It was held that Section 92 of the Code contemplates a suit against a Trust either for removing any trustee; appointing new trustee; or vesting any property in a trustee etc. but the present suit itself is by a Trust against a Sevadar, therefore, the procedure prescribed under Section 92 of the Code would not be applicable in a suit by a Trust. Section 92 of the Code confers right on a person in case of any alleged breach of any express or constructive trust created for a public purpose of a charitable or religious nature. Since the Trust itself was the plaintiff, the finding of the High Court is clearly erroneous and not sustainable. The fact is that Baba Gopal Dass has been found to be Sevadar as per statement (Ex.P/1) given in the previous suit for permanent injunction. Therefore, Ram Niwas as legal representative of Baba Gopal Dass will not have a larger interest than what was vested in the original defendant. Ram Niwas has been found to be doing service to the Temple as member of public. The High Court has affirmed the finding that Ram Niwas could offer his services but he has not proved that he was appointed as Chela of Baba Gopal Dass. Still further, the decree for rendition of accounts could be executed only against the deceased Baba Gopal Dass, therefore, after his demise, such decree cannot be executed.

It was held that the finding of the High Court on first substantial question of law is set aside and the suit is found to be maintainable and was rightly decreed by the First Appellate Court.

It was also found that the apprehension of the respondent that the amount of compensation can be misused is not tenable. The appellant is a registered Society. The appellant as a registered Society has statutory obligations. We find that such apprehension is misconceived and beyond the scope of the present suit and the appeal arising out of such proceedings.

Consequently, the appeal was allowed. The order of the High Court in respect of first substantial question of law was set aside and the suit was decreed. **[Ghat Talab Kaulan Wala vs. Baba Gopal Dass Chela Surti Dass (Dead) by L.R. Ram Niwas, 2021 (150) RD 127]**

Permissive Possession- Where a plaintiff wants to establish that defendant's original possession was permissive, he has to prove this allegation and in the In event of his failure to establish same, it may be presumed that possession was adverse unless there is evidence contrary to it.

Decree of Possession- A person claiming a decree of possession has to establish his entitlement to get such possession- He must show that he had possession before alleged trespasser got possession.

Legal Maxim- "Possession follows title"- Presumption that possession must be deemed to follow title, arises only where no definite proof of possession by anyone else.

Limitation Act, 1963- Section 3- Recovery of possession of immovable property–Suit filed after period of limitation is liable to be dismissed- Even though plea of limitation not taken in defence.

Civil Procedure Code, 1908- Section 100- Second appeal- Suit for declaration and recovery of possession and means profit –Reversal of Judgment and decree of First Appellate Court by High Court- Legality- Appellant- defendant was owner of a part of suit premises and

respondent- plaintiff was owner of other part of premises –This finding of First Appellate Court based on cogent and binding documents of title, including registered Deed of Conveyance- Both parties thus, acquired title over suit premises- Therefore, no erroneous inference from any proved fact- Entitlement of respondent-plaintiff for declaration of title in respect of half share based on pleadings and evidence – Therefore, finding of First Appellate Court in this regard- Does not call for any interference- Appellant-defendant claimed continuous possession since year 1966 on strength of Deed of Release executed by his father –He claimed to be in possession of suit premises, as owner for almost 28 years prior to institution of suit- In absence of any whisper in plaint as to date on which appellant-defendant and/or his predecessor-in-interest took possession of suit property, relief for decree of possession was within time- High Court could not have reversed finding of First Appellate Court and allowed respondent-plaintiffs relief of recovery of possession- Judgment and order of High Court under appeal- Does not discuss or decide any question of law involved in case- Impugned order of High Court set aside- Judgment and decree of First Appellate Court Restored- Appeals allowed. **[Nzair Mohamed vs. J.Kamala and others, 2021 (150) RD 476]**

Code of Criminal Procedure, 1973

There can be no doubt that Section 320 CrPC does not encapsulate Sections 324 and 307 IPC under its list of compoundable offences. Given the unequivocal language of Section 320(9) CrPC which explicitly prohibits any compounding except as permitted under the said provision, it would not be possible to compound the appellants' offences. Notwithstanding thereto, it appears that the fact of amicable settlement can be a relevant factor for the purpose of reduction in the quantum of sentence. Given the position of law and the peculiar circumstances arising out of subsequent events, it is a fit case to take a sympathetic view and reconsider the quantum of sentences awarded to the appellants.

It is so because, first, the parties to the dispute have mutually buried their hatchet. The separate affidavit of the victim inspires confidence that the apology has voluntarily been accepted given the efflux of time and owing to the maturity brought about by age. There is no question of the settlement being as a result of any coercion or inducement. Considering that the parties are on friendly terms now and they inhabit the same society, it is a fit case for reduction of sentence.

Second, at the time of the incident, the victim was a college student, and both appellants too were no older than 20-22 years. The attack was in pursuance of a verbal altercation during a sports match with there being no previous enmity between the parties. It does raise hope that parties would have grown up and have mended their ways. Indeed, in the present case, fifteen years have elapsed since the incident. The appellants are today in their mid-thirties and present little chance of committing the same crime.

Third, the appellants have no other criminal antecedents, no previous enmity, and today are married and have children. They are the sole bread earners of their family and have

significant social obligations to tend to. In such circumstances, it might not serve the interests of society to keep them incarcerated any further.

Finally, both the appellants have served a significant portion of their sentences. M has undergone more than half of his sentence and R has been in jail for more than one year and eight months. (**Murali v. State (Represented by Inspector of Police), (2021) 1 SCC 726)**

Anticipatory Bail

Criminal Procedure Code, 1973 (Sections 438 and 482) – Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Sections 18 and 18-A) - Anticipatory bail - Directions given by the Apex Court in Dr. Sub-hash Kashinath Mahajan's case stood nullified by insertion of section 18-A in the Act of 1989 – A preliminary inquiry permissible only in the circumstances as per law laid down by the Constitution Bench in Lalita Kumari v. Government of U.P. - If the complaint does not make out a prima facie case for applicability of the provisions of 1989 Act – Bar created by sections 18 and 18-A of the 1989 Act shall not apply - In exceptional cases exercise of power under section 482, CrPC, for quashing the cases to prevent misuse of provisions can be made. Challenge to provisions inserted by way of section 18-A rendered academic and writ petitions disposed of accordingly. (**Prathvi Raj Chauhan v. Union of India and others, 2020(113) ACC 307)**

Cr.P.C. – Right of Victim in Criminal Appeals:

Criminal Procedure Code, 1973 – Section 377 – High Court has dismissed the appeal filed by the appellant seeking enhancement of sentence – Appeal against – A reading of the proviso makes it clear that so far as victim's right of appeal is concerned, same is restricted to three eventualities – Namely, acquittal of the accused, conviction of the accused for lesser offence; or for imposing inadequate compensation - While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate – While it is open for the State Government to prefer appeal for inadequate sentence under section 377, CrPC but similarly no appeal can be maintained by victim under section 372, CrPC on the ground of inadequate sentence – It is fairly well –settled that the remedy of appeal is creature of the Statute – Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable – Appeal is dismissed. (**Parvinder Kansal v. State of NCT of Delhi and another, 2020 (113) ACC 676)**

CrPC – Prosecution Sanction:

Criminal Procedure Code, 1973 (Sections 197 and 482) Indian Penal Code, 1860-Sections 120-B, 220, 323, 330, 348 and 506-B read with section 34 - Karnataka Police Act, 1963 – Section 170 – Quashing of order taking cognizance in a private complaint alleging ill-treatment and police excesses while in police custody-Additional Chief Metropolitan Magistrate took cognizance against appellant, a Police Officer of the rank of Superintendent of Police – No

previous sanction or prosecution of the accused obtained from the Government – Accused – appellant filed quashing petition under section 482 CrPC read with section 170 of the Karnataka Police Act –High Court observed that sanction was a legal requirement which empowered the Court to take cognizance and remanded the matter to the Trial Court with direction to appellant to file application under section 245, CrPC for discharge – Policeman acted in excess of duty but there is a reasonable connection between the act and performance of official duty – Policeman cannot be deprived of the protection of Government sanction-Records of the instant case reveal that the complainant alleged police excesses while he was in custody- Patently complaint pertains to an act under colour of duty. (**D. Devaraja v. Owais Sabeer Hussain, 2020 (113) ACC 904)**

Refusal from TIP: Not a Presumption of Guilt

Hon'ble Apex Court while appreciating the value of Test Identification Parade under section 9 of Indian Evidence Act held that the courts should be circumspect about drawing an adverse inference from the facts, which have emerged in any event, the test identification is intended to lend assurance to the Identity of accused. The finding of guilt cannot be based purely on the refusal of the accused to undergo an identification parade. The refusal to undergo test identification parade assumes secondary importance, if at all, and cannot survive independently in the absence of it being a substantive piece of evidence. It means that the foremost thing for appreciating the evidence is substantive piece of evidence adduced in that particular case. **[Rajesh alias Sarkari and another v. State of Haryana, 2021 Cri. L. J. 206: AIR Online 2020 SC 808 (Supreme Court)]**

Faulty Final Report and Duty of Court

In this matter investigation was promptly closed and closure report was filed stating that there was no concrete evidence of conspiracy against respondent and that informant had not placed any materials before police direct or indirect with regard to conspiracy Hon'ble Apex Court held that once conscience of court is satisfied from materials on record that police has not investigated properly or apparently is remiss in investigation Court has constitutional obligation to ensure that investigation is conducted in accordance with the law, if Court gives any directions for the purpose within controls of law it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Article 14 and 21 of the Constitution of India and Supreme Court has bounden obligation to ensure adherence by the police. [**Amarnath Chaubey v. Union of India and others, 2021 Cri.L.J.709 : AIR Online 2020 SC 898 (Supreme Court)]**

Appreciation of Evidence by Appellate Courts in Criminal Cases (Sections 376, 378, 506 IPC)

Hon'ble Apex court while discussing the view to be established in appeals and regarding appreciation of evidence held that;

This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761,Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama Krishna v. S. Rami Reddy (2008) 5 SCC 535, Arulvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P (2009) 16 SCC 98 and Ram Singh v. State of H.P (2010) 2 SCC 445)

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

Hon'ble Court while appreciating the evidence in rape and criminal intimidation, the allegation was that accused committed rape on prosecutrix and threatened her not to disclose incident to anyone, as a result she became pregnant and delivered a baby child as per DNA test accused was found to be biological father of the baby child delivered by prosecutrix. Prosecutrix was having mild mental retardation accused took disadvantage of her mental sickness, even accused never disposed about the consent of prosecutrix, minor contradictions in opinion of doctors regarding language known by victim was not held fatal. The conviction of the accused for offences under section 376 and 506 IPC was justified. [**Chaman lal v. State of Himachal Pradesh, 2021 CRI. L. J. 646 : AIR Online 2020 SC 869 (Supreme Court)]**

Criminal Procedure Code, 1973, Family and Personal Laws

It was held that anticipatory bail can be granted to a person apprehending arrest under the Muslim Women Act, 2019 subject to conditions that competent court must hear married Muslim woman upon whom the triple talaq is pronounced, and all the requirements specified in S. 7 (c) of the 2019 Act are satisfied. Moreover, liability for offence under Ss. 3 and 4 can only be committed by Muslim husband. Mother of husband who pronounced triple talaq cannot therefore be made liable for the same. **[Rahna Jalal v. State of Kerala, (2021) 1 SCC 733]**

Sec. 167, 172-- Investigation and closure report in murder cases

The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police. [**Amar Nath Chaubey vs. Union of India, AIR 2021 SC 109]**

Powers of the Court U/S Sec. 319 Cr.P.C.

The principles for exercise of power under Section 319 Cr.P.C. by Criminal Court are well settled. The Constitution Bench of this Court in Hardeep Singh versus State of Punjab and others, (2014) 3 SCC 92, has elaborately considered all contours of Section 319 Cr.P.C. This Court has held that Power under Section 319 Cr.P.C. is a discretionary and extra-ordinary power which has to be exercised sparingly. This Court further held that the test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. Hon'ble Court laid down as under: -

> "The power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised and not in a casual and cavalier manner.

Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un-rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused." The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused." (**Ajay Kmar @ Bittu vs. State of Uttarakhand, AIR 2021 SC 683)**

Sec. 167, 439(2) -- N.D.P.S. Act, Sec.22, 28, 29

It is true that the bail granted under Section 167(2) Cr.P.Cc. could have been cancelled under Section 439(2) Cr.P.C.. This Court in Pandit Dnyanu Khot Vs. State of Maharashtra and Ors., (2008) 17 SCC 745 while considering the case where bail granted under Section 167(2) Cr.P.C. was cancelled under Section 439(2) Cr.P.C. by learned Sessions Judge after noticing the facts upheld the order under Section 439 Cr.P.C. cancelling the bail.

The proviso to Section 167 itself clarifies that every person released on bail under Section 167(2) shall be deemed to be so released under Chapter XXXIII. Therefore, if a person is illegally or erroneously released on bail under Section 167(2), his bail can be cancelled by passing appropriate order under Section 439(2) CrPC. This Court in Puran v. Rambilas [(2001) 6 SCC 338] has also clarified that the concept of setting aside an unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. (**Venkatesan Balasubramaniyan vs The Intelligence Officer AIR 2021 SC 335**).

Sec. 125-- Hindu Marriage Act, Sec. 24, 25-- Special Marriage Act, 1954, Sec.4, 36, 37-- Hindu Adoption and Maintenance Act, Sec. 18(2), 23-- Protection of Women from Domestic Violence Act sec. 20(1) (d)-- Overlapping jurisdiction for maintenance claim

Final Directions

In view of the foregoing discussion as contained in Part B – I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India:

(a) Issue of overlapping jurisdiction

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. Court directs that:

(i) Where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set- off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;

(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.

(b) Payment of Interim Maintenance

The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enumerated in Part B – III of the judgment.

The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B – IV above.

(e) Enforcement / Execution of orders of maintenance

For enforcement / execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section

20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 r/w Order XXI. [**Rajnesh vs. Neha, AIR 2021 SC 569]**

Appointment of Special Public Prosecutor - (Section 24 Cr.P.C.)

Hon'ble Apex Court while deciding an issue related to the appointment of Special Public Prosecutor under section 24 of Code of Criminal Procedure held that in the circumstances where in the family members of the victim have chosen to engage some advocates of their choice The High court would consider these aspects and order in accordance with the law if such need arises. [**Satyama Dubey and others v. Union of India and others, 2021 Cri.L.J.81: AIR Online 2020 SC 792 (Supreme Court)]**

Test Identification Parade - (Section 9 IEA & Section 162 Cr.P.C.)

Apex Court while deciding the matter relating to the evidentiary value of Test Identification Parade and the evidentiary value of statements under section 162 Code of Criminal Procedure held that when the identifications are held in police presence the resultant Communications tantamount to statements made by the identifiers to a police officer in course of Investigation and they fall within the ban of section 162 of the code the matter was related to appreciation of evidence where accused along with co accused or allegedly assaulted deceased with axe and sticks resulting in to his death on spot. The alleged weapons of offence were recovered on basis of statement of accused but were not linked to the crime. **[Chunthuram v. State of Chhattisgarh, 2021 Cri.L.J.46 : AIR ONLINE 2020 SC 799 (SUPREME COURT)]**
Factors to be considered on Bail - Section 439 Cr.P.C.

While considering the factors to be considered by High court on an application for grant of bail Hon'ble Apex court held that the nature of alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction. Whether there exist a reasonable apprehension of accused tampering with the witnesses or being a threat to the complainant or the witnesses. The possibility of securing the presence of accused at the trial or the likelihood of the accused fleeing from justice. The antecedents of and circumstances which are peculiar to the accused. Whether prima facie the ingredients of the offence are made out, on the basis of allegations as they stand, in the FIR and The significant interest of the public or the state and other similar considerations. These principles are equally applicable to the exercise of Jurisdiction under article 226 of the Constitution where the court is called upon to secure the liberty of the accused the High Court must exercise its power with caution and circumspection Cognizant of the fact that this jurisdiction is not a ready substitute for recourse to the remedy of bail under section 439 of Cr.P.C. **[Arnab Manoranjan Goswami v. State of Maharashtra and others, 2021 CRI. L. J. 517 : AIR Online 2020 SC 845 (Supreme Court)]**

Constitution of India, 1950

Installation of CCTV cameras in police stations. Credible recording of evidence and safeguarding human rights inside police stations. Implementation of action plan prepared by Committee of Union of India, Ministry of Home Affairs (MIHA) and as directed by Supreme Court in Shafi Mohammed, (2018) 5 SCC 311. States and Union Territories directed to file compliance affidavit disclosing exact position of CCTV cameras qua each police station.

Whenever there is information of force being used at police stations resulting in serious injury and/or custodial deaths, it is necessary that person be free to complain for a redressal of the same. Such complaints may not only be made to State Human Rights Commission, which is then to utilize powers, more particularly under Ss. 17 and 18 of the Human Rights Act, 1993, for redressal of such complaints, but also to Human Rights Courts, which must be set up in each district of every State/Union Territory under S. 30 of the Human Rights Act, 1993. Commission/ Court can then immediately summon CCTV camera footage in relation to incident for its safe keeping, which may then be made available to an investigation agency in order to further process complaint made to it.

Union of India further directed to install CCTV cameras and recording equipment in offices of agencies where such interrogation and holding of accused takes place in the same manner as if would in police station. **(Paramvir Singh Saini v. Baljit Singh and others, (2021) 1 SCC 184)**

Elevation as a High Court Judge

Article 217(2) merely prescribes the eligibility criteria and the method of computation of the same. If a person is found to have satisfied the eligibility criteria, then he must take his place in one of the queues. There are 2 separate queues, one from judicial service and another from the Bar. One cannot stand in one queue by virtue of his status on the date of consideration of his name for elevation and at the same time keep a towel in the other queue, so that he can claim to be within the zone of consideration from either of the two or from a combination of both.

The queue, to which a person is assigned, depends upon his status on the date of consideration. If a person is an advocate on the date of consideration, he can take his place only in the queue meant for members of the Bar. Similarly, if a person is a judicial officer on the date of consideration, he shall take his chance only in the queue meant for service candidates.

Hopping on and hopping off from one queue to the other, is not permissible. Today, if any of the petitioners cease to be Judicial Officers and become Advocates, they may be eligible to be considered against the quota intended for the Bar. But while continuing as Judicial Officers, they cannot seek to invoke Explanation (a) as it applies only to those who have become

advocates after having held a judicial office. [**R. Poornima vs. Union of India, AIR 2021 SC 1054]**

Preamble of the Constitution of India- Fraternity Assuring Dignity of Individual and Unity of the nation are linked together – One in the form of individual rights and other in the form of individual obligations.

It was held that the Preamble to the Constitution consciously puts together fraternity assuring dignity of the individual and the unity and integrity of the Nation which are linked, one in the form of rights of individuals and other in the form of individual's obligation to others to ensure unity and integrity of the nation. The unity and integrity of the nation cannot be overlooked and slighted, as acts that promote or are likely to promote divisiveness, alienation and schematism do directly and indirectly impinge on diversity and pluralism.

It has also been held that there is an extent to which hate speech may be tolerated in democracy and beyond which it requires to be restricted by State action, and warrants invocation of penal laws restricting the same. It is important to consider the elements of hate speech viz. content based, intent based and harm or impact based, need consideration in multi-dimensional context. The context in which the offending speech is made should also be considered to find out whether it amounts to hate speech or not.

It was further observed that identity based hate speech or controversial speech, inciting or made against a particular target class/group of persons belonging to particular caste, creed, religion, etc., without any other useful purpose, which creates or promotes or is likely to create or promote public disorder and violence, impinges on dignity and other co-existing rights of such targeted class/ group guaranteed under Part III and the Preamble. Such hate speech or controversial speech necessitates suitable State action to curb the same by invoking relevant penal provisions.

It is established that when multiple FIRs are lodged by targeted groups by way of retaliatory proceedings at different Police Stations pertaining to same offence(s)/incident(s), information first entered in police diary, held, must be treated as FIR under S. 154 CrPC and remaining information should be treated as statements under S. 162 CrPC. It is necessary to mention that freedom of speech and expression has to be balanced against right to dignity and equality.

It must be seen that journalistic norms and standards are maintained as responsible journalism is practiced. It is not penal threat alone which can help us achieve and ensure equality between groups in a polity committed to pluralism. This can be achieved by self-restraint, institutional check and correction, as well as self-regulation or through the mechanism of statutory regulations, if applicable. (**Amish Devgan v. Union of India and others, (2021) 1 SCC 1**)

Preamble of the Constitution and Articles 39 & (5 (3) envisage Social Justice – Remedy of Maintenance is a Measure of Social Justice – It is to prevent Wives and Children from falling into Destitution

Hon'ble Supreme Court observed that the remedy of maintenance is a measure of social justice as envisaged under the Constitution to prevent wives and children from falling into destitution and vagrancy. Preamble and Articles 39 and 15(3) of the Constitution envisage social justice and positive State action for the empowerment of women and children.

There is no inconsistency between CrPC and the Hindu Adoptions and Maintenance Act, 1956 and both can stand together. Though there are different enactments providing for maintenance, each enactment provides an independent and distinct remedy framed with a specific object and purpose. Provision of maintenance in secular laws like the Special Marriage Act, 1954 (SMA), S. 125 CrPC and the Protection of Women from Domestic Violence Act, 2005 are irrespective of religious community to which they belong and apart from other remedies provided in personal laws like dissolution of marriage or restitution of conjugal rights, etc.

There is a distinction in the scope and power exercised by the Magistrate under S. 125 CrPC and the DV Act. An order passed in a maintenance proceeding would not debar re-adjudication of the issue of maintenance in any other proceeding. Proceedings under S. 125 CrPC are summary in nature, and are intended to provide a speedy remedy to the wife. Any order passed under S. 125 CrPC by compromise or otherwise would not foreclose the remedy under S. 18 of the Hindu Adoption and Maintenance Act. Maintenance granted to an aggrieved person under the Domestic Violence Act, would be in addition to an order of maintenance under S. 125 CrPC, or under the Hindu Adoption and Maintenance Act.

The following directions are issued in exercise of powers under Article 142 of the Constitution: To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. It is directed that:

(i) Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding.

(ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding,

(iii) If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same.

Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution:

(a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance

proceedings, including pending proceedings before the Family Court District Court/Magistrate's Court concerned, as the case may be, throughout the country.

(b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets.

(c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be willful and contumacious in delaying the proceedings. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on basis of the affidavit filed by the applicant and the pleadings on record.

(d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

(e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

(f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

(g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/ supplementary affidavit, which would be considered by the court at the time of final determination.

(h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

(i) In case the parties belong to the economically weaker sections ("EWS"), or are living below the poverty line ("BPL"), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

(j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

(k) A professional Marriage Counsellor must be made available in every Family Court.

Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the court concerned, for fixing the permanent alimony payable to the spouse. In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid. Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family. If there are any trust funds/investments created by any spouse/grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.

The financial position of the parents of the applicant wife would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations, the court should mould the claim for maintenance based on various factors brought before it.

On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, required as well as the spiraling inflation rates and high costs of living.

A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is e able to maintain herself with reasonable comfort.

Section 23 of the Hindu Adoption and Maintenance Act provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Section 23(2) of the Hindu Adoption and Maintenance Act provides the following factors which may be taken into consideration: (6) position and status of the parties, (ii) reasonable wants of the claimant, (in if the petitioner claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property. (v) income from claimant's own earning or from any other source.

Section 20(2) of the DV Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

Factors for determining maintenance

The following factors have been laid down for determining maintenance:

1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.
7. Provisions for food clothing, shelter, education, medical attendance and treatment, etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
10. The non-applicant to defray the cost of litigation.
11. The amount awarded under Section 125 CrPC is adjustable amount awarded under Section 24 of the Act.

(a) Age and employment of parties : In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and retrain herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependent wife to get an easy entry into the workforce after a break of several years.

(b) Right to residence : Section 19(1)(f) of the DV Act provides that the Magistrate may pass a residence order inter alia directing the respondent to secure the same level of alternate accommodation for the aggrieved woman as enjoyed by her in the shared household. While passing such an order, the Magistrate may direct the respondent to pay the rent and other payments, having regard to the financial needs and resources of the parties.

Section 2(s) read with Sections 17 and 19 of the DV Act entitles a woman to the right of residence in a shared household irrespective of her having any legal interest in the same. There is no requirement of law that the husband should be a member of the joint family, or that the

household must belong to the joint family, in which he or the aggrieved woman has any right, title or interest. The shared household may not necessarily be owned or tenanted by the husband singly or jointly.

(c) Where wife is earning some income : The obligation of the husband to provide maintenance stands on a higher pedestal than the wife. Thus, the courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. In fact, furthermore, merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself in accordance with the lifestyle of her husband in the matrimonial home. Sustenance does not mean, and cannot be allowed to mean mere survival.

(d) Presumption: An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court.

(e) Maintenance of minor children: The living expenses of the child would include expenses for food, clothing, residence, medical expenses and education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extra-curricular coaching classes, and not an overly extravagant amount which may be claimed. Education expenses of the children must be normally borne by the father, be shared proportionately between the parties.

(f) Serious Disability or ill Health : Serious disability or ill health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance.

Date from which Maintenance to be Awarded : There is no provision in the HMA with respect to the date from which an order of maintenance may be made effective. Similarly, Section 12 of the DV Act does not provide the date from which the maintenance is to be awarded. Section 125(2) CrPC is the only statutory provision which provides that the Magistrate may award maintenance either from the date of the order, or from the date of application. In the absence of a uniform regime, there is a vast variance in the practice adopted by the Family Courts in the country, with respect to the date from which maintenance must be awarded. The divergent views taken by the Family Courts are: first, from the date on which the application for maintenance was filed, second, the date of the order granting maintenance; third, the date on which the summons was served upon the respondent.

Maintenance From the Date of Application : The view that maintenance ought to be granted from the date when the application was made, is based on the rationale that the primary

object of maintenance laws is to protect a deserted wife and dependent children from destitution and vagrancy. If maintenance is not paid from the date of application, the party seeking maintenance would be deprived of sustenance, owing to the time taken for disposal of the application, which often runs into several years. The legislature intended to provide a summary, quick and comparatively inexpensive remedy to the neglected person. Where a litigation is prolonged, either on account of the conduct of the opposite party, or due to the heavy docket in courts, or for unavoidable reasons, it would be unjust and contrary to the object of the provision, to provide maintenance from the date of the order.

It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.

Enforcement of orders of maintenance : Enforcement of the order of maintenance is the most challenging issue, which is encountered by the applicants. If maintenance is not paid in a timely manner, it defeats the very object of the social welfare legislation. Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law. An application for execution of an order of maintenance can be filed under the following provisions:

(a) Section 28-A of the Hindu Marriage Act, 1956 read with Section 18 of the Family Courts Act, 1984 and Order 21 Rule 94 CPC for executing an order passed under Section 24 of the Hindu Marriage Act (before the Family Court)

(b) Section 20(6) of the DV Act (before the Judicial Magistrate); and

(e) Section 128 CrPC before the Magistrate's Court.

Section 18 of the Family Courts Act, 1984 provides that orders passed by the Family Court shall be executable in accordance with CPC/CrPC.

Section 125(3) CrPC provides that if the party against whom the order of maintenance is passed fails to comply with the order of maintenance, the same shall be recovered in the manner as provided for fines, and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier.

Decree of maintenance may be enforced like a decree of a civil court

The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc as provided by various provisions of CPC, more particularly Sections 51, 55, 58, 60 read with Order 21 CPC.

The following directions are issued in exercise of powers under Article 142 of the Constitution: For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the HMA, 1956; Section 20(6) of the DV Act; and Section 128 CrPC, as may be applicable. The order of maintenance may be

enfoced as a money decree of a civil court as per the provisions of CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.

Legal interest in shared household not relevant: An aggrieved woman's right to residence in a "shared household" is irrespective of her having any legal interest in the same. A shared household under S. 2(s) need not be owned singly by the husband. It may or may not be jointly owned or taken on rent by the husband. The intention of the parties and the nature of living, including the nature of the household, must be considered to determine as to whether the parties intended to treat the premises as a "shared household" or not.

Shared household does not mean all the houses where the aggrieved person has lived in a domestic relationship along with the relatives of the husband. There will be a number of shared households, which was never contemplated by the legislative scheme. Mere fleeting or casual living at different places would not make it a shared household.

The right to residence under S. 19 is, not an indefeasible right, especially when a daughter-in-law is claiming a right against aged parents in-law. While granting relief under S. 12 of the DV Act, or in any civil proceeding, the court has to balance the rights between the aggrieved woman and the parents-in-law. (**Rajnesh v. Neha and another, (2021) 2 SCC 324)**

Bail not Jail – Duty of Court- NJDG Data shows that Bail Applications are not disposed with expedition. Need to expand the footprint of Liberty.

It was observed that the data on NJDG makes clear, there is a pressing need for courts across the judicial hierarchy in India to remedy the institutional problem of bail applications not being heard and disposed of with expedition. It is hoped that courts will exhibit acute awareness to the need to expand the footprint of liberty and use the approach delineated herein as a decision-making yardstick for future cases involving the grant of bail. While considering an application for the grant of bail under Article 226 in a suitable case, the High Court must consider the settled factors which emerge from the precedents of the Supreme Court. These factors can be summarised as follows:

(i) The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction.

(ii) Whether there exists a reasonable apprehension of the accused tampering with the witnesses or being a threat to the complainant or the witnesses.

(iii) The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice.

(iv) The antecedents of and circumstances which are peculiar to the accused.

(v) Whether prima facie the ingredients of the offence are made out on the basis of the allegations as they stand, in the FIR.

(vi) The significant interests of the public or the State and other similar considerations.

These principles are equally applicable to the exercise of jurisdiction under Article 226 of the Constitution when the court is called upon to secure the liberty of the accused. The High Court must exercise its power with caution and circumspection, cognizant of the fact that this jurisdiction is not a ready substitute for recourse to the remedy of bail under Section 439 CrPC. In the backdrop of these principles, it has become necessary to scrutinise the contents of the FIR in the case at hand. In this batch of cases, a prima facie evaluation of the FIR does not establish the ingredients of the offence of abetment of suicide under Section 306 IPC. The appellants are residents of India and do not pose a flight risk during the investigation or the trial. There is no apprehension of tampering of evidence or witnesses. Taking these factors into consideration, the order dated 11-11-2020 envisaged the release of the appellants on bail.

Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the h edicts of criminal law and procedure. Section 482 CrPC recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of CrPC "or prevent abuse of the process of any court or otherwise to secure the ends of justice". Decisions of the Supreme Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise power with a sense of restraint, the decisions of the Supreme Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one and a significant- end of the spectrum. The other end of the spectrum is equally important: the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty.

In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but the court is clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty.

Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum-the district judiciary, the High Courts and the Supreme Court - to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum- the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be, Liberty survives by the vigilance of her citizens, on the cacophony of

the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.

Bail Not Jail - Duty of court

The basic rule of our criminal justice system is "bail, not jail". The High Courts and courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving the Supreme Court to intervene at all times. The role of the district judiciary is important, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the "subordinate judiciary". It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious.

Common citizens without the means or resources to move the High Courts or the Supreme Court languish as under trials. Courts must be alive to the situation as it prevails on the ground in the jail and police stations where human dignity has no protector. As Judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression, The remedy of bail is the "solemn expression of the humaneness of the justice Tasked as the court is with the primary responsibility of preserving the liberty of all citizens, it cannot countenance an approach that has the consequence of amply this basic rule in an inverted form. (**Arnab Manoranjan Goswami v. State of Maharashtra and others, (2021) 2 SCC 427**)

<u>Crimes against Women and Children and Protection of Women from Domestic Violence Act, 2005</u>

Shared Household under DV Act, 2005 – May be premises belonging to any relative of husband – Lining in Domestic Relationship – Jurisdiction of Civil Court u/S 26 – Intention of Parties & the Nature of Household Relevant

It has been held that for certain premises to fall within definition of “shared household" under the DV Act, 2005, *firstly*, it is not requirement of law that aggrieved person may either own the premises jointly or singly or tenanting it jointly or singly. *Secondly,* the household may belong to joint family of which the respondent is a member irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household. *Thirdly*, the shared household may either be owned or tenanted by the respondent singly or jointly. Shared household may even be premises belonging to any relative of husband with whom woman lives in domestic relationship. But living must have some permanency mere fleeting or casual living at different places shall not make a shared household. It was further held

that the intention of parties and nature of living including nature of household are relevant considerations for ascertaining whether parties treated premises as shared household.

After wife files application under S. 12 impleading her husband, father-in-law and mother-in-law, and obtained order in her favour relating to right of residence in shared household, father-in-law as owner of the house along with mother-in-law filed suit against daughter-in-law for mandatory and permanent injunction. In the suit, if mother-in-law alleges that she had been subjected to various threats and violence by daughter-in-law defendant, civil court can consider the issues and if proved, may grant relief. Order passed by Magistrate/criminal court would be considered by civil court as a matter of evidence in terms of S. 43 of the Evidence Act and would be given its due weight.

In suit filed by father-in-law for mandatory and permanent injunction against his daughter-in-law, claiming plaintiff himself to be owner of suit house in which his son had no share. The defendant's plea was that the house is her shared household in which she has right to residence under S. 17. It was held that it must be considered by civil court by virtue of S. 26. In such suit, civil court has to ascertain outcome of proceeding initiated by defendant under S. 12 for relief under S. 19 residence orders/"shared household". In suit proceeding before civil court based on claim of plaintiff being owner of suit house, no separate application or prayer made by defendant daughter-in-law for relief under S. 19, but she resisted plaintiff's claim on ground that suit house being her shared household, she has right to reside therein. It was held that the trial court is required to determine whether defendant succeeded in proving stand taken by her against plaintiff's claim.

Moreover, pendency of proceedings under the DV Act, 2005 or any order, interim or final, passed under S. 19 regarding right of residence, would not bar initiation or continuation of any civil proceedings, which relate to the order passed in proceedings under the Act. Judgment and order of criminal count on an application under S. 12 granting interim or final relief under S. 19 is relevant within the meaning of S. 43 of the Evidence Act and can be taken into consideration by civil court Such order though not binding on civil court, but it having been passed under the Act, which is a special Act, deserves due weight.

In a suit for mandatory and permanent injunction filed by husband's father against daughter-in-law, application filed by plaintiff under Or. 12 R 6 CPC seeking decree based on defendant's admission in her application under S. 12 of the DV Act, 2005 that suit house was owned by plaintiff. Defendant in her written statement claimed that suit property was her shared household within meaning of S. 2(6) and she had right of residence therein. Admission on the basis of which decree sought by plaintiff and defendant's claim relating to S. 19 of the DV Act, 2005 in written statement being interconnected, it was that the held trial court was not justified in passing decree under Or. 12 R. 6 CPC without considering claim of defendant.

It was further held that said expression contemplates proceedings in court of competent jurisdiction for eviction or exclusion of aggrieved person from shared household. Hence suit for mandatory and permanent injunction/eviction or possession by owner of property is maintainable. However, prohibition against eviction or exclusion "save in accordance with procedure established by law" is only against "respondent" within the meaning of S. 2(q). If

shared household of a woman is a tenanted/allotted/licensed accommodation where husband, father-in-law or any other relative is tenant/allottee/licensee, then DV Act, 2005 would not operate against landlord/lessor/licensor in initiating appropriate proceedings for eviction of tenant/allottee/licensee qua shared household, provided that the proceedings are not outcome of collusion between the two. [**Satish Chander Ahuja v. Sneha Ahuja, (2021) SCC 414]**

Family Law

Hindu Adoptions and Maintenance Act, 1956 – Section 20 – Criminal Procedure Code, 1973 – Section 125- Claim of maintenance of applicant No. 4 was filed at the time when she was minor- During pendency of the application, she became major –Learned Judicial Magistrate, therefore, allowed the application of the appellant for maintenance till she attains majority- Scheme under section 125(1), Cr.P.C., thus, contemplates that claim of maintenance by a daughter, who has attained majority is admissible only when by reason of any physical of mental abnormality or injury, she is unable to maintain herself – Appeal is dismissed. (Paras 10, 12 and 39).

Family Courts Act, 1984 – Section 1 – Hindu Adoptions and Maintenance Act, 1956 – Section 20 –Criminal Procedure Code, 1973- Section 125-A Family Court shall also have the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX of Cr.P.C. relating to order for maintenance of wife, children and parents- Where there is no Family Court, proceedings under Section 125, Cr.P.C. shall have to be before the Magistrate of the First Class –In an area where the Family Court is not established, a suit or proceedings for maintenance including the proceedings under section 20 of the Act, 1956 shall only be before the District Court or any subordinate Civil Court-Appeal is dismissed. (Paras 32 and 39)

It was observed that after enactment of Family Courts Act, 1984, a Family Court shall also have the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX of Cr.P.C. relating to order for maintenance of wife, children and parents. Family Courts shall have the jurisdiction only with respect to city or town whose population exceeds one million, where there is no Family Courts, proceedings under Section 125 Cr.P.C. shall have to be before the Magistrate of the First Class. In an area where the Family Court is not established, a suit or proceedings for maintenance including the proceedings under Section 20 of the Act, 1956 shall only be before the District Court or any subordinate Civil Court.

It was held that in facts of the present case the ends of justice be served by giving liberty to the appellant to take recourse to Section 20(3) of the Act, 1956, if so advised, for claiming any maintenance against her father. Subject to liberty as above, the appeal is dismissed. **[Abhilasha v. Parkash and others, 2021 (150) RD 113 (SC)]**

Indian Evidence Act, 1872

Defence of appellant that he had sold the house to co-accused on 12.6.2009 –Co-accused acquitted of the charge – 'G' as a village Chowkidar was best person in know of the ownership and possession of the house-He was one of the two witnesses to the sale agreement – Prosecution did not examine him for inexplicable reasons-No forensic report obtained-Witnesses acknowledged that appellant lived in his new house for the last 15 years-Presumption against accused under sections 35 and 54 of the Act to explain possession rebuttable and does not dispense with the obligation of the prosecution to prove the charge beyond reasonable doubt-Appellant produced the sale agreement promptly the very next day-Genuineness thereof was never investigated –No appeal preferred by the prosecution against acquittal of the co-accused – Police investigation very casual –Appellant denied fair investigation-Prosecution failed to establish a prima facie case-Evidence led was insufficient-Conviction of appellant being unsustainable in law set aside-Appeal allowed. (**Gangadhar alias Gangaram v. State of M.P., 2020(113) ACC 296)**

Appreciation of Evidence – Burden of Proof in Criminal Trials:

Indian Penal Code, 1860 – Section 302 – Conviction – Sustainability – Case of the prosecution that deceased was married with appellant-She was subjected to cruelty and harassment since very beginning by appellant and his mother-Appellant throttled her in the night in his bedroom-Appellant and deceased alone were in his bedroom in the night and none other was there-PW-2 to PW-6, PW-12 and PW-14 brothers and sister-in-law of the appellant-PWs 7 to PW-9 his neighbours - All the witnesses turned hostile-Defence of appellant that deceased committed suicide-Medical evidence shows death of deceased was homicidal and not suicidal-Injuries on parts of the body of deceased indicate act of violence by the aggressor – No explanation from appellant how she died in his bedroom –Appellant and appellant alone can be attributed with acts which resulted in death of his wife – No material on record to come to conclusion that there was quarrel leading to sudden fight – Exception 4 of section 300, IPC not attracted – Facts were within the exclusive knowledge of the appellant – Burden under section 106 of the Evidence Act on the appellant to establish as to what transpired within the privacy of their bedroom – No evidence about how drunk was appellant – There is gap between time when he was allegedly found drinking and the time of the crime- Appellant can be presumed to have intended the natural consequence – Act of appellant culpable homicide amounting to murder. (**Paul v. State of Kerala, 2020 (113) ACC 329**)

Sec. 68, 69- Proof of registered document

Hon'ble Court held that we are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in **Prem Singh and Ors. v. Birbal and Ors**. The relevant portion of the said decision reads as below:

"27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.

In this regard, we refer to Section 68 of the Indian Evidence Act, 1872 which prescribed procedure for proof of execution of document. The same is reproduced hereunder:

"68. Proof of execution of document required by law to be attested. If a document is required by law to be attested, it shall not be used as evidence until one (2006) 5 SCC 353 For short, "the 1872 Act" attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied." (emphasis supplied)

Thus, we must now advert to Section 69 of the 1872 Act which provides for proof when no attesting witness is found. The same is extracted below:

"69. Proof where no attesting witness found. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person."

Section 71 of the said Act, which reads:

"71. Proof when attesting witness denies the execution. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence."

The requirement regarding shifting of burden onto the defendants had been succinctly discussed in **Anil Rishi v. Gurbaksh Singh10, (2006) 5 SCC 558** wherein this Court had held that for shifting the burden of proof, it would require more than merely pleading that the relationship is a fiduciary one and it must be proved by producing tangible evidence. The relevant extract of the said decision is reproduced as thus:

"8. The initial burden of proof would be on the plaintiff in view of Section 101 of the Evidence Act, which reads as under:

"101. Burden of proof.— Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

9. In terms of the said provision, the burden of proving the fact rests on the party who substantially asserts the affirmative issues and not the party who denies it. The said rule may not be universal in its application and there may be an exception thereto. The learned

trial court and the High Court proceeded on the basis that the defendant was in a dominating position and there had been a fiduciary relationship between the parties. The appellant in his written statement denied and disputed the said averments made in the plaint.

In Jagdish Chand Sharma v. Narain Singh Saini (dead) through legal representatives & Ors.13, this Court held as under:

"57.1. Viewed in premise, Section 71 of the 1872 Act has to be necessarily accorded a strict interpretation. The two contingencies permitting the play of this provision, namely, denial or failure to recollect the execution by the attesting witness produced, thus a fortiori has to be extended a meaning to ensure that the limited liberty granted by Section 71 of the 1872 Act does not in any manner efface or emasculate the essence and efficacy of Section 63 of the Act and Section 68 of the 1872 Act. The distinction between failure on the part of an attesting witness to prove the execution and attestation of a will and his or her denial of the said event or failure to recollect the same, has to be essentially maintained. Any unwarranted indulgence, permitting extra liberal flexibility to these two stipulations, would render the predication of Section 63 of the Act and Section 68 of the 1872 Act, otiose. The propounder can be initiated to the benefit of Section 71 of the 1872 Act only if the attesting witness/witnesses, who is/are alive and is/are produced and in clear terms either denies/deny the execution of the document or cannot recollect the said incident. Not only, this witness/witnesses has/have to be credible and impartial, the evidence adduced ought to demonstrate unhesitant denial of the execution of the document or authenticate real forgetfulness of such fact. If the testimony evinces a casual account of the execution and attestation of the document disregardful of truth, and thereby fails to prove these two essentials as per law, the propounder cannot be permitted to adduce other evidence under cover of Section 71 of the 1872 Act. Such a sanction would not only be incompatible with the scheme of Section 63 of the Act read with Section 68 of the 1872 Act but also would be extinctive of the paramountcy and sacrosanctity thereof, a consequence, not (2015) 8 SCC 615 legislatively intended. If the evidence of the witnesses produced by the propounder is inherently worthless and lacking in credibility, Section 71 of the 1872 Act cannot be invoked to bail him (the propounder) out of the situation to facilitate a roving pursuit. In absence of any touch of truthfulness and genuineness in the overall approach, this provision, which is not a substitute of Section 63(c) of the Act and Section 68 of the 1872 Act, cannot be invoked to supplement such failed speculative endeavour." (emphasis supplied). [**Rattan Singh and others vs. Nirmal Gill and others, Inder Pal Singh vs. Nirmal Gill, AIR 2021 SC 899]**

Sec. 8, 25 - Dacoity with Murder - Testimony of child witness

The caution expressed by this Court in Suryanarayana, (2001) 9 SCC 129 that "corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence" is a well-accepted AIR (1956) SC 441 (1973) 1 SCC 202 (2010) 12 SCC 324 (2015) 7 SCC 167 principle. While applying said principle to the facts of that case, this Court in Suryanarayana (2001) 9 SCC 129 observed:-

"5. Admittedly, Bhavya (PW 2), who at the time of occurrence was about four years of age, is the only solitary eyewitness who was rightly not given the oath. The time and place of the occurrence and the attending circumstances of the case suggest no possibility of there being any other person as an eyewitness. The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The evidence of PW 2 cannot be discarded only on the ground of her being of tender age. The fact of PW 2 being a child witness would require the court to scrutinise her evidence with care and caution. If she is shown to have stood the test of cross- examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix-up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not.

Incident occurred inside house where child witness would naturally be availed but on issue whether he had witnessed incident glaring inconsistencies on record cannot be discarded. In absence of any substantive piece of evidence, testimony of child witness cannot be basis of conviction, accused persons are entitled to benefit of doubt. [**Hari Om @ Hero v. State Of U.P. AIR 2021 SC 402]**

Evidence Act, 1872- Sections 73 and 45- Comparison of disputed and admitted fingerprint specimens – Jurisdiction and power of Court- Explained- Since findings with regard to difference between admitted and disputed specimen- Bereft of reason- Therefore, set aside- Matter remanded – Petition partly allowed.

It was held that when there is a positive denial by the person who is said to have affixed his finger impression and where the finger impression in the disputed document is vague or smudgy or not clear, making it difficult for comparison, the court should hesitate to venture a decision based on its own comparison of the disputed and admitted finger impressions. Further, even in cases where the court is constrained to take up such comparison, it should make a thorough study, if necessary with the assistance of counsel, to ascertain the characteristics, similarities and dissimilarities. Necessarily, the judgment should contain the reasons for any

conclusion based on comparison of the thumb impression, if it chooses to record a finding thereon. The court should avoid reaching conclusions based on a mere casual or routine glance or perusal." **[Smt. Ram Dei vs. Joint Director of Consolidation and others, 2021 (150) RD 241]**

Presence of Related Eye Witness – Not supported by FIR Version – Non-Examination of Ballistics Expert Fatal when assault made by Lethal Weapon. Purpose of conducting TIP highlighted.

It has been held that the presence of related eye witness on the spot not believable, when the claim of the witnesses regarding taking the deceased to the hospital from the spot, not supported by the FIR, which was lodged by one of the said witnesses and indicated removal of deceased to the hospital by two other persons.

Non-examination of ballistics expert was held to be fatal, when there were discrepancies in the FSL report and the eyewitness testimony found not free from doubt. Legal position regarding necessity of examination of ballistics expert in case of assault by means of lethal weapon, reiterated.

It was further held that a line of precedent of the Supreme Court has dwelt on the purpose of conducting a TIP, the source of the authority of the investigator to do so, the manner in which these proceedings should be conducted, the weight to be ascribed to identification in the course of a TIP and the circumstances in which an adverse inference can be drawn against the accused who refuses to undergo the process. The principles which have emerged from the precedents of the Supreme Court can be summarised as follows:

(i) The purpose of conducting a TIP is that persons who claim have seen the offender at the time of the occurrence identify them from amongst the other individuals without tutoring or aid from any source. An identification parade, in other words, tests the memory of the witnesses, in order for the prosecution to determine whether any or all of them can be cited as eyewitness to the crime.

(ii) There is no specific provision either in CrPC or the Evidence Act, 1872 which lends statutory authority to an identification parade. Identification parades belong to the stage of the investigation of crime and there is no provision which compels the investigating agency to hold or confer a right on the accused to claim a TIP.

(iii) Identification parades are governed in that context by the provision of Section 162 CRPC.

(iv) A TIP should ordinarily be conducted soon after the arrest of the accused, so as to preclude a possibility of the accused being shown to the witnesses before it is held.

(v) The identification of the accused in court constitutes substantive evidence.

(vi) Facts which establish the identity of the accused person are treated to be relevant under Section 9 of the Evidence Act.

(vii) A TIP may lend corroboration to the identification of the witness in court, if so required.

(viii) As a rule of prudence, the court would, generally speaking, look for corroboration of the witness identification of the accused in court, in the form of earlier identification proceedings. The rule of prudence is subject to the exception when the court considers it safe to rely upon the evidence of a particular witness without such, or other corroboration.

(ix) Since a TIP does not constitute substantive evidence, the failure to hold it does not ipso facto make the evidence of identification inadmissible.

(x) The weight that is attached to such identification is a matter to be determined by the court in the circumstances of that particular case.

(xi) Identification of the accused in a TIP or in court is not essential in every case where guilt is established on the basis of circumstances which lend assurance to the nature and the quality of the evidence.

(xii) The court of fact may, in the context and circumstances of each case, determine whether an adverse inference should be drawn against the accused for refusing to participate in a TIP. However, the court would look for corroborating material of a substantial nature before it enters a finding in regard to the guilt of the accused. (**Rajesh alias Sarkari and another v. State of Haryana, (2021) 1 SCC 118)**

Motive in Criminal Offences:

Indian Penal Code, 1860 – Section 302 – Conviction and sentences under – Appeal against - Evidence Act, 1872 – Section 8 – Motive – Absence of motive does not disperse a prosecution case if the prosecution succeeds in proving the same – Motive is always in the mind of person authoring the incident – Motive not being apparent or not being proved only requires deeper scrutiny of the evidence by the Courts while coming to a conclusion – When there is definite evidence proving an incident and eye-witness accounts prove the role of accused, absence of the motive does not affect the prosecution case (**Stalin v. State represented by Inspector of Police, 2020 (113) ACC 988**)

Sec. 376- Sec. 45, Evidence Act-- Sec. 378 Cr.P.C. - Rape and criminal intimidation, appreciation of evidence

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

It was held that various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion. (4) An appellate court, however, must

bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

It was ld that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court." **[Chaman Lal v. State of Himachal Pradesh, AIR 2021 SC 46]**

Sec. 148, 307and 34-- Sec. 3 Evidence Act-- Appreciation of Evidence

The Court held that although both Section 34 and 149 of the IPC are modes for apportioning vicarious liability on the individual members of a group, there exist a few important differences between these two provisions. Whereas Section 34 requires active participation and a prior meeting of minds, Section 149 IPC assigns liability merely by membership of the unlawful assembly. In reality, such 'common intention' is usually indirectly inferred from conduct of the individuals and only seldom it is done through direct evidence. [**Rohtas v. State of Harayana AIR 2021 SC 114]**

Sec. 304 B-- Sec. 3, 113B Evidence Act

It was observed that a number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;
(ii) The trial court's decision was based on an erroneous view of law;
(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";
(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;
(v) The trial court's judgment was manifestly unjust and unreasonable;
(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.
(vii) This list is intended to be illustrative, not exhaustive.

The appellate court must always give proper weight and consideration to the findings of the trial court. If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused."

The Law about Poisoning: Application to Facts

In **Anant Chintaman Lagu v. State of Bombay AIR 1960 SC 500**, three tests came to be reiterated, as necessary to establish in a case of poisoning.

1. Death took place on account of poisoning
2. The accused had the poison in his possession
3. The accused had an opportunity to administer the poison

The poison murder cases are not to be put outside the rule of circumstantial evidence. There may be obvious very many facts and circumstances out of which the court may be justified in drawing permissible inference that the accused was in possession of the poison in question.

There may be very many facts and circumstances proved against the accused which may call for tacit assumption of the factum of possession of poison with the accused. The insistence on proof of possession of poison with the accused invariably in every case is neither desirable nor practicable. It would mean to introduce an extraneous ingredient to the offence of murder by poisoning. We cannot, therefore, accept the contention urged by the learned counsel for the appellant. The accused in a case of murder by poisoning cannot have a better chance of being exempted from sanctions than in other kinds of murders. Murder by poisoning is run like any other murder. In cases where dependence is wholly on circumstantial evidence, and direct evidence not being available, the court can legitimately draw from the circumstances an inference on any matter one way or the other." (**Sandeep Kumar vs. State of Uttarakhand, AIR 2021 SC 691)**

Sec.302-- Sec.320, Cr.P.C. - Compounding of offence of custodial death

Court may refer to the judgment of this Court in Yashwant and others vs. State of Maharashtra, (2019) 18 SCC 571, where this Court laid down that when the police is violator of the law whose primary responsibility is to protect the law, the punishment for such violation has to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society. Following was laid down in paragraph 34: -

> "34. As the police in this case are the violators of law, who had the primary responsibility to protect and uphold law, thereby mandating the punishment for such violation to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society. It may not be out of context to remind that the motto of Maharashtra State Police is "Sadrakshnaya Khalanighrahanaya" (Sanskrit: "To protect good and to punish evil"), which needs to be respected. Those, who are called upon to administer the criminal law, must bear, in mind, that they have a duty not merely to the individual accused before them, but also to the State and to the community at large. Such incidents involving police usually tend to deplete the confidence in our criminal justice system much more than those incidents involving private individuals. We must additionally factor this aspect while imposing an appropriate punishment on the accused herein." [**Pravat Chandra Mohanty vs. State of Odisha, Pratap Kumar Chaudhary vs. State of Odisha, AIR 2021 SC 1067]**

Interpretation of the Criminal words in Sections 299 & 300 IPC – Imprisonment for the remainder of natural life – Effect of amendment in 2013 – Section 6 of POCSO Act – Effect of Section 376A vis-a-vis Article 20 of the Constitution of India

It has been observed that the injuries suffered by the victim were directly as a result of sexual assault inflicted upon her. But the medical evidence does not disclose that either before or after the commission of sexual assault, any other injury was consciously caused with the intention to extinguish the life of the victim. Injury 17 which was the cause of death was suffered by the victim during the course of commission of sexual assault upon her. The questions that arise, therefore, are whether such an act on the part of the appellant comes within the parameters of Sections 299 and 300 IPC and whether he is guilty of having committed culpable homicide amounting to murder.

According to clause Fourthly under Section 300 IPC, the offence may come under the category of culpable homicide amounting to murder if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid".

It has further been observed that the distinction between "murder" and "culpable homicide not amounting to murder" has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minutiae abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Section 299 and Section 300.

Clause (c) of Section 299 and Section 300(4) both require knowledge of the probability of the act causing death. Section 300(4) would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons being caused from his imminently dangerous act, approximates to a practical certainty Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

Thus, whenever a court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder", on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 IPC is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300. If the answer to this question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the *first* or the *second* part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the

offence would still be "culpable homicide not amounting to murder", punishable under the first part of Section 304 IPC.

The Hon'ble Court made it unequivocally clear that above are only broad guidelines and not cast-iron imperatives. In most of cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages. For determining the applicability of Section 300(4) IPC, the principle is that even if there be no intention to cause death, if there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as is likely to cause death, Section 300(4) will get attracted and the offender must be taken to have known that he was running the risk of causing the death or such bodily injury as was likely to cause the death of the victim.

Considering the age of the victim in the present case, the accused must have known the consequence that his sexual assault on a child of 2-1/2 years would cause death or such bodily injury as was likely to cause her death. The instant matter thus comes within the parameters of clause fourthly to Section 300 IPC and the question posed at the beginning of the discussion on this issue must be answered against the appellant. The appellant is therefore guilty of having committed the offence of culpable homicide amounting to murder.

In the instant case, the offence was committed on 11.2.2013 when the provisions of the Ordinance were in force. However, the Amendment Act having been given retrospective effect from 3-2-2013, the question arises whether imposition of life sentence for the offence under Section 376(2) could "mean imprisonment for the remainder of that person's natural life".

In the present case, since the victim was about two-and-a-half years of age at the time of incident and since it was the Ordinance which was holding the field, going by the provisions of the Ordinance, clauses (f), (h) and (l) of Section 376(2) would get attracted. The comparable provisions of Section 376(2) as amended by the Amendment Act would be, clauses (f), (i) and (m) respectively. As the substantive penal provisions under clauses (f), (h) and (l) as inserted by the Ordinance and clauses (f). (i) and (m) as inserted by the Amendment Act are identical, no difficulty on that count is presented. But the sentence prescribed Section 376(2) as amended by the Amendment Act, has now, for the first time provided that the imprisonment for life "shall mean imprisonment for the remainder of that person's natural life". This provision comes with retrospective effect and in a situation where such prescription was not available on the statute when the offence was committed, the question arises whether such ex-post facto prescription would be consistent with the provisions of clause (1) of Article 20 of the Constitution.

An imposition of life sentence simpliciter does not put any restraints on the power of the executive to grant remission and commutation in exercise of its statutory power, subject of course to Section 433-A CrPC. But, a statutory prescription that it "shall mean the remainder of that person's life" will certainly restrain the executive from exercising any such statutory power and to that extent the provision concerned definitely prescribes a higher punishment ex-post facto. In the process, the protection afforded by Article 20(1) of the Constitution would stand negated. It must therefore be declared that the punishment under Section 376(2) IPC in the

present case cannot come with stipulation that the life imprisonment shall mean the remainder of that person's life. Similar prescription in Section 6 of the POCSO Act, which came by way of amendment in 2019, would not be applicable and the governing provision for punishment for the offence under the POCSO Act must be taken to be the pre-amendment position as noted hereinabove.

However, insofar as the situation covered by Section 376-A IPC as amended by the Amendment Act is concerned, substantively identical situation was dealt with by Section 376-A as amended by the Ordinance and the prescription of sentence in Section 376-A by the Amendment Act is identical to that prescribed by Section 376-A as amended by the Ordinance. Section 376-A as amended by the Ordinance being gender neutral so far as victim was concerned, naturally covered cases where the victim was a woman. Thus, the ex-post facto effect given to Section 376-A by the Amendment Act from the day the Ordinance was promulgated, would not in any way be inconsistent with the provisions of clause (1) of Article 20 of the Constitution. (**Shatrughna Baban Meshram v. State of Maharashtra, (2021) 1 SCC 596**)

Information Technology Act, 2000

Precision, transparency and seamless administration are key features of a system which adopts technology in pursuit of efficiency. Technology has enabled both administrators and citizens to know precisely when an electronic record is uploaded. The considerations which Parliament had in its view providing for crucial amendments to the statutory scheme by moving from manual to electronic forms of governance in the assessment of duties must not be ignored. Tax administration must leave behind the culture of an age in which the assessment of duty was wrought with delays, discretion, doubt and sometimes, the dubious.

Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognized official channel, namely, the Official Gazette, now including e-gazettes as provided for in S. 8 of the IT Act, 2000 or some other reasonable mode of publication. (**Union of India and others v. G.S. Catha Rice Mills and another, (2021) 2 SCC 209)**

Limitation Act, 1963

Limitation Act, 1963- Article113- "When right to sue accrues"- Expression used in Article 113 distinct from expression used in other Articles of the First Division Dealing with suits – In terms of Article 58 period of limitation would be reckoned from date on which cause of action arose first- Under Article 113 the period of limitation would be differently computed depending upon the last day when cause of action therefore arose.

The expression used in Article 113 of the 1963 Act is "when the right to sue accrues", which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to the happening of a specified event. Whereas, Article 113 being a residuary clause and which has been invoked by all the three Courts in this case, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue.

Concededly, the expression used in Article 113 is distinct from the expressions used in other Articles in the First Division dealing with suits such as Article 58 (when the right to sue "first" accrues), Article 59 (when the facts entitling the plaintiff to have the instrument or decree canceled or set aside or the contract rescinded "first" become known to him) and Article 104 (when the plaintiff is "first" refused the enjoyment of the right). The view taken by the trial Court, which commended to the first appellate Court and the High Court in second appeal, would inevitably entail in reading the expression in Article 113 as – when the right to sue (first) accrues. This would be re-writing of that provision and doing violence to the legislative intent. We must assume that the Parliament was conscious of the distinction between the provisions referred to above and had advisedly used generic expression "when the right to sue accrues" in Article 113 of the 1963 Act. Inasmuch as, it would also cover cases falling under Section 22 of the 1963 Act, to wit, continuing breaches and torts. **[Shakti Bhog Food Industries Ltd. vs. Central Bank of India and another, 2021 (150) RD 131]**

Maintenance and Welfare of Parents and Senior Citizens Act, 2007

Protection of Women from Domestic Violence Act

It was held that this Court is cognizant that the Senior Citizens Act 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under Section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the Civil Courts, under Section 8. The jurisdiction of the Civil Courts has been explicitly barred under Section 27 of the Senior Citizens Act 2007. However, the over-riding effect for remedies sought by the applicants under the Senior Citizens Act 2007 under Section 3, cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the PWDV Act 2005. The PWDV Act 2005 is also in the nature of a special legislation that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society. In deference to the dominant purpose of both the legislations, it would be appropriate for a Tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged under S.2(b) of the Senior Citizens Act 2007 that do not result in obviating competing remedies under PART E other special statutes, such as the PWDV Act 2005. Section 2627 of the PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil court in any legal proceedings. Therefore, in the event that a composite dispute is alleged, such as in the present case where the suit premises are a site of

contestation between two groups protected by the law, it would be appropriate for the Tribunal constituted under the Senior Citizens Act 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act 2005 and Senior Citizens Act 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to over-ride and nullify other protections in law, particularly that of a woman's right to a "shared household' under Section 17 of the PWDV Act 2005. In the event that the "aggrieved woman" obtains a relief from a Tribunal constituted under the Senior Citizens Act 2007, she shall duty-bound to inform the Magistrate under the PWDV Act 2005, as per Sub-section (3) of Section 26 of the PWDV Act 2005. This course of action would ensure that the common intent of the Senior Citizens Act 2007 and the PWDV Act 2005- of ensuring speedy relief to its protected groups who are both vulnerable members of the society, is effectively realized. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realization. [**S. Vanitha vs. The Deputy Commissioner, AIR 2021 SC 177]**

Mine and Minerals (Development and Regulation) Act, 1957

It has been held that the objective of exercising power under R. 68 of the 1963 Mining Rules should be to aid development of minerals. Statutory rules have been worded in a restrictive manner deliberately giving only a restricted window and this legislative intent ought not to be defeated by supplanting it with any other interpretation. When words of statutory rules or statutory provision are clear and unambiguous, recourse to different principles of interpretation, other than rule of literal construction, cannot be resorted to. It has further been held that the fresh grant or extension of mining lease can only be granted strictly in compliance with the Rules and Policy in force at the relevant time.

Moreover, disruption due to judicial interdict itself will not give window to extend lease without compliance with statutory provisions, especially when terms of lease and the Rules (1963 Mining Rules in present case) do not provide for consequences of any judicial interdict or other reason for disruption of operation of the lease, other than refund of security deposit and advance royalties paid, if any. As leases in present case were prevented from operation for no fault attributable to leaseholders, held, they were entitled to refund of security deposit and advance royalty paid, with 9% interest. (**Dharmendra Kumar Singh v. State of Uttar Pradesh and others, (2021) 1 SCC 93)**

Motor Vehicles Act, 1988

Person accompanying injured can't simultaneously go to Police Station – Fair opportunity to cross-examine to the OP is essential – Standard of proof – only preponderance of probabilities rather than Proof beyond doubt in MV Act matters

It is quite natural that such a person, who had accompanied the injured to the hospital for immediate medical aid, could not have simultaneously gone to the police station to lodge the FIR. The High Court ought not to have drawn any adverse inference against the witness for his

failure to report the matter to the police. Further, as the police had themselves reached the hospital upon having received information about the accident, there was perhaps no occasion for AW 3 to lodge a report once again to the police at a later stage either.

The failure of the respondents to cross-examine the solitary witness or confront him with their version, despite adequate opportunity, must lead to an inference of tacit admission on their part. They did napoleon suggest the witness that he was siding with the claimants. The High Court has failed to appreciate the legal effect of this absence of cross-examination of crucial witness. It is the jurisprudence of law that cross-examination is an acid-test of the Truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:

(1) to destroy or weaken the evidentiary value of the witness of his adversary;
(2) to elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party,
(3) to show that the witness is unworthy of belief by impeaching the credit of the said witness;
(4) the questions to be addressed in the course of cross-examination are to test his veracity;
(5) to discover who he is and what is his position in life, and
(6) to shake his credit by injuring his character.

The identity of the witness is necessary in the normal trial of cases to achieve the above objects and the right of confrontation is one of the fundamental guarantees so that he could guard himself from being victimized by any false and invented evidence that may be tendered by the adversary party.

There is nothing in the 1988 Act to preclude citing of a witness in motor accident claim who has not been named in the list of witnesses in the criminal case. What is essential is that the opposite party should get a fair opportunity to cross examine the witness concerned. Once that is done, it will not be open to them to complain about any prejudice caused to them. If there was any doubt to be cast on the veracity of the witness, the same should have come out in cross-examination, for which opportunity was granted to the respondents by the Tribunal.

The standard of proof in such matters is one of preponderance of probabilities rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.

No effective contention could be raised on behalf of the claimants as to how the compensation assessed by the Tribunal was inadequate, except that in view of the authoritative pronouncement of the Supreme Court in **Pranay Sethi, (2017) 16 SCC 680**, the claimants are entitled to an increase of 40% towards annual dependency on account of "future prospects" given the undisputed age of the deceased. Their appeal to that extent deserves to be allowed. (**Anita Sharma and others v. New India Assurance Company Ltd. and another, (2021) 1 SCC 171)**

Death of one of the dependants – Not to be a reason of reduction of compensation in motor accident claims – Claims crystallize at the time of accident – Compensation to be guided by the Principles of fairness, equity & good conscience.

It has been held that the time of death, there in fact were four dependants of the deceased and not three. The subsequent death of the deceased's dependant mother ought not to be a reason for reduction of motor accident compensation. Claims and legal liabilities crystallise at the time of the accident itself, and changes post thereto ought not to ordinarily affect pending proceedings. Just like how the appellant claimants cannot rely upon subsequent increases in minimum wages, the respondent insurer too cannot seek benefit of the subsequent death of a dependant during the pendency of legal proceedings.

Any compensation awarded by a court ought to be just, reasonable and consequently must undoubtedly be guided by principles of fairness, equity and good conscience. Not only did the family of the deceased consist of septuagenarian parents, but there were also two toddler girls, aged merely 3 and 4 years; each of whom requires exceptional care and expenditure till they reach the stage of self dependency. Tragically, in addition to the married couple, the negligence of the driver also extinguished the life of the family's third child who was a foetus in P's womb at the time of the accident. Thus, the appropriate deduction for personal expenses for both V and P ought to be 1/4th only, and not 1/3rd as applied by the Tribunal and the High Court, more so when there were four family members dependant on the deceased.

Given how both deceased were below 40 years and how they have not been established to be permanent employees, future prospects to the tune of 40% must be paid. The contention that no such future prospects ought to be allowed for those with notional income, is both incorrect in law and without merit considering the constant inflation-induced increase in wages.

However, it must be remembered that all the above methods are merely suggestions. There can be no exact calculation or formula that can magically ascertain the true value provided by an individual gratuitously for those that they are near and dear to. The attempt of the court in such matters should therefore be towards determining, in the best manner possible, the truest approximation of the value added by a homemaker for the purpose of granting monetary compensation.

Whichever method a court ultimately chooses to value the activities of a homemaker, would ultimately depend on the facts and circumstances of the case. The court needs to keep in mind its duty to award just compensation, neither assessing the same conservatively, nor so liberally as to make it a bounty to claimants. Once notional income has been determined the question remains as to whether escalation for future prospects should be granted with regard to it. Initially, the awarding of future prospects by the Supreme Court was related to the stability of the job held by the victim.

However, there was a shift in jurisprudence regarding future prospects with the five-Judge Bench decision of the Supreme Court in **Pranay Sethi, (2017) 16 SCC 680**. The Supreme Court extended the benefit regarding future prospects to even self-employed persons, are those on a fixed salary.

Taking the above rationale into account, the situation is quite clear with respect to notional income determined by a court in the first category of cases outlined earlier, those where the victim is proved to be employed but claimants are unable to prove the income before the court. Once the victim has been proved to be employed at some venture, the necessary corollary is that they would be earning an income. It is clear that no rational distinction can be drawn with respect to the granting of future prospects merely on the basis that housemaker's income was not proved, particularly when the court has determined their notional income.

When it comes to the second category of cases, relating to notional income for non-earning victims, the above principle applies with equal vigour, particularly with respect to homemakers. Once notional income is determined the effects of inflation would equally apply. Further, no one would ever say that the improvements in skills that come with experience do not take place in the domain of work within the household. It is worth noting that, although not extensively discussed, the Supreme Court has been granting future prospects even in cases pertaining to notional income.

Therefore, on the basis of the above, certain general observations can be made regarding the issue of calculation of notional income for homemakers and the grant of future prospects with respect to them, for the purposes of grant of compensation which can be summarised as follows:

(i) Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

(ii) Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all.

(iii) Various methods can be employed by the court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.

(iv) The court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

(v) The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation. (**Kirti and another v. Oriental insurance Company Ltd., (2021) 2 SCC 166)**

<u>Muslim Women (Protection of Right on Marriage), 2019</u>

Section 7 - Anticipatory Bail

Section 7 of Muslim Women (Protection of Right on Marriage), 2019 begins with a non-obstante clause, which operates “notwithstanding anything contained” in the CrPC. The statutory text indicates that Section 7(c) does not impose an absolute bar to the grant of bail. On the contrary, the Magistrate may grant bail, if satisfied that “there are reasonable grounds for

granting bail to such person" and upon complying with the requirement of hearing the married Muslim woman upon whom talaq is pronounced. Hence, though Section 7 begins with a non obstante clause which operates in relation to the CrPC, a plain construction of Section 7(c) would indicate that it does not impose a fetter on the power of the Magistrate to grant bail, save and except, for the stipulation that before doing so, the married Muslim woman, upon whom talaq is pronounced, must be heard and there should be a satisfaction of the Magistrate of the existence of reasonable grounds for granting bail to the person. This implies that even while entertaining an application for grant of anticipatory bail for an offence under Crl.A./2020 the Act, the competent court must hear the married Muslim woman who has made the complaint, as prescribed under Section 7(c) of the Act. Only after giving the married Muslim woman a hearing, can the competent court grant bail to the accused. [**Rahna Jalal v. The State of Kerala, AIR 2021 SC 920]**

Narcotic drugs and Psychotic Substances Act, 1985

Narcotic Drugs and Psychotropic Substances Act, 1985 – Section 58 – Criminal Procedure Code, 1973- Sections 154, 156 and 157 – Investigation by the informant himself – Having doubted the correctness of the decision of Supreme Court in the case of **Mohan Lal v. State of Punjab**, taking the view that in case the investigation is conducted by the police officer who himself is the complainant, the trial is vitiated and the accued is entitled to acquittal-Initially by order dated 17.1.2019 has referred to a Larger Bench of five Judges to consider the matter – Considering that NDPS Act is a special Act with special procedure to be followed under Chapter V, there is no specific bar against conducting the investigation by the informant himself and in view of the safeguard provided under the Act itself, namely, section 58, that there cannot be any general proposition of law to be laid down that in every case where the informant is the investigator the trial is vitiated and the accused is entitled to acquittal- Similarly, even with respect to offences under the IPC, there is no specific bar against the informant/complainant investigating the case – Only in a case where the accused has been able to establish and prove the bias and/or unfair investigation by the informant-cum-investigator and the case of the prosecution is merely based upon the deposition of the informant-cum-investigator, meaning thereby prosecution does not rely upon other witnesses, more particularly the independent witnesses, in that case, where the complainant himself had conducted the investigation, such aspect can be given due weight while assessing the evidence – It is not proper to lay down a broad and unqualified proposition that in every case where the police officer who registered the case by lodging the first information, conducts the investigation by that by itself had caused prejudice to the accused and thereby it vitiates the entire prosecution case and the accused is entitled to acquittal – Reference is answered accordingly.

Criminal Procedure Code, 1973 – Sections 154, 156, 157 and 173 – Under section 173, CrPC, the Officer-in-charge of a police station after completing the investigation is required to file the final report/charge-sheet before the Magistrate – Thus, under the scheme

of CrPC, it cannot be said that there is a bar to a police officer receiving information for commission of a cognizable offence, recording the same and then investigating it – On the contrary, sections 154, 156 and 157 permit the officer-in-charge of a police station to reduce the information of commission of a cognizable offence in writing and thereafter to investigate the same – Reference is answered accordingly.

Narcotic Drugs and Psychotropic Substances Act, 1985 – Sections 67 and 68 – Section 67 of the NDPS Act authorizes/permits any officer referred to in section 42 to call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of the NDPS Act or any rule or order made thereunder during the course of any enquiry – Section 68 of the NDPS Act provides that no officer acting in exercise of powers vested in him under any provision of the NDPS Act or any rule or order made thereunder shall be compelled to say from where he got any information as to the commission of any offence.

Narcotic Drugs and Psychotropic Substances Act, 1985 – Section 52 – Section 52 mandates that ay officer arresting a person under sections 41, 42, 43 or 44 to inform the person arrested of the grounds for such arrest – Sub-section (2) of section 52 further provides that every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued – As per sub-section (3) of section 52, every person arrested and article seized under sub-section (2) of sections 41, 42, 43 or 44 shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police station, or the officer empowered under section 53.

Narcotic Drugs and Psychotropic Substances Act, 1985 – Section 53 – It appears that the Legislature in its wisdom has never thought that the officers authorized to exercise the powers under sections 41, 42, 43 and 44 cannot be the officer-in-charge of a police station for the investigation of the offences under the NDPS Act – Section 53 authorises the Central Government to invest any officer of the department of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government – Or any class of such officers with the powers of an officer in charge of a police station for the investigation – Similar powers are with the State Government – Only change in sections 42 and 53 is that in section 42 the word "police" is there, however in section 53 the word "police" is not there – There is an obvious reason, as for police such requirement is not warranted as he always can be the officer-in-charge of a police station as per the definition of an "officer-in-charge of a police station" as defined under the CrPC. (**Mukesh Singh v. State (Narcotic Branch of Delhi), 2020 (113) ACC 644)**

Property Law

Oral Gift-Suit for cancellation of- A decree for mandatory injunction seeking the possession of premises- Suit was decreed in favour of plaintiff-Appeal filed by defendant

was dismissed- Hence, the instant second appeal- Held, the defendant in his pleadings, could never give a date regarding the said gift-Two witnesses who were claimed to be present at the time of gift were never examined- Defendant had filed the affidavit of another witness Afzal Ahmad however he did not appear for cross-examination- Only documents produced by the defendant was the mutation entries in the Nazul and Nagar Palika, where the signature of the appellant was shown as 'Shah Jahan' Begum upon relevant documents whereas the appellant always signed only 'Shahjahan' which indicated that signatures were forged- Gift was alleged to have been made in the month of January, 1987 whereas the defendant got his name mutated in the year 1983- 84 for which there was no cogent explanation- Concurrent findings of Courts below against the defendant- No interference warranted- Second appeal dismissed. (Paras 36 to 39)

Hon'ble Court held that upon considering the respective evidence, the scenario that emerges is, that the plaintiff had got the disputed house on the basis of an oral gift made by her husband Nabi Ahmad who expired in November, 1980. After his death, there was a family dispute, wherein the mother-in-law and sister-in-law of the plaintiff had instituted a suit which ended in a compromise and in terms whereof the mother-in-law and the sister-in-law acknowledged the right, title and interest of the plaintiff Smt. Shahjahan Begam in respect of the property and the plaintiff agreed to pay a sum of Rs. 68,000/- to her mother-in-law and sister-in-law. A sum of Rs. 60,000/- is said to have been paid before the Court where the compromise took place and the remaining Rs. 8,000/- was to be paid in monthly installments of Rs. 1,000/- commencing from November, 1986. The mother-in-law Smt. Majira expired in the interim period and the last installment of Rs. 1,000/- was paid to the sister-in-law.

It was also held that this Court has considered the documents as well as the evidence and finds that the conclusion arrived at by the two courts that the gift could not be proved does not suffer from any error which may persuade this Court to exercise powers under Section 100 C.P.C. to upset the same. As already indicated above, the gift has not been proved and as far as the possession is concerned, the same whether constructive or actual also could not be established in the sense that the possession was exclusive with the defendant in pursuance of the Gift and that he was in complete control to the exclusion of the plaintiffs. This has been seen in light of the fact that the plaintiff herself had permitted the defendant to take the charge of the business and permitted the defendant to stay in the house after her husband's death and much prior to the making of the gift. Therefore, the mere possession is not sufficient. It was necessary to establish that the gift was made and after the making of the gift, the possession and control of the defendant was of such a nature and character which established that even though both the plaintiff and the defendant had been residing together yet the entire control was that of the defendant to the exclusion of the plaintiff and this has definitely not been made out. Hence this Court is of the definitive opinion that neither the oral Gift was established nor the possession was exclusively given to the defendant. **[Nafees Ahmad vs. Ghulam Mohd., 2021 (150) RD 578]**

Transfer of Property Act- S. 54

The Hon'ble Court held that "Apart from the above, it is also fundamental, as per Section 54 of the Transfer of Property Act, 1882, that an agreement for sale of immoveable property does not, of itself, create any interest in or charge on such property. A person having an agreement for sale in his favour does not get any right in the property, except the right of obtaining sale deed on that basis." **[Venigalla Koteswaramma vs. Malampati Suryamba and others, 2021 (1) ARC 377]**

Registration Act, 1908

Evidence Law- Second appeal- Injunction suit- Decreed by Lower Appellate Court reversing judgment and decree of Trial Court- Legality- Admissibility of unregistered receipt filed by plaintiff in evidence- A receipt is not an 'Instrument' of transfer of title from one person to another- Moreover, it does not mention Arazi Number at all- Therefore, receipt cannot be considered a document and thus, not admissible in evidence- No right or title can be acquired over property in dispute through said receipt- Impugned judgment and decree passed by lower Appellate Court not sustainable- Set aside- Appeal allowed. (Paras 11, 14, 141 and 143)

Registration Act, 1908- Section 49 –Unregistered receipt –Collateral purpose- A collateral purpose is such which is not required to be evidenced or affected by a registered document- a receipt cannot be treated to be an evidence of transfer of title- Said receipt will not come within realm of "collateral purposes". (Paras 15 and 16)

Registration Act, 1908- Section 49- Unregistered document- Use of it for collateral purpose- Permissibility –When title in property in dispute could not have been transferred to plaintiff in absence of a registered instrument of sale- Such transfer cannot be said proved by treating it to be collateral purpose.

Injunction –Grant of- If plaintiff failed to prove its title or valid possession over property in dispute- No injunction could have been granted- Plaintiff has to prove its case- Relief cannot be granted due to weakness in defence of defendant. (Paras 30 and 31)

Hon'ble Court held that, it is not the defendant-appellant who has to prove its case or relief can be granted to the plaintiff due to weakness in defence but plaintiff, in order to seek relief, has to stand on its own and prove its case. The document, Exhibit 2, a receipt dated 28.2.1965, is not an instrument of title and that too not a registered document admissible in evidence and could not have been relied for the purpose of anything, which may reflect upon the title. At the best, document shows that a particular amount was given by 'A' to 'B' but in respect of title and possession of immovable property, document was inadmissible in evidence. On the contrary, defendant-appellant relied on a sale deed duly registered hence claim of defendant-appellant was founded on a valid piece of document, duly admissible in evidence. **[Latooree vs. Shyam Lal, 2021 (150) RD 204]**

Sec. 17(2)

"The Hon'ble Court, conclude that "in view of the fact that the consent decree dated 19.08.1991 relate to the subject matter of the suit, hence it was not required to be registered under Section 17(2) (vi) and was covered by exclusionary clause." **[Khushi Ram and others vs. Nawal Singh and others, 2021 (1) ARC 508]**

Scheduled Caste & Schedule Tribe (Prevention of Atrocities) Act, 1989

Meaning of Public View under SC & ST Act

The matter was related to the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act, Hon'ble Apex Court while quashing the charge sheet held that the allegations regarding abusing of informant were within four walls of her building and not within public view. The offence under section 3 (1) (r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of scheduled caste or a scheduled tribe, all insults or intimidation to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to the Schedule caste or Scheduled tribe the object of the act is to improve the socio-economic conditions of the schedule caste and Scheduled Tribes, as they are denied number of civil rights . An offence under the Act would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment. In the matter the offence is alleged to have taken place within the four walls of the building therefore in view of the judgement of this Court in Swarn Singh it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per FIR or the charge sheet. (**Hitesh Verma versus state of Uttarakhand and another, 2021 Cri.L.J. 1: AIR ONLINE 2020 SC 812)**

Specific Relief Act, 1963

Sec. 38– Suit for injunction

Court referred the law laid down in **Jagdish Prasad Patel (dead) through Legal Representatives and another vs. Shivnath and others, (2019) 6 SCC 82.** wherein the in the suit for declaration of title and possession supreme Court reiterated the principle that suit for declaration of title and possession the plaintiffs will succeed on the strength of their own title irrespective of whether defendants proved their case or not. In paragraph 44 and 45 following was laid down:

> "44. In the suit for declaration for title and possession, the Plaintiffs-Respondents could succeed only on the strength of their own title and not on the weakness of the case of the Defendants-Appellants. The burden is on the Plaintiffs-Respondents to establish their title to the suit properties to show that they are entitled for a decree for declaration. The Plaintiffs-Respondents have neither produced the title document i.e. patta-lease which the Plaintiffs-Respondents are relying upon nor proved their right by adducing any other evidence. As noted above, the revenue entries relied on by them are also held to be not genuine. In any event, revenue entries for few Khataunis

are not proof of title; but are mere statements for revenue purpose. They cannot confer any right or title on the party relying on them for proving their title.

45. Observing that in a suit for declaration of title, the Plaintiffs- Respondents are to succeed only on the strength of their own title irrespective of whether the Defendants-Appellants have proved their case or not, in Union of India v. Vasavi Coop. Housing Society Limited, (2014) 2 SCC 269, it was held as under LSCC p.275, para 15)

"15. It is trite law that, in a suit for declaration of title, the burden always lies on the Plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the Defendants would not be a ground to grant relief to the Plaintiff." [**A. Subramanyam and others vs. R. Pannerselvam, AIR 2021 SC 821]**

Specific Relief Act, 1963- Section 31/34- Cancellation of the instrument under section 31 is as between the parties to the action and their privies and not against all persons generally, as the instrument that is canceled is to be delivered to the plaintiff in the cancellation suit- A judgment delivered under section 31 does not bind all persons claiming an interest in the property inconsistent with the judgment, even though pronounced in their absence – unlike section 31, under section 34, any person entitled to any legal character may institute a suit for a declaration that he is so entitled- Cancellation of the very same deed, therefore, by a non-executant would be an action in personam since a suit has to be filed under Section 34- However, cancellation of the same deed by an executants of the deed, being under section 31, would somehow convert the suit into a suit being in rem- This anomaly only highlights the impossibility of holding that action under section 31 is an action to rem- Appeal is dismissed. (Paras 20, 22, 25 and 26)

19. P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn., Wadhwa Nagpur) describes an in rem proceeding as follows:

"In rem. adj. [Latin "against a thing"] Involving or determining the status of a thing, and therefore the rights of persons generally with respect to that thing.- Also termed (archaically) impersonal. (Black 7th Edn., 1999)

"An action in rem is one in which the judgment of the Court determines the title to property and the rights of the parties, not merely as between themselves, but also as against all persons at any time dealing with them or with the property upon which the Court had adjudicated." R.H. GRAVESON, Conflict of Laws 98 (7th ed. 1974).

Against the king; against the property, not against a person.

This term is derived from the Roman law, but is not used in English law in precisely the same sense as in that law. Indeed, Bracton, limits proceedings in rem to actions to obtain possession of res by which he understood real actions; (Bigelow on Estoppel 42, 43.)

A proceeding in rem is a proceeding instituted against a thing, and not against a person.

A proceeding in rem, in a strict sense, is one taken directly against property, and has for its object the disposition of the property, without reference to the title of individual claimants but in a larger and more general sense the term 'proceeding in rem' is applied to actions between parties where the direct object is to reach and dispose of property owned by them, or of some interest therein.

A judgment in rem is generally said to be a judgment declaratory of the status of some subject matter, whether this be a person, or a thing. Thus the probate of a will fixes the status of the document as a will; so a decree establishing or dissolving a marriage is a judgment in rem, because it fixes the status of the person. A judgment or forfeiture against specified articles of goods for violation of the revenue laws is a judgment in rem. In such case the judgment is conclusive against all the world, and, if the expression 'strictly in rem' may be applied to any class of cases, it should be confined to such as these. Chief Justice Marshall says: 'I have always understood that where a process is to be served on the thing itself, and where the mere possession of the thing itself, by the service of a process and making proclamation, authorizes the Court to decide upon it without notice to any individual whatever, it is a proceeding in rem, to which all the world are parties. The claimant if a party, whether he speaks or is silent, whether he asserts his claim or abandons it. But usage has distinguished as proceedings in rem a class of cases in which, while the seizure of the thing will be in aid of jurisdiction, yet it is essential that some form of notice be given to the particular person or persons. The proceeding thus assumes a phase of actions in personam, and a judgment will not be binding upon any one who was not before the Court.

An act or proceeding is in rem when it is done or directed with reference to no specific person and consequently against or with reference to all whom it might concern, or 'all the world'.

Lawsuits brought against property as compared with those against a person; the Court's jurisdiction does not depend on notice to the property owner."

In R. Viswanathan v. Rukn-Ul-Mulk Syed Abdul Wajid, (1963) 3 SCR 22, this Court set out the Roman law concept of jus in rem as follows:

The reasoning in the aforesaid judgment would again expose the incongruous result of section 31 of the Specific Relief Act being held to be an in rem provision. When it comes to cancellation of a deed by an executant to the document, such person can approach the Court under section 31, but when it comes to cancellation of a deed by a non-executant, the non-executant must approach the Court under section 34 of the Specific Relief Act, 1963. Cancellation of the very same deed, therefore, by a non-executant would be an action in personam since a suit has to be filed under section 34. However, cancellation of the same deed by an executant of the deed, being under section 31, would somehow convert the suit into a suit being in rem. All these anomalies only highlight the impossibility of holding that an action instituted under section 31 of the Specific Relief Act, 1963 is an action in rem. **[Deccan Paper Mills Co. Ltd. vs. Regency Mahavir Properties and others, 2021 (150) RD 709]**

The Probation of Offenders Act, 1958

Section 4 the Probation of Offenders Act

The matter was related to the benefit of probation under The Probation of Offenders Act , section 4 , to the accused , convicts under section 307 IPC attempt to murder, The facts of the present case are that the appellants have not served out the minimum sentence of 7 years though they have served about half the sentences. They were aged under 19 & 21 years of age as on the date of offence but not on the date of sentence. The redeeming feature in their case is that the person who suffered, appears to have forgiven them, possibly with the passage of time.

There is no adverse report against them about their conduct in jail otherwise the same would have been brought to our notice by learned counsel for the State. Faced with the aforesaid legal position, this is a fit case that the benefit of probation can be extended to the appellants under the said act in view of the provisions of Section 4 of the said Act on completion of half the sentence court released the appellants on probation of good conduct under Section 4 of the said Act on their completion of half the sentence and on their entering into a bond with two sureties each to ensure that they maintain peace and good behaviour for the remaining part of their sentence, failing which they can be called upon to serve that part of the sentence. **[Lakhvir singh etc v. State of Punjab and another, 2021 CRI. L. J. 1235: AIR Online 2021 SC 15 (Supreme Court)]**

Allahabad High Court Rules, 1952

Allahabad High Court Rules, 1952-Chapter V, Rule 6- Scope of Reference cannot be made for the mere necessity of creating a precedent-Discussed. (Paras 49 and 53)

Reference- To Larger Bench- Brief reasons for making a reference have to be indicated so as to enable the Larger Bench to know the minds of the Judges making the reference –No conflict between the two decisions which warranted a reference before the Larger Bench.

Reference-Before Larger Bench –Pronouncement by a Full Bench when is not a proper judicial exercise- Discussed.

Considering the scope of Chapter V of Rule 6 of the High Court Rules, it was held therein that reference cannot be made for the mere necessity of creating a precedent. If a question of law of whatever importance arises before the Division Bench, ordinarily, the Division Bench should decide it itself and not refer it to a Larger Bench, unless there is conflict of precedent, which makes it impossible for the Division Bench to decide this way or other. It was further held that where the questions of law are formulated by a Division Bench for reference and decision, the case has to be alive before the Division Bench itself. Thus, in other words, in both eventuality where there is no conflict of precedent or the case is not alive before the Division Bench, reference to a Larger Bench should not be made for the mere necessity of creating a precedent. Paragraph '13', '14', '18', '19', '20' of the said report are relevant to be reproduced herein:-

"We respectfully follow the Kerala special Bench judgment relied upon by Mr. Mitra appeared for ICICI, being the case of Babu Premarajan reported at . Passages would be found at page 449 to the effect that if a question of law of whatever importance arises before the Division Bench, ordinarily the Division Bench should decide it itself and not refer it to a larger Bench, unless there is a conflict of precedent, which makes it impossible for the Division Bench to decide this way or the other. This was opined in Kerala, even though there was a rule of the High Court which, on a plain reading, appeared to allow two Hon'ble Judges of a Division Bench to refer any questions to a larger Bench merely on their Lordships agreement.

As such, if the writ petition before the Hon'ble Division Bench is still alive, the Division Bench is fully at libertyin its own aisdoun to decide all the questions itself and indeed all the questions purportedly got referred to the larger Bench.

In saying so, the Full Bench has relied upon the Full Bench judgment of Kerala High Court in Babu Premarajan Vs. Superintendent of Police, Kasaragode & others14, wherein even the rule of the Kerala High Court permitted the Division Bench to refer any question to a Larger Bench merely on their Lordships agreement. **[Suresh Jaiswal vs. State of U.P. and another, 2021 (150) RD 827]**

Arms Act, 1959

Arms Act & Reliability of Evidence by the Police

Arms Act, 1959 – Sections 25, 29 and 30 – Conviction – Criminal Procedure Code, 1973 – Section 397/401 – Legality and propriety – Revisionist–1 charged for offence committed under sections 29 and 30 of the Act on account of recovery of his 12 bore licensed gun from possession of revisionist No.2- Revisionist No.2 charged for offence committed under section 25 of the Act for possessing a 12 bore single barrel gun and cartridges without valid licence-Chief Judicial Magistrate found both revisionists guilty of charge and convicted and sentenced them-Special Judge confirmed the judgment and order passed by the CJM – Contention of the revisionists that prosecution has relied upon evidence of Police personnel and no independent witness has been examined-No legal proposition that evidence of Police Officers is unworthy of acceptance unless it is supported by independent witnesses – If evidence of police officials is reliable, it can be relied upon without any independent corroboration-Concurrent findings of fact recorded by two Courts below cannot be said to be perverse – Petition dismissed. (**Jai Karan Singh and another v. State of U.P., 2020 (113) ACC 794)**

Code of Civil Procedure, 1908

CPC – Sec. 80(2)

The Hon'ble Court observed as "This Court upon considering the material on record as well as the reasons contained in the impugned order finds that the approach of the Trial Court

was completely erroneous. The issue regarding mis-joinder or non-joinder of the parties is something which has to be considered on the merit of the matter. At the state of considering the application under Section 80(2) C.P.C., the only focus of the Court should be on the aspect of urgency. It must be remembered that at this stage, the plaint is not before the Court to enable it to enter intomerits."

Further The Hon'ble Court held that at "the stage of consideration of an application under Section 80(2) C.P.C., the role of the Court is only confined to examine that whether the facts pleaded give rise to a cause of action upon which the plaintiff is entitled to seek an urgent remedy which otherwise would frustrate the claim or cause of the plaintiff if the suit is not entertained for want of compliance of Section 80(1) C.P.C.

In the totality of the facts and circumstances, this Court is of the definite view that the impugned order cannot be sustained and the leave ought to have been granted." **[Dalveer Singh vs. State of U.P. through District Magistrate Kheri and others, 2021 (1) ARC 605]**

CPC – Sec. 100

The Hon'ble Court in para 27 observed as "this court lately in the case of **Jai Prakash Singh vs. Bachchu Lal, Writ Petition No. 3553/2002,** decided on 27.09.2019, had the occasion to consider the aforesaid issue regarding the jurisdiction and it reviewed all the earlier decisions and has held that in case if the person instituting proceedings is recorded as tenure-holder on the date of institution of the civil proceedings, he can maintain the proceedings in the civil Court as there is no question regarding declaration of his rights which are involved.

Further the Hon'ble Court held that "In a suit of this nature where the plaintiff was seeking permanent injunction as well as the mandatory injunction, the Court ought to have taken note of the fact that when the defendant has made illegally encroachment which is sought to be removed by the plaintiff, in fact, the consideration before the Court is if the title of the plaintiff is established in the given circumstance, the said removal of construction can be ordered by mandatory injuction."…….

"In the instant case, the plaintiff has set up a clear case regarding the property in question being of Ram Lal, who had executed a will in favour of the plaintiff and they have been in possession. On the other hand, the contention of the defendant was that the property was joint and that Ram Lal being the elder his name was mutated in the revenue records but the right of the other co-owners was also decided and the possession was also of the other co-owners. However, the defendants have not brought on record any material nor could lead any evidence indicating the possession of the defendants. The defendants also could not refute the fact that once partition then under what circumstances, the said property remained joined and when was it acquired by the joint funds and why the defendants appellants never sought any counter claim or agitated their rights before the appropriate Court seeking their declaration or their title. In absence of such material pleadings the lower appellate Court has considered the evidence of the defendants and found that they have not been able to establish their plea. In view of the

aforesaid, it cannot be said tht the lower appellate Court has put a reverse burden on the defendant"

"This Court in exercise of powers under Section 100 CPC is not required to re-appreciate the evidence. Even the view taken by the lower appellate Court which is possible and is based on appreciation of legal, admissible evidence, it cannot be said that te lower appellate Court has exceeded his jurisdiction.

Needless to say that the lower appellate Court while exercising powers under Section 96 CPC is the finl Court on both the law and fact, it is permissible for the lower appellate Court to re-appreciate the evidence and come to contrary finding. " **[Ramesh Chandra and others vs. Krishna Kumar and others, 2021 (1) ARC 614]**

CPC – O.12 R.6

The Hon'ble Court summarized as "It is well-settled that consent decrees are intended to create estoppels by judgment against the parties, thereby putting an end to further litigation between the parties. Resultantly, this Court has held that it would be slow to unilaterally interfere in, modify, substitute or modulate the terms of a consent decree, unless it is done with the revised consent of all the parties thereto. **(Gupta Steel Industries v. Jolly Steel Industries Pvt. Ltd. and another, (1996) 11 SCC 678; Suvaran Rajaram Bandekar and others vs. Narayan R. Bandekar and others, (1996) 10 SCC 255).**

However, this formulation is far from absolute and does not apply as a blanket rule in all cases. This Court, in **Byram Pestonji Gariwala vs. Union Bank of India and others, (1992) 1 SCC 31**, has held that a consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation, or mistake. Further, this Court in the exercise of its inherent powers may also unilaterally rectify a consent decree suffering from clerical or arithmetical errors, so as to make it conform with the terms of the compromise." **[Compack Enterprises India (I) Ltd. vs. Beant Singh, 2021 (1) ARC 525]**

Execution of Will – Suspicious circumstances

"It has been said almost too frequently to require repetition that a will is one of the most solemn documents known to law. The executant of the will cannot be called to deny the execution or to explain the circumstances in which it was executed. It is, therefore, essential that trustworthy and unimpeachable evidence should be produced before the court to establish genuineness and authenticity of the will. It must be stated that the factum of execution and validity of the will cannot be determined merely by considering the evidence produced by the propounder. In order to judge the credibility of witnesses and disengage the truth from falsehood the court is not confined only to their testimony and demeanour. It would be open to the court to consider circumstances brought out in the evidence or which appear from the nature and contents of the documents itself. It would be also open to the court to look into surrounding circumstances

as well as inherent improbabilities of the case to reach a proper conclusion on the nature of the evidence adduced by the party.

In H. Venkatachala Iyengar v. B.N. Thimmajamma : AIR 1959 SC 443, Gajendragarkar, J., as he then was, has observed that although the mode of proving a will did not ordinarily differ from that of proving any other document, nonetheless it requires an element of solemnity in the decision on the question as to whether the document propounded is proved as the last will and testament of departed testator. Where there are suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before the will could be accepted as genuine. Where there are suspicious circumstances, the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. These principles have been reiterated in the subsequent decisions of this Court in Rani Purnima Devi v. V. Kumar Khagendra Narayan Dev : [1962] 3 SCR 195 and Smt. Indu Bala Bose v. Manindra Chandra Bose :[1982] 1 SCC 20.‖

The reference has also been made to a Gauhati High Court decision in Pradip Saikia & Ors. vs. Suwala Saikia & Ors., reported in AIR 2006 Gau 56, where it has been held that the law governing the proof of a Will is well established. The burden of proof of a Will is always on the propounder. If suspicious circumstances surrounding the execution of Will are repelled, the testamentary capacity and the signature of the testator on the Will are proved, that would be sufficient discharge of such burden. However, where any suspicious circumstance occurs, the onus is squarely on the propounder to explain to the satisfaction of the court.

A Will is an instrument that contains the last desire of the testator/testatrix. Normally, the Court, therefore, acts in accordance with the wishes of the maker of the Will. However, if, any way, the Court is to doubt either the voluntariness or genuineness as regards the execution of the Will, it would disassociate to act in accordance with what has been narrated in the Will. If the Will is surrounded by suspicious circumstances, the removal of such suspicion shall be always the onus or obligation of the propounder. Until and unless such suspicion is removed, the Will cannot be 'probated'.

The law has been enunciated by Delhi High Court in Yashodha Gupta vs. Sunil Goyel & Ors., reported in AIR 2002 Delhi 20, where Delhi High Court has categorically held inter alia that disinheritance of a heir of equal degree without reason would be suspicious. It has been observed in Yashodha Gupta (supra) as follows:

“Reliance was placed on Vellaswamy Servai & Ors. vs. L. Sivaraman Servai : AIR 1930 PG 24 wherein it was stated (page 25, column 2) that where the propounder of a Will is its principal beneficiary and he takes ‗a leading part in giving instructions for the Will and in procuring its execution and registration' would be a suspicious circumstance.

In Guro (Smt) v. Atma Singh : (1992) 2 SCC 507, the Supreme Court mentioned in paragraph 3 of the Report some suspicious circumstances such as a shaky signature, a feeble mind and unfair and unjust disposal of property or the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit.’

In Kalyan Singh v. Smt. Chhoti & Ors. : AIR 1990 SC 396, the supreme Court observed as follows in paragraph 18 of the Report:-

‘In the normal course, the wife would be the first to be thought of by the husband while executing a Will. She should have been the first beneficiary of her husband's bounty unless there was odium or embittered feelings between them. But there is no such evidence and it was not even the plaintiff's case that their relationship was strained. Why then she should be excluded altogether? It is indeed baffling since it runs counter to our societal values.’

Later, in paragraph 22 of the Report, the Supreme Court took notice of three facts which cast a serious doubt on the authenticity of the Will. These were the fact that the plaintiff therein was the sole legatee, no right whatsoever had been conferred to the testator's wife which was unnatural and finally that they Will had not been produced for many years before the Court or the public authorities even though occasions arose for producing it.

In Bhagwan Kaur, w/o Bachan Singh v. Kartar Kaur w/o Bachan Singh : (1994) 5 scc 135, the Supreme Court reiterated in paragraph 8 of the Report that the propounder of a Will taking an active part in its execution would be a suspicious circumstance and the fact that no provision was made in the Will for the widow of the testator would also be a suspicious circumstances.

In Ram Piari v. Bhagwant & Ors. : AIR 1990 SC 1742, the testator had disinherited his daughter by executing a Will one day before his death. He bequeathed all his property in favor of the sons of her sister. This was held by the Supreme Court to be a suspicious circumstance and the Will was not accepted as genuine.

However, in Sadasivam v. K. Doraisamy : (1996) 8 SCC 624, the Supreme Court held in paragraph 6 of the Report that divesting of close relations being the purpose of the execution of a Will is normally not a suspicious circumstance.

Similarly, in Ravindra Nath Mukherjee & Anr. v. Panchanam Banerjee (dead) by LRs. : (1995) 4 SCC 459, the Supreme Court held in paragraph 4 of the Report that the whole idea behind the execution of a Will is to interfere with the normal line of succession. Therefore, if a natural heir is not a beneficiary under a Will, it would not be a suspicious circumstance. It was also held in paragraph 7 of the Report that someone has to take necessary steps for the execution of a Will. If he happens to be someone close to the testator, eyebrows are bound to rise but if there are circumstances justifying the conduct of the propounder, they would require to be taken into consideration.

In paragraph 8 of the Report, the Supreme Court expressed the thought that a total view has to be taken of all the circumstances and it is only then that the Court should reach a conclusion about the authenticity of a Will.

This, I think, has to be the guiding principle along with what the Supreme Court has said in H. Venkatachala Iyengar [AIR 1959 SC 443].

Learned counsel for the plaintiff relied upon Dharmadas Mondal & Ors. v. Kashi Nath De: AIR 1959 CaL 243 to contend that the mere registration of a Will leads only to a presumption about the validity of the proceedings which took place before the Registrar. It does not have any reference to antecedent proceedings regarding the actual writing of the Will or the mental capacity of the testator or the signing of the Will by the attesting witnesses.

A similar view was expressed by a Division Bench of this Court in Prem Chand v. Mool Chand etc.: 1983 RLR 522. It was held that the presumption about the validity of a registered Will can be displaced by proof of suspicious circumstances.

Considering the various authorities cited before me, it is quite clear that whether a Will is genuine or not has to be decided on the facts of each case. There is no mathematical equation to determine whether a Will is genuine or not. The authenticity of a Will depends on the circumstances surrounding its execution and the quality of the evidence that is led in respect of its genuineness.‖ [Emphasis added] **[Kalyani Das vs. Minati Das and others, 2021 AIR CC 479 (Tri): AIR Online 2020 Tri 116]**

Civil Procedure Code, 1908- Order XXIII, Rule 3, -Compromise of suit- Application for- Allowed- Legality Once issues regarding bar of section 331 of U.P..A. and L.R. Act and question of validity of adoption of plaintiff No. 1 raised- Some of the property having been sold by defendant No. 1 during pendency of suit and said deed not challenged- Trial Court committed an error of law in blindly acce3pting compromise between plaintiff No. 1 and defendant No. 1 –Thus, Issues involved in injunction suit regarding agricultural property completely ignored by Trial Court while passing impugned judgment and decree on basis of compromise- First Appellate Court right in setting aside judgment and decree passed by Trial Court and in remanding matter to Trial Court for fresh decision –Appeal dismissed.

Civil Procedure Code, 1908- Order XLIII, Rule 1(4)- Impleadment application- Rejection- Legality- Issue involved in suit and subsequent events which gave rise to compromise and its validity were complex questions requiring adjudication-Since respondent No. 1 would be affected party- Hence, it was necessary for him to be impleaded- Trial Court committed an error in failing to consider this aspect of matter while rejecting impleadment application- Lower Court rightly allowed application for impleadment- Appeal dismissed.

In light of the propositions deduced from the decisions of the Hon'ble Apex Court as well as this Court as mentioned above, it would be clear that in the aforesaid circumstance where the allegation of malafide, the factum of adoption as claimed by the plaintiff was disputed also the animosity and estranged relation between the plaintiff No.1 and the defendant No.1 coupled with absence of any evidence or material on record regarding the adoption were germane issues and the property has been transferred during the pendency of the proceedings. Merely because the sale-deed was executed in teeth of the interim order granted by the court would entail consequences as provided in law especially when the plaintiffs themselves did not assail the aforesaid deed by seeking any amendment in the plaint coupled with the fact that they did not even initiate any proceedings for violation of the interim injunction hence the issues involved in the suit and the subsequent events which had given rise to the compromise and its validity were complex questions which required adjudication and since Amar Nath Shukla would be an affected party, hence it was necessary for him to be impleaded and thus this Court finds that the trial court committed an error in failing to consider this aspect of the matter while rejecting the impleadment application.

This Court notes that the initial proceedings relates to the year 1985 and by means of the interim order granted by this Court dated 31.07.2003, the further proceedings of the trial court remained suspended during the period this appeal remained pending. In the aforesaid circumstance, this Court directs that the parties shall appear before the trial court on 03.02.2020. The trial court must take note of the fact that the matter is of the year 1985, thus, it shall provide full opportunity to the parties to contest the case on merits, however, the trial court shall ensure that the parties may not misuse the liberty by seeking unnecessary adjournments. The plaintiff shall implead the parties concerned namely Amar Nath Shukla and Suman Shukla as defendants in the suit, who shall file their defense in a time bound fashion to be determined by the trial court and the trial should proceed as far as possible by fixing short dates so that the entire trial and arguments is concluded and the matter is decided within eight months from the date a certified copy of this judgment and order is placed before the court concerned. The trial court shall be justified in imposing heavy costs or any appropriate order in case if any of the party misuses the liberty, or willfully attempts to violate the time schedule determined by the trial court. **[Sanjay Kumar vs. Amar Nath Shukla, 2021 (150) RD 601]**

Code of Criminal Procedure, 1973

Criminal Procedure Code, 1973 – Sections 204(4) and 397/401 – Quashing of compliant under section 204(4), CrPC – Legality – Once summons already sent, then no necessity of paying further Court-fees – At stage of seeking presence of accused, complainant's presence not at all necessary – Since stage was for appearance of accused who evaded summons being aware of passing of summoning order-While presence of accused should have been sought to be procured by way of invoking procedure, as per provisions of section 87, CrPC – Impugned order being perverse – Set aside. (**Rajbahadur Singh, Advocate v. State of U.P. & others, 2020 (113) ACC 868)**

Default Bail under Section 167 (2) CrPC

Hon'ble Allahabad High Court has vividly discussed about the right to default bail The Court held that right to default bail is not mere statutory right under first proviso to Section 167 (2) but is part of procedure established by law under Article 21 of the Constitution, it is therefore a Fundamental Right granted to accused person to be released on bail once conditions of first proviso to Section 167 (2) are fulfilled and if the application for default bail is filed prior to filing of chargesheet the accused is entitled to be enlarged on default bail. In this case the Judgement of Hon'ble Supreme Court **Uday Mohanlal Aacharya versus state of Maharashtra AIR 2001 SC 1910 and Union of India vs Nirala Yadav AIR 2014 SC 3036** were referred. It is the settled view that on the expiry of the said period of 90 days or 60 days as the case may be an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail if he is prepared to and furnishes the

bail as directed by the magistrate. **[Chhotu v. State of Uttar Pradesh, 2021 Cri.L.J. 712 : AIR ONLINE 2020 ALL 2456 (Allahabad High Court)]**

Eye Witness: Appreciation of Evidence

Hon,ble Allahabad High Court while deciding the matter regarding appreciation of the testimony of eyewitness Hon'ble Court held that if the testimony of witnesses is corroborated by medical reports, it stands credible, although shot fired by one accused and however act of escaping accused along with co- accused person establishes common intention ,the minor lapses on the part of Investigating Officer are not fatal for the prosecution, as incident ,as well as the participation of accused, is well proved and the conviction was held proper. **[Girraj Singh and others v. State of Uttar Pradesh 2021 Cri.L.J.227: AIR ONLINE 2020 ALL 226 (Allahabad High Court)]**

Testimony of Prosecutrix : Appreciation (Section 376 IPC)

Hon'ble Allahabad High Court while deciding the criminal appeal held that if testimony of prosecutrix is corroborated by her medical report, there is no possibility of false implication. Court also held that the sentence awarded to the appellant by the trial court for the offences under section 376 IPC and under section 307 IPC for life imprisonment respectively is perfectly justified.

In the instant case, as it shocks the conscience of the society and the Courts must hear the loud cry for Justice by the society in cases of rape of innocent helpless girls of tender years and respond by imposition of sentence. To show Mercy in the case of such henious crime, could be travesty of justice and the plea of leniency is wholly misplaced.

The facts of of this case were as such, the accused allegedly in absence of informant father came to his house and bolted house from inside he committed rape with his minor daughter and in order to kill her cut her neck, the related witnesses saw accused coming out of the house in disturb state of mind, the testimony of prosecutrix along with her medical examination report and evidence of her parents showing that accused committed rape upon prosecutrix with intention to kill her, assaulted on her neck with scissors causing grievous injuries to her , bloodstained scissors were recovered at instance of accused, the human spermatozoa found on salwar of prosecutrix ,human blood was also found on clothes of prosecutrix and upon cemented floor of the house where incident took place. Testimony of prosecutrix was corroborated by her medical report so there was no possibility of false implication, conviction and sentence was held proper. **[Sohanpal v. State of Uttar Pradesh, 2021 Cri.L.J. 407: AIR ONLINE 2020 ALL 2423 (Allahabad High Court)]**

Determining Quantum of Sentence

Hon'ble Allahabad High Court held that while determining quantum of sentence court should bear in mind principle of proportionality. While deciding the quantum of sentence the factors which can be taken into the account are gravity of offence, manner of commission of crime, age and sex of the accused. **[Anoop v. State of Uttar Pradesh, 2021 CRI. L. J. (NOC) 54 (ALL.): AIR ONLINE 2020 ALL 2407]**

No need to Summon Judicial Officer who recorded the Statement u/S 164 (S. 164, 281, 397 (2) Cr.P.C.)

Hon'ble Allahabad High Court held that the statement of the complainant as well as the other witnesses of the prosecution are to be recorded in the manner provided in the section 164 and 281 Cr.P.C. and further no declaration is required by the magistrate with regard to the voluntariness of the statement, as it is only a statement of the complainant. The application of the petitioner requiring summoning of the Judicial Officer to prove the voluntariness of the statement is clearly misconceived. The statement recorded under section 164 would be a public document as per section 74 of Evidence Act and therefore does not require any formal proof by summoning the Magistrate to prove the same it was also decided by the Hon'ble Court that the rejection of application under section 311 Cr.P.C. seeking to summon Magistrate as a witness who recorded the statement under section 164 is an interlocutory order and revision against this order under section 397 (2) is not maintainable. **[CBI v. State of Uttar Pradesh and another, 2021 Cri.L.J. 766: AIR Online 2020 ALL 2441 (Allahabad High Court)]**

Compromise in Serious Offences (S. 482 Cr.P.C.)

In this matter, Hon'ble Allahabad High Court held that compromise in serious offences is not acceptable. The Court held that it is very well settled that in respect of serious offences like murder, rape, dacoity and other offences of mental depravity under IPC or offences of moral turpitude under special statutes like the Prevention of Corruption Act for the offences committed by public servants while working in that capacity, any compromise between the victim and the offender in relation to such offences cannot provide for the basis of quashing the criminal proceeding the inherent power is not to be exercised in those prosecutions which involve heinous and serious offences such offences are not private in nature and have a serious impact on society. It was also decided that the criminal proceedings in such offences cannot be quashed in exercise of power under section 482 of the code on the ground that the parties have resolved their entire dispute among themselves through compromise or settlement. It was also held that rape is an offence against the society it is not a matter to be left for the parties to compromise and settlement. At the cost of repetition in the case of rape or attempt to rape the concept of compromise under no circumstances can be thought of there cannot be a compromise or settlement against the honour and dignity of a woman which matters the most. [**Rajesh Kumar**

and 3 others v. State of Uttar Pradesh and another, 2021 Cri.L.J. 461: AIR ONLINE 2020 ALL 2445 (Allahabad High Court)]

Section 156 (3) Cr.P.C.

In this matter an application for registration of FIR and investigation was presented under section 156 (3) Cr.P.C. before the Court , it was rejected on the ground that there was dispute between parties pertaining to business transaction and nature of allegation is civil in nature, hence no cognizable offence made out requiring investigation by police. The rejection by the Court was held proper by Hon'ble Allahabad High Court. [**Parvez Saifi v. state of Uttar Pradesh and others, 2021 Cri.L.J. (NOC) 150 (ALL.): AIR ONLINE 2020 ALL 2427 (Allahabad High Court)]**

Prosecution Sanction u/S 197 CrPC

In this matter quashing of chargesheet was prayed on the ground that the prior sanction for prosecution was not obtained. The allegations were of uttering words with deliberate intent to wound religious feelings of any person. The accused ceased to be an official of University long back. **Ramesh Chandra v. State of Uttar Pradesh and others 2021, Cri.L.J. (NOC) 166 (ALL.): AIR ONLINE 2020 ALL 2366 (Allahabad High Court)**

It was held that once a person is ceased to be a public servant requirement of obtaining prior sanction under section 197 Cr.P.C. also becomes redundant and would not vitiate proceedings, the charge sheet cannot be quashed in this matter, Hon'ble Court relied on the judgement of Hon'ble Supreme Court in **AIR 2012 SC 1921**

Family Law

Hindu Marriage Act (25 of 1955), S.13(1)(ia) – Divorce- Petition by husband- Ground of cruelty- Plea of husband that initiation of criminal proceedings against him are false and amounted to mental cruelty- Complaint given by brother of wife for frequent dowry demand- Criminal proceedings against husband cannot be relied on in matrimonial proceedings unless it is established that complaint was given with intention to solely barass husband – Husband assaulted brothers of wife, not once but twice and therefore complaints given against husband cannot be said to be baseless – Huband acquitted by Criminal Court by given benefit of doubt – Therefore, his acquittal cannot come to aid of husband to show that he was victim of matrimonial cruelty.

Merely because the Criminal Court had acquitted the appellant-husband from the purview of criminal proceedings, it cannot be said that the complaint given against him is false or motivated. Further, the Criminal proceedings initiated against the appellant-husband cannot be

relied on in the matrimonial proceedings by the appellant-husband to say that he was subjected to matrimonial cruelty. Unless it is established that the criminal complaint was given with false and irrelevant material particulars with an intention to solely harass the appellant-husband, the judgment of acquittal passed against the appellant-husband cannot be of any significance for consideration in this appeal. In any event, the criminal complaint was not given by the respondent-wife, but by her brother. Above all, we find that the appellant-husband, in the Original petition, had asserted that he was assaulted by the brothers of the respondent- wife and driven him out of their house. If it is so, we are at a loss to understand as to what prevented the appellant-husband to give a complaint to the Police. The appellant-husband did not do so, rather, he hurped on by staring that he was subjected to criminal prosecution vexatiously. In this context, the respondent-wife had clearly deposed before the Family Court that the appellant-husband had assaulted her brothers, not once but twice and therefore, they have earlier given complaint to the Singanallur Police Station. Therefore, the complaints given after the appellant-husband had physically assaulted the brothers of the respondent-wife. In such event, we are of the view that the appellant-husband is the aggressor and he had exhibited a blame-worthy conduct. While so, the appellant-husband cannot be expected to take advantage of his own wrong and seek for a decree of divorce to dissolve the marriage solemnized between him and the respondent-wife. In this context, the learned counsel for the appellant-husband placed reliance on the decision of the Supreme Court in the case of K. Srinivassa Rao vs. Deepa, reported in AIR 2013 SC 985 and the decision of Division Bench of this Court in the case of Arun Kumar Jain vs. Geetha, reported in 2014 (2) Madras Weekly Notes (Civil) 393 and of the Supreme Court in the case of K. Srinivas v. Sunita, reported in 2014(3) Madras Weekly Notes (Civil) 671 (SC): (AIR Online 2014 SC 147). In those cases, it was established that the criminal complaint given against the appellant-husband was motivated and the wife also admitted having given the complaint without any truth. It was in those circumstance, it was held that the husband was subjected to matrimonial cruelty. In the present case, the appellant-husband was acquitted by the Criminal Court by giving benefit of doubt and there is nothing to suggest that the appellant-husband was maliciously prosecuted. Therefore, the aforesaid decision cannot come to the aid of the appellant-husband to show that he was a victim of matrimonial cruelty at the instance of the respondent-wife. **[Pannerselvam vs. Sivagami, 2021 AIR CC 532 (Mad): AIR Online 2020 Mad 1955]**

Indian Contract Act, 1872

Fraud of Forgery- Mere suspicion or skepticism cannot be recognized in law as sufficient parameters to uphold allegations of fraud- Such an allegation must be established conclusively and found to have been definitively committed – A prima facie view by its very nature requires and mandates a further enquiry and examination before a definitive ruling or finding can be entered- Discussed. (Para 101)

It was held that a finding of fraud or forgery cannot be sustained or rest on such a nebulous pedestal. A prima facie view cannot sustain an allegation of fraud or fabrication. Mere

suspicion or skepticism cannot be recognized in law as sufficient parameters to uphold allegations of fraud. Bearing in mind the seriousness of such an allegation, they must be established conclusively and found to have been definitively committed. “Prima facie”, an oft utilized phrase, merely means an impression gathered or an opinion formed on first impressions and initial observation. A prima facie view by its very nature requires and mandates a further enquiry and examination before a definitive ruling or finding can be entered. **[Committee of Management, Subash Chandra Bose Smark, Vidyalaya, Isipur through its Manager and another vs. State of U.P. through its Secretary, Firms, Societies and Chits, Government of Uttar Pradesh, Lucknow and others , 2021 (150) RD 444]**

Indian Evidence Act, 1872

Appreciation of Evidence in Rape Cases

FIR lodged against accused persons after one month of the occurrence-No plausible explanation or the delay furnished - No external injury on person of prosecutrix found by doctor except a contusion on right thigh – Her hymen membrane was absent – She was found to be carrying pregnancy of 3 months – Medical opinion that victim was used to sexual intercourse – Her age found to be 20-21 years – Victim was accompanied by her husband – Husband did not lodge any report of the occurrence – Husband not examined during trial-Victim raised no alarm at any stage when she was abducted and raped and taken to Aligarh – Her silence amounted to her consent – Hotel employees where she was detained, not examined – Alleged blood stained clothes of victim not handed over to the Investigating Officer-Whole prosecution story unreliable – Testimony of victim unworthy of credence – Conviction and sentence of appellants being not based on proper appreciation of material on record, set aside – Appeal allowed.(**Santosh and another v. State of U.P., 2020 (113) ACC 44)**

Indian Penal Code, 1860 – Sections 376-D, 452, 323 and 506 – Judgment of acquittal – Applicant made allegations against persons that when she was sleeping, accused –persons armed with Tamancha entered her house with intention to sexually assault her and committed rape upon her at gun point one by one – Old enmity and criminal litigation with accused persons and their family members admitted – **Documents relating to criminal case against husband of the complainant admitted –Deposition of prosecutrix under cloud and required corroboration – Place of sleeping of the prosecutrix not established - Right hand of one of the accused was amputated above elbow – Not possible for such person to commit rape upon a lady holding tamancha in his left hand –** In fact the prosecutrix tried to frame accused – persons just to create pressure upon them to compromise the ongoing criminal litigation – Deposition of prosecution witnesses not inspiring confidence – Testimony of prosecutrix not inspiring confidence – Her statement cannot be made solitary basis ofr conviction of accused – No substantial and compelling reasons to reverse the order of acquittal passed by the Trial Court. (**Smt. Sugara @ Subra v. State of U.P. and others, 2020 (113) ACC 50)**

Indian Penal Code, 1860 – Section 302 – Conviction – Sustainability – FIR lodged by brother of the victim girl that his sister has been burnt by her in-laws – Father-in-law of victim got her admitted in the District Hospital and left – Incriminating materials such as plastic can , matchbox, half lit match-stick, broken pieces of bangles etc. re-covered by local police which also found smell of kerosene where victim breathed her last during treatment at Lucknow – All the prosecution witnesses of fact PW-2 to PW-12 except PW-1 turned hostile – Even informant did not support the allegation of demand of dowry – Statement of the victim recorded by the Executive Magistrate in presence of doctor appears voluntary and truthful-Both doctor and Executive Magistrate appeared in witness box and proved her statement and her fit state of mind to give such statement – Credibility of dying declaration cannot be doubted on ground that it was not recorded in question and answer form – Victim implicated only the appellant and left others present in the house – She expressed her disappointment for none of them tried to save her – Victim cannot be taken to have been tutored – Incriminating articles recovered from place of incident including her upper undergarments telling their own story – Incriminating circumstances put to accused persons – No explanation from their side – Conviction of appellant upheld-Sentence being minimum not liable to be interfered with-Appeal dismissed.

Evidence Act, 1872 – Section 32-Dying declaration-Legal position about admissibility of dying declaration as settled by the Apex Court reiterated-Credibility of dying declaration cannot be doubted on ground that it was not in question and answer form.

Criminal Procedure Code, 1973 – Section 164 - Statement of victim recorded under section 164, CrPC by the Magistrate – Recording of statement of the victim thereafter by the Investigating Officer without adopting due procedure i.e. certificate of doctor condemnable and may be seen as an attempt to subvert the prosecution case.

Evidence Act, 1872 – Section 106-Burning of bride in connection with demand of dowry –Incident took place inside the house of the accused - Burden to establish the case undoubtedly on the prosecution – But inmates of the house have corresponding burden to give cogent explanation as to how the deceased got burnt – In-laws of deceased cannot get away by simply keeping quiet and offering no explanation. (**Ravi Pratap Singh @ Tinku Singh v. State of U.P., 2020 (113) ACC 520)**

Dying Declaration and Appropriate Sentence

Indian Penal Code, 1860 – Sections 498-A and 304-B – Dowry Prohibition Act, 1961 – Section ¾ - Initial version of informant that his daughter was married with the appellant – appellant and his family members poured kerosene over her and set here ablaze – She succumbed to her injuries during treatment – Cause of death septic shock as a result of ante-mortem injuries in the opinion of the doctor-Deceased used to complain to her parents about her harassment by her in-laws for bringing more dowry – Dying declaration of the deceased recorded by the Additional City Magistrate proved – Deceased was in fit mental and physical condition to make statement also certified by the physician attending on her – Oral dying declaration made by

the deceased before her father also similar – No in consistency or contradiction between the two dying declarations – Version of the appellant that deceased suffered burn injuries while cooking food and he got her admitted in the hospital does not inspire confidence – PW-1 father and PW-2 mother of the deceased made specific statements that deceased was persistently harassed for dowry by the appellant and his family members – Demand of dowry and harassment caused by in-laws proved – Marriage of the deceased was solemnized only seven months prior to the incident – She was continuously being harassed – Sentence of life imprisonment cannot be said to be excessive – Conviction under sections 498-A, 304-B, IPC and section 4 o the D.P. Act confirmed – Order of sentence upheld – Conviction under section 3 of the D.P. Act set aside. (**Dharam Das v. State of U.P., 2020 (113) ACC 705**)

Dying Declaration

Indian Penal Code, 1860 – Sections 302/34 and 498 – Conviction-Sustainability - Written report given by PW-1 registered by police - It revealed that daughter of PW-1 was married with appellant No. 1 and she was burnt by her husband and his relatives by pouring kerosene oil and setting her ablaze – Dying declaration discloses that the two sisters–in–law dragged her to the kitchen where appellant No. 2 handed over a gallon of kerosene oil to appellant No. 1 who poured the same upon her and appellant No. 3 threw a burning match a stick upon her-That her husband used to physically assault her on every trivial and insignificant issue-Doctor certified that victim was conscious and mentally oriented during recording of her statement-P.Ws. 6 and 7 proved that dying declaration of deceased was recorded in the District Hospital- Incident took place on 25.5.2009 and her demise on 18.6.2009 - Deceased remained under treatment at various places – There are no documentary proof/bed head tickets showing treatment of deceased at various places – Marked shift in prosecution case as mentioned I the FIR and in the dying declaration of the deceased-Post-mortem report of no help about the seriousness and gravity of injuries sustained by the deceased-Fit case for modifying the sentence-Appellants should have been convicted under section 304, Part-II, IPC-Conviction under section 302, IPC altered to one under section 304 Part-II, IPC and sentence of life imprisonment to period already undergone. (**Ramjan Shah and other v. State of U.P., 2020 (113) ACC 871**)

Juvenile Justice (Care & Protection of Children) Act, 2015

Juvenile Justice (Care and Protection of Children) Act, 2015 – Sections 12, 101 and 102 – Indian Penal Code, 1860 – Sections 302/201, IPC – Bail-Rejection of bail application of juvenile by Juvenile Justice Board and Appellate Court-Legality-Once on an identical role and evidence, an adult co-accused is found entitled to bail-It would be not only unfair but discriminatory to hold juvenile in institution incarnation-Since, in present case, role of revisionist absolutely at par with an adult co-accused who has been admitted to concession of bail-Therefore, no justification to hold juvenile and further, in institutional incarceration-Impugned

orders rejecting bail of revisionist manifestly illegal-Set aside-Bail allowed. (**Subham Kumar Malik (Juvenile) through his father v. State of U.P. and another, 2020 (113) ACC 37**)

Juvenile Justice (Care and Protection of Children) Act, 2015 – Sections 12, 101 and 102 – Indian Penal Code, 1860 – Sections 302, 504 and 506 – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Section 3(2)(v)-Bail-Refusal to enlarge appellant on bail by Courts below-Legality-Seriousness and heinousness of nature of offence-Cannot be ground to eject the bail of juvenile-Since no specific role of appellant shown in orders impugned-Therefore, set aside-Appeal allowed-Appeal allowed. (**Shivam (Minor) v. State of U.P. and another, 2020 (113) ACC 42)**

Juvenile Justice (Care and Protection of Children) Act, 2015 – Section 12 – Indian Penal Code, 1860 – Sections 147, 148, 149, 323, 504, 506, 304 and 308 - Bail to a juvenile in conflict with law – If an adult accused and a child have same role and adult found entitled to bail – Proviso to sub-section (1) of section 12 of Act – Cannot be read in a manner so as to disentitle child to liberty of bail – Role of all accused – Identical-All adult accused admitted to bail-Therefore, no justification to undertake further inquiry with reference to proviso to sub-section (1) of section 12 of Act – Revision allowed-Impugned orders rejecting bail application-Set aside-Bail allowed.(**Amit Kumar @ Raja v. State of U.P. and another, 2020 (113) ACC 189)**

Juvenile Justice (Care and Protection of Children) Act, 2015 – Sections 101 and 18(1)(g) - Indian Penal Code, 1860 – Sections 498-A, 304-B and 323 – Dowry Prohibition Act, 1961 – Section ¾ - Bail – Case of the prosecution that deceased was married on 25.4.2015 – Her husband, father-in-law and mother-in-law used to torture her for bringing more dowry – Deceased disclosed to her father in the hospital that with the help of other accused persons her mother-in-law poured kerosene oil over her and set her ablaze – Revisionist brother of the husband of deceased and said to have been present on the spot – Revisionist declared to be a juvenile by the Juvenile Justice Board – Co-accused adult offenders identically circumstanced enlarged on bail – Role of revisionist based on prima facie weak circumstantial evidence – Revisionist already completed more than half of the sentence out of possible three years – No likelihood of early trial – Material on record does not indicate possibility of tampering with the evidence – Impugned judgment and order passed by the Juvenile Justice Board and Additional Sessions Judge set aside – Revisionist directed to be released on bail – Conditions imposed – Revision allowed. (**Shyamu (Juvenile) v. State of U.P. & another, 2020 (113) ACC 361)**

Juvenile Justice (Care and Protection of Children) Act, 2015 – Sections 12 and 102 – Indian Penal Code, 1860 – Sections 363, 366, 376 and 342 – Protection of Children from Sexual Offences Act, 2012 – Section ¾ - Bail – Accused declared juvenile by the Juvenile Justice Board – Statement of victim under section 164, CrPC that she was married to 'S' in May, 2016 – Accused belongs to her village – He enticed her and kept her roaming from place to place – Accused established physical relationship with her – Section 12 of the 2015 Act provides that

bail should invariably be granted to a juvenile accused alleged to be in conflict with law unless his case falls under one of th exceptions engrafted by proviso of sub-clause (1) – Nothing on record to show that there is likelihood of his coming in association with known criminal or risk of exposing him to moral, physical or psychological danger – Apprehension that applicant would abscond to Nepal if granted bail based on no evidence – Impugned orders quashed – Revisionist directed to be release on bail on his father executing personal bond of Rs. 50,000/- with solvent sureties in like amount to the satisfaction of the Principal Judge, Juvenile Justice Board – Conditions imposed. **(Sanjay Chaudhary (Minor) v. State of U.P. and another, 2020 (113) ACC 498)**

Maintenance and Welfare of Parents and Senior Citizens Act, 2007

Sec. 28, 32, 27--

Father and daughter filed application before district magistrate seeking eviction of daughter in law and her sons from his self acquired house. Dispute between parties arose as result of gift deed executed by father in favour of daughter. daughter in law filed suit for permanent injunction and declaration of gift deed as wide. The suit was pending before Civil Court, in such condition eviction order could not be passed by district magistrate in exercise of power conferred on him under rule 21 of the said rule. The issue that eviction of daughter in law and her sons from house in question which is stated to be our matrimonial house can only be examined by civil pool. Bar under section 27 is not attracted in such condition. [**Swaraj Varun and other vs. State of Uttar Pradesh, AIR 2021 All 45]**

Motor Vehicles Act, 1988

S. 149 (2) (a) (ii)—Motor insurance-Driving licence-Liability of insurance company-insurance company not exempted from liability on the plea of breach of policy.

It was observed that as far as the objection of insurance company regarding consideration of the copy of the driving licence is concerned, the law is well settled that it has not been proved by evidence by the insurance company that the said document is either a forged document or it is not issued by the transport authorities, the claimants cannot be expected to find original document and the same document has to be considered by the Tribunal. The admitted position of law is that Motor Vehicles Act, 1988 is a beneficent and benevolent piece of legislation which has been enacted to award just and reasonable compensation to the victims of the road accidents and therefore, according to court, while deciding the claim petition filed by the claimants, it is not necessary for the Tribunal to insist for strict proof of the documents produced by the claimants and the strict proof as per Indian Evidence Act is not to be insisted upon and the Tribunal is obliged not to make these strict principles applicable to the proceedings before the Claims Tribunal if the documents produced by the claimants are found to be genuine and correct If the Tribunal on facts has found them to be correct and has relied upon those documents, this court while re-appreciating those documents also finds them to be genuine. It can be relied for coming to the conclusion that the driver of the said vehicle, namely, truck had proper driving licence. The insurance company did not lead any evidence to prove that the licence was a fake licence. In absence of proving the same, this court cannot accept the submission of the learned counsel for the insurance company.

The proposition of law is very clear that the document, i.e., driving licence unless proved to be unreliable or proved to be a fake driving licence, has to be considered and not be neglected. The Tribunal has considered this aspect in detail and has rejected the contention of the insurance company that it is not liable. In this case, it is not proved that the licence produced by the claimant was not a proper driving licence. [**National Insurance Co. Ltd. v. Urmila Devi and others, 2021 ACJ 232]**

Motor Vehicles Act, 1988, section 166-Claim application: Limitation

The claim petition was filed on 20.8.2020 most probably after the courts started functioning and accepted filing in physical form. The reasons for delay were also assigned by the petitioners by annexing several medical documents and death certificate of mother of petitioner No. 1. The Tribunal mechanically held that amended section 166 (3) of the Act prescribes a period of six months for filing claim petition and, therefore, a matter after that period cannot be entertained. Learned Tribunal, therefore, dismissed the claim petition, which has given rise to this appeal.

In exercise of the powers conferred by sub-section (2) of section 1 of the Amendment Act, the Central Government appointed 1.9.2019 as the date on which the following sections of the Amendment Act shall come into force, namely - "Section 2, section 3, clauses (i) to (iv) of section 4, clauses (i) to (iii) of section 5, section 6, clause (i) of section 7, sections 9 and 10, section 14, section 16, clause (ii) of section 17, section 20, clause (ii) of section 21, section 22, section 24, section 27, clause (i) of section 28, sections 29 to 35, sections 37 and 38, sections 41 to 43, section 46, sections 48 and 49, sections 58 to 73, section 75, sub-clause (i) of clause (B) of section 77, sections 78 to 87, section 89, sub-clause (a) of clause (i) and clause (ii) of section 91 and section 92 of the Amendment Act. Admittedly sections 50 to 57 of the Amendment Act are not notified till date.

It clearly appears that sections 50 to 57 of the Amendment Act are yet to be notified. These sections 50 to 57 of the Amendment Act relate to sections 140 to 144, sections 145 to 164, section 165, section 166, section 168, section 169, section 170 and section 173, respectively, of the Principal Act. In simple words, sections 140 to 144 of the Principal Act (Chapter X) have not been omitted as yet and continue to operate. Similarly sections 145 to 164 (Chapter XI) and section 165, section 166, section 168, section 169, section 170 and section 173 of the Principal Act would continue to operate with full vigour till the time sections 51 to 57 of the Amendment Act are notified in the Official Gazette.

Court quashed and set aside the judgment/order impugned. Claim petition is ordered to be restored to file of Tribunal.(**Shailendra Tripathi and another v. Dharmendra Yadav and others 2021 ACJ 284)**

Motor Vehicles Act, 1988, section 169 (1)-Claims Tribunal Procedure and powers

Strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt.(**Anita Sharma and others v. New India Assurance Co. Ltd. and another 2021 ACJ 17)**

Quantum-Fatal accident-Award of Rs. 11,95,000 enhanced to Rs. 17,40,000.

Although the deceased's father took a plea that Vinod was earning Rs. 14,000 every month as a teacher at Pratap Public School in Delhi, but he was unable to substantiate his claim with any documentary evidence. Thus, minimum wage in Delhi was adopted for computation of loss of dependency. An additional 25 per cent income was accounted for future prospects of Poonam, and 3rd of Vinod's salary was deducted towards personal expenses. Rs. 2,50,000 was given for each deceased as compensation for loss of love and affection, loss of estate and funeral charges. Thus, the Tribunal awarded a total sum of Rs. 40,71,000 for both deceased to the claimants.(**Kirti and others v. Oriental Insurance Co. Ltd. 2021 ACJ)**

Quantum-Fatal accident-Principles of assessment

Adverting to the claimants' appeal for enhancement of compensation, the view that no effective argument could be raised on their behalf as to how the compensation assessed by the Tribunal was inadequate, except that in view of the authoritative pronouncement of this court in National Insurance Co. Ltd. v. Pranay Sethi, 2017 ACJ 2700 (SC), the claimants are entitled to an increase of 40 per cent towards annual dependency on account of future prospects given the undisputed age of the deceased. Their appeal to that extent deserves to be allowed. (**Anita Sharma and others v. New India Assurance Co. Ltd. and another 2021 ACJ 17)**

Negligence-on account of negligent driving of driver of vehicle 'B', the accident took place-Tribunal's finding upheld.

From the site plan prepared by the police official, it is apparent that the vehicle No. UP 42-R 2049 was being driven from north to south and the same was on the proper side of the road and the vehicle No. UP 70-CQ 5758 was being driven from south to north and on account of the negligent driving of the driver of the vehicle No. UP 70-CQ 5758, the accident took place.
Taking note of observation of the Hon'ble Apex Court in the judgment passed in the case of Sunita, 2019 ACJ 801 (SC) and the statement of ocular witness and documents on record, i.e., site plan and charge-sheet filed in the criminal case against the driver of the vehicle insured with the Company, we are of the view that Tribunal rightly held that in the accident, in issue, the driver of the vehicle insured with the Company was negligent. The point No. (i) is decided accordingly against the Company. (**Uday Pratap Singh and others v. New India Assurance Co. Ltd. and others 2021 ACJ 584)**

Quantum-Fatal accident

Considering the age of the deceased, i.e., between 31 and 35, the Tribunal applied the multiplier of 16, which is as per the judgment passed by the Hon'ble Apex Court in the case of

Sarla Verma v. Delhi Transport Corporation, 2009 ACJ 1298 (SC), taken note of and approved by the Hon'ble Apex Court in paras 10, 44 and 61 of the judgment passed in the case of Pranay Sethi, 2017 ACJ 2700 (SC). Thus, the Tribunal rightly applied the multiplier of 16.

Towards conventional heads, namely, loss of estate, loss of consortium and funeral expenses, the Tribunal has awarded Rs. 10,000, Rs. 10,000 and Rs. 5,000 and on the amount awarded, the Tribunal has granted simple interest at the rate of 7 percent per annum.

Accordingly, court modified the judgment and award dated 24.12.2015 in following terms only and except modification the rest of the judgment and award dated 24.12.2015 passed by the Tribunal would remain intact.

(a)	Towards loss of estate	Rs. 15,000
(b)	Towards loss of consortium (Rs. 40,000 to each legal heir)	Rs. 1,20,000
(c)	Towards funeral expenses	Rs. 15,000
	Total	Rs. 1,50,000

In view of the above, the total amount of compensation for which the claimants-appellants are entitled comes to Rs. 43,77,000 + Rs. 1,25,000 = Rs. 45,02,000. (**Uday Pratap Singh and others v. New India Assurance Co. Ltd. and others 2021 ACJ 584)**

Negligence-Contributory negligence-truck driver solely responsible for the accident.

In the present case there is no evidence that the deceased who was driving the vehicle had seen the truck coming in a zigzag manner from the opposite side. Therefore unless there is evidence to prove that the accident had taken place due to rash and negligent driving of the deceased, the plea of contributory negligence could not have been recorded merely on the basis of site plan.

The site plan could not have been relied for recording a finding of contributory negligence in absence of the examination of the police official who had prepared the site plan more so in absence of ocular evidence to prove and explain the contents of the site plan. Therefore the finding recorded by learned Tribunal in regard to the contributory negligence is not sustainable.

The finding recorded by the learned Tribunal with regard to contributory negligence is not sustainable and is liable to be set aside and this court is of the considered opinion that the judgment and award passed by the learned Tribunal is liable to be modified. (**Asha Jaiswal and others v. Param Jeet Singh and another 2021 ACJ 674)**

<u>Specific Relief Act, 1963</u>

(C) Specific Relief Act (47 of 1963), Ss. 16(c), 20(As substituted by 2018 Amendment Act) – Decree of specific performance – Discretion of Court – Though mandate of S.20 was

adverted to by Trial Court, but it proceeded to allow suit, merely on basis of oral assertion of plaintiff – S. 20 has been substituted in year 2018, but rigour of requirements under earlier provisions certainly applied to Trial Court at time when decree was passed – Trial Court in disregarding mandate of S.20, as is stood prior to substitution. (Paras 29, 30)

This is crucial because, as has been declared by the Hon'ble Supreme Court in Azhar Sultana v. B.Rajamani and Others (2009) 17 SCC 27), it is not necessary that the plaintiff must keep ready the entire amount of consideration or RFA.No.703 OF 2009 must file proof of the same, unless he is specially called upon to do so by the court.

Further, in Boramma v. Krishna Gowda and Others ((2000) 9 SCC 214) the Hon'ble Supreme Court has spoken on tendering of the balance consideration by the plaintiff, referring to the explanation to Clause (c) of Section 16 of the Specific Relief Act, declaring that "where a contract involves payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money, except when so directed by the court".

Obviously, therefore, an adverse inference of inability of the plaintiff in performing his part of the contract till the time the suit was filed could not have been recorded by the Trial Court. However, I notice from the impugned judgment and decree that such an inference has been drawn by the said Court and to that extent I cannot find favour.

That so said, before I proceed, it is essential that I must keep in mind the difference between the concepts of 'readiness to perform the contract' and 'willingness to perform the contract'. The difference between these two have been RFA.No.703 OF 2009 succinctly spoken about by the Hon'ble Supreme Court in His holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar [1996 (4) SCC 526], which is discussed in paragraph 2 thereof. It deserves a full reading and is, for such purpose, re- produced as under:

“There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinized. There is no documentary proof that the plaintiff had ever funds to pay the balance of consideration. Assuming that he had the funds, the has to prove his willingness to perform his part of the contract. According to the terms of the agreement, the plaintiff was to supply the draft sale deed to the defendant within 7 days of the execution of the agreement, i.e., by 27.02.1975. The draft sale deed was not returned after being duly approved by the petitioner. The factum of readiness and willingness to perform plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bide for the time RFA.No.703 OF 2009 which disentitles him as time is of the essence of the contract.”

When I move on with the evaluation and assessment of the dialectical claims in this case, I must certainly keep in mind certain other vital circumstances and factual factors before a conclusive view is taken on the specific issues involved.

Admittedly, as per the impugned decree, the respondent/plaintiff was directed to tender the balance sale consideration within a period of 30 days from its date to the defendant and the latter was then directed to execute the sale deed, after measuring the property; and to hand over its prior title deeds, along with an Encumbrance Certificate, sketch and plan prepared through a competent Surveyor. The decree clearly stipulates that if the appellant/defendant disobeyed this direction for 30 days from the date of the judgment, namely, 13.07.2009, the plaintiff was at liberty to deposit the balance sale consideration of Rs.9,24,000/- and to get the sale deed executed through the process of law.

Sri.P.M.Joshi, the learned counsel for the respondent/plaintiff, admits that the impugned judgment and RFA.No.703 OF 2009 decree were delivered on 13.07.2009 and therefore, that his client ought to have tendered the balance sale consideration at least by the 12.08.2009. He then, unequivocally concedes that his client did not do so and that he waited until 16.09.2009, allegedly till he obtained a copy of the decree and that, thereafter, on 17.09.2009, he issued a notice to the appellant/defendant offering to tender the balance sale consideration. He adds that his client waited for another 20 days and then made an application before the Trial Court on 07.10.2009 to remit the balance consideration, but that before he could do so, on 11.11.2009, this Court granted an interim order staying the decree.

When I hear Sri.P.M.Joshi as afore, it becomes ad rem that even after the respondent/plaintiff asserts that he had made an application before the Court below on 07.10.2009, offering to deposit the balance sale consideration, he did not do so until 11.11.2009, which is more than one month thereafter; on which date, this Court granted an interim stay in this appeal.

The afore factors certainly have a bearing on this case because, had the defendant/respondent been in possession RFA.No.703 OF 2009 of the requisite funds at least on the date of the decree, he would have tendered the balance sale consideration to the defendant within a period of 30 days from its date, as has been ordered therein and would not have taken a plea that he was waiting for the certified copy of decree to be received on 16.09.2009.

In any event of the matter, since the decree makes it clear that the respondent has to tender the balance sale consideration within a period of one month from its date, namely 13.07.2009 and since he concedes that he did not seek any modification of the same, it was certainly up to him to tender the balance sale consideration to the appellant/defendant within the time frame so granted; and in the absence of the same having been done, it becomes justified for this Court to draw an adverse inference as to his ability and willingness to pay the same. This is fortified by the fact that he did not approach the Trial Court with an application to deposit the money for nearly 20 days after he admits he received the copy of the impugned judgment and decree; and even thereafter, did not do so till 11.11.2009, when this Court granted stay of the RFA.No.703 OF 2009 judgment and decree assailed in this appeal.

The totality of all these factual factors guide me to the irresistible impression that the respondent/plaintiff had never been serious in tendering the balance sale consideration, which is manifest from the fact that he refused to do so even after the decree.

Added to the above, at the time when the Trial court delivered the judgment, it is without contest that Section 20 of the Specific Relief Act - prior to its amendment in the year 2008 — held the field. Under the mandate of the said provision, the said Court had a duty to examine whether it was bound to grant specific performance because, at that time, this was certainly a discretionary relief. A learned Division Bench of this Court in Antony K.O and Another v. M.K. Krishnankutty Menoki and Others [2017 (1) KHC 479] has spoken on this issue affirmatively, which is available from paragraph No.11 of the said judgment, which, for ease of reference, is extracted below:

"It says that the Court is not bound to grant specific performance as it is a discretionary one even though it is lawful to do so. It further states that the discretion has to be exercised in a sound and reasonable RFA.No.703 OF 2009 manner and it should be the one capable of correction by an Appellate Court. The various expressions embodied under Section 20 of the Specific Relief Act would show that the Court is not bound to grant a decree for specific performance, even though it was found to be lawful to do so and the Court has to exercise its discretion. The question at what time the Court has to exercise its discretion is also well evident from a mere reading of S.20 of the Specific Relief Act, which would arise only after finding that it is lawful to grant the relief sought for in favour of the plaintiff. In all other provisions of law wherein discretion could be exercised stands for exercising discretion in a positive way for granting some relief to the parties and not for refusing any relief. But, the discretionary power incorporated and embodied under S.20 stands on a different footing in which the court has to exercise discretion not for granting the relief, but for refusing the same. It has got its own character and peculiarity, apart from other provisions contained in other laws for the time being in force. So, the real impact of S.20 should be and must be understood under the background of those aspects. It is a mandate upon the Court to address the question of exercise of discretion before granting or refusing a decree for specific performance and it has to be exercised only after finding that it is lawful to grant a relief of specific performance in favour of the plaintiff. A decree which was granted without addressing and without exercising the discretion under S.20 of the said Act is bad in law. The Court is duty bound to address the question of exercise of RFA.No.703 OF 2009 discretion under S.20 of the Specific Relief Act while granting or refusing to grant a decree of specific performance. The said discretion has to be exercised only after finding that it is lawful to grant the relief prayed for in suit in favour of the plaintiff. In the present case in hand, that question is not considered or answered. So the impugned decree is bad in law due to non-compliance of requirement under S.20 of the Specific Relief Act."

In the case at hand, the impugned judgment and decree do not show that the mandate of Section 20 had even been adverted to by the Trial Court, but it proceeded to allow the suit, granting specific performance of the agreement, merely on the basis of the oral assertion of the plaintiff that he had the resources to pay the balance sale consideration and that he was willing to tender it at all times, as had been averred by him in the plaint. Even though Section 20 has now

been substituted in the year 2018, the rigour of the requirements under the earlier provisions certainly was applicable to the Trial Court at the when time the impugned judgment and decree were issued; and the fact that it did not even consider the same certainly cuts at the root of its validity.

That being so said, I am fully aware that the contention of Sri.P.M.Joshi is that since Section 20 has now been substituted, it should be presumed to have been so from the inception and therefore, that the impugned judgment and decree may not be set aside on this ground alone. Though I cannot approve this contention, the Trial Court being not aware that the said Section would be amended or substituted in the future, I do not propose to set aside the impugned judgment and decree on this ground, but am only pointing out that the said Court could not have disregarded the mandate of Section 20, as is stood then.

Since the appellant does not stand in the way of the alternative plea being granted to the respondent, I deem that it will be justified for this Court to allow this appeal, vacating the conclusions and directions of the Trial Court granting specific performance of Ext.A1 agreement; however, decreeing the suit as regards the advance sale consideration. I am also of the considered view that the award of interest at the rate of 10% per annum from the date of agreement till the date of RFA.No.703 OF 2009 realization will be sufficient to protect the respondent/defendant because, going by the fact that the agreement was entered as early as on 02.09.2006, this would certainly provide sufficient succor to him.

In the result, this appeal is allowed in part, with the impugned judgment and decree being set aside; and the suit is decreed in part, allowing the plaintiff to recover an amount of Rs.1,51,000/-, along with proportionate costs and 10% interest per annum on the said sum, from the date of Ext.A1, namely 02.09.2006, till the date of realization from the defendant and his assets, for which purpose, a charge over the plaint schedule property is hereby granted under the provisions of Section 55(6)(b) of the Transfer of Property Act. **[Joshy vs. Subash K. Thomas, 2021 AIR CC 114 (Ker): AIR Online 2020 Ker 791]**

(B) Specific Relief Act (47 of 1963), S.16(c) – Suit for specific Performance – Readiness and willingness – Agreement for sale – Power of attorney holder cannot speak about state of mind of vendee- Vendee neither appearing in witness Box nor opportunity provided to vendor to cross examine him – Inference can be drawn that vendee was never ready and willing to perform his part of alleged contract. (Para 68)

63. In the case of Man Kaur (supra), the Hon'ble Court, inter alia, held that it is the plaintiff to prove that he was always been ready and willing to perform his part of contract and he should necessarily step into the witness box to give evidence. The Court observed as hereunder:-

"To succeed in a suit for specific performance, the plaintiff has to prove: (a) that a valid agreement of sale was entered into by the defendant in his favour and the terms thereof; (b) that the defendant committed breach of the contract; and (c) that he was always ready and willing to perform his part of the obligations in terms of the contract. If a plaintiff has to prove that he was always ready and willing to perform his part of the contract, that is, to perform his obligations in terms of the contract, necessarily he should step into the witness box and give evidence that he

has all along been ready and willing to perform his part of the contract and subject himself to cross-examination on that issue. A plaintiff cannot obviously examine in his place, his attorney-holder who did not have personal knowledge either of the transaction or of his readiness and willingness. Readiness and willingness refer to the state of mind and conduct of the purchaser, as also his capacity and preparedness on the other. One without the other is not sufficient. Therefore, a third party who has not personal knowledge cannot give evidence about such readiness and willingness even if he is an attorney-holder of the person concerned."
(emphasis supplied)

In the case of Ravi Setia (supra), Hon'ble Court observed that the plaintiff has to demonstrate readiness and willingness throughout to perform his obligation under a contract.

65. On behalf of the respondent, it is argued that plaintiff's case may be proved without the plaintiff having been examined in to the evidence if the other evidence can prove the case. Personal examination of the plaintiff is not required. In support of his contention, learned counsel placed reliance upon the principles of law as laid down in the case of Pandurang Jivaji Apte Vs. Ramchandra Gangadhar Ashtekar, (dead) by LRs and others, AIR 1981 SC 2235 and Rattan Dev Vs. Pasam Devi, 2002 (2) Allahabad Rent Cases 592.

In the case of Pandurang Jivaji (supra), the question was with regard to the validity of a attachment before judgment. In such case, the Hon'ble Court observed as hereunder:-

"11. In our opinion the question of drawing an adverse inference against Apte and Bavdekar on account of their absence from the court would arise only when there was no other evidence on the record on the point in issue. The first appellate court had relied upon the admission of the decree-holder himself and normally there could be no better proof than the admission of a party. The High Court, however, has observed in its judgment that the decree-holder has made no admission in his evidence which would justify refusal to draw adverse inference for the failure of Apte and Bavdekar to step into the witness box."

In the case of Rattan Dev (supra), the Hon'ble Supreme Court placed reliance upon the principles of law as laid down in the case of Ishwar Bhai C. Patel alias Bachu Bhai Patel v. Harihar Behera and another, JT 1999 (2) SC 250, and observed as hereunder:-

"5 Learned Counsel for the respondent has placed reliance on Ishwar Bhai Ishwar Bhai C. Patel alias Bachu Bhai Patel v. Harihar Behera and another, JT 1999 (2) SC 250 : 1999 SCFBRC 189, wherein this Court has emphasized that withholding of the plaintiff himself from the witness box and thereby denying the defendant an opportunity for cross-examination of himself results into an adverse inference being drawn against the plaintiff. That proposition of law is undoubtable. However, as we have already said, that is a fact to be kept in view and taken into consideration by the Appellate Court while appreciating other oral and documentary evidence available on record. May be that from other evidence - oral and documentary - produced by plaintiff or otherwise brought on record the plaintiff has been able to discharge he onus which lay on him, and, subject to the Court forming that opinion, a mere abstention of plaintiff himself from the witness box may pale into insignificance."

This Court had already held that in fact why the respondent issued Power of Attorney, is still doubtful. He was a person, who was working at a BAR in the hotel of PW2 Laxman Das. He

allegedly executed the Power of Attorney in the year 1985 saying that he used to go out station in connection with his work. Whereas, this statement in the Power of Attorney has been destroyed by the statement of PW2 Laxman Das, who says that respondent is generally sick and upset, therefore, he executed the Power of Attorney. Readiness may be a financial aspect but willingness is the state of mind. It is the respondent alone who would have revealed his state of mind. A power of attorney holder cannot speak about state of mind. But, the respondent did not appear in the witness Box. He did not provide any opportunity to the appellant to cross examine him on this aspect. It refers only one and one conclusion that the respondent was never ready and willing to perform his part of alleged contract, which this Court has held was not proved. Therefore, according to this Court, it is not proved that the respondent was ever ready and willing to perform his part of alleged contract. This point is decided accordingly. **[Shakuntala Rani (Deceased) and another vs. Om Prakash Kohli, 2021 AIR CC 785 (UTR): AIR Online 2020 Utr 510]**

U.P. Revenue Code, 2006

U.P. Revenue Code, 2006-Section 206- Civil Procedure Code, 1908- Order VII, Rule 10- Second appeal- Suit for permanent prohibitory injunction- Dismissal of suit on ground of lack of jurisdiction over subject land-Legality- Once it is determined that Courts lack jurisdiction at any stage- Order to be passed is for returning of plaint- No determination can be made on merits of the case- Appeal succeeds in part to the extent that decree of dismissal of suit passed by lower appellate Court set aside- Shall stand substituted by an order directing return of plaint for presentation in accordance with law to proper Court. (Paras 3 and 10 to 12)

This is plaintiff-appellants' second appeal from judgment and decree dated 15.07.2020 of the District Judge, Bhadohi at Gyanpur dismissing the Civil Appeal No. 09 of 2020 whereby affirming the original decree passed by the Additional Civil Judge (Junior Division), Bhadohi at Gyanpur dismissing the Original Suit No. 76 of 2017.

Plaintiff-appellants had filed a suit for permanent prohibitory injunction against the respondent-defendant which was registered as Original Suit No. 76 of 2017 [Amarnath and another v. Shyamlal] in the Court of Junior Division, Bhadohi on the ground that defendant was interfering in the cultivation and possession of the plaintiff-appellants. Respondent-defendant had contested the suit and filed his written statement denying the allegations made in the plaint therein. Trial Court framed eight issues and issue no. 5 was framed to the effect, whether a suit is barred by Section 206 of the U.P. Revenue Code, 2006. The Trial Court while deciding the issue no. 5 vide judgment and decree dated 29.07.2019 held that as the plaintiff had claimed the relief for permanent injunction, and the question of title was also involved and no relief for declaration has been sought, in view of the said fact as the land in dispute is agricultural land, the suit was barred by Section 206 of the U.P. Revenue Code, 2006, thus, it was not cognizable by Civil Court and same was dismissed, accordingly. **[Amarnath and another v. Shyamlal, 2021 (150) RD 671]**

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972), S.21 (1)(a)- Release of premises.

Release of premises –Comparative hardship – Tenant never made any effort to search alternative accommodation – No relief can be granted to tenant on ground of comparative hardship.

He has also placed reliance upon a judgment of the Apex Court in the case of Rishi Kumar Govil Vs. Maqsoodan and others, (2007) 4 Supreme Court Cases, 465. Paragraph 19 of the said judgment is being quoted below:-

"In Ragavendra Kumar v. Firm Prem Machinary and Co., it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. In Gaya Prasad v. Pradeep Shrivastava, it was held that the need of the landlord is to be seen on the date of application for release. In Prativa Devi (Smt.) v. T.V. Krishnan, it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not be normally interfered with. The High Court noted that when the Prescribed Authority passed the order son of the respondent-landlady was 20 years old and the shop was sought to be released for the purpose of settling him in business. More than 20 years have elapsed and the son has become more than 40 years of age and she has not been able to establish him as she has still to get the possession of the shop and the litigation of the dispute is still subsisting. The licence for repairing fire arms can only be obtained when there is a vacant shop available and in the absence of any vacant shop, licence cannot be obtained by him. Therefore, the High Court came to the conclusion concurring with that of the Prescribed Authority and Appellate Authority that the need of the landlady is bona fide and genuine. Considering the factual findings recorded by the Prescribed Authority, Appellate Authority and analysed by the High Court, there is no scope for any interference in this appeal which is accordingly dismissed. However, considering the period for which the premises in question was in the occupation of the appellant time is granted till 31st December, 2007 to vacate the premises subject to filing of an undertaking before the Prescribed Authority within a period of 2 weeks to deliver the vacant possession on or before the stipulated date. There will be no order as to costs."

Next judgment relied upon by learned counsel for the respondent is Arvind Kumar Mishra v. Jitendra Kumar Gupta and others, [2016 (1) ARC 634. Paragraphs 20 to 25 of the judgment are quoted below:-

"In the present case, courts below have given categorical finding of fact that the tenant did not make any effort to search an alternative accommodation immediately after filing of the release application and even during the pendency of appeal, so the said facts were sufficient to tilt the balance of the comparative hardship against the tenant, in view of the law as laid down by Hon'ble Supreme Court in the case of B.C. Bhutada V. G.R. Mundada, A.I.R. 2003 SC 2713; 2003 SCFBRC 167 wherein it was held that bona fide requirement implies an element of

necessity. The necessity is a necessity without regard to the degree to which it may be. For the purpose of comparing the hardship the degree of urgency or intensity of felt need assumed significance."

In the above authority it has also been held in para 13, that tenant must show as to what efforts he made to purchase or take on rent other accommodation after filing of the release application which is quoted below:-

"In Piper V. Harvey, 1958(1) All ER 454, the issue as to comparative hardship arose for the consideration of Court of appeals under the Rent Act, 1975. Lord Denning opined; "when I look at all the evidence in his case and see the strong case of hardship which the landlord put forward, and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to but or to rent, it seems to me that there is only one reasonable conclusion to be arrived at, and that is that the tenant did not prove (and the burden is on him to prove) the case of greater hardship." Hudson, L.J. ,opined: " the tenant has not been able to say anything more than the minimum which every tenant can say, namely, that he was in fact been in occupation of the bungalow, and that he has not at the moment any other place to go to. He has not, however, sought to prove anything additional to that by way of hardship such as unsuccessful attempts to find other accommodation, or, indeed, to raise the question of his relative financial incompetence as compared with the landlord." On such state of the case, the Court answered the issue as to comparative hardship against the tenant and ordered his eviction."

In the case of Salim Khan V. IVth Additional District Judge, Jhansi and others , 2006(1) ARC 588 has held that in respect of comparative hardship, tenant did not show what efforts they made to search alternative accommodation after filing of release application. This case sufficient to tilt the balance of hardship against them Vide Bhutada V. G.R. Mundada 2003 Supreme Court 2713; 2005(2) ARC 899. Moreover, rent of Rs. 6/- per month which the tenants are paying is virtually as well as actually no rent. By paying such insignificant rent they must have saved a lot of money. Money saved is money earned. They must, therefore, be in a position to take another house on good rent. Further, they did not file any allotment application for allotment of another house. Under Rule 10(3) of the Rules framed under the Act, a tenant, against whom release application has been filed, is entitled to apply for allotment of another house immediately. Naturally such person is to be given preference in the matter of allotment. Respondents did not file any such allotment application. Thus, the question of comparative hardship has also to be decided against the tenants. (See. also Raj Kumar Vs. Lal Khan, 2009 (2) ARC 740 and Ashis Sonar and other Vs. Prescribed Authority and others 2009 (3) ARC 269.)

In the case of Jagdish Chandra Vs. District Judge, Kanpur Nagar and others 2008 2 ARC 756 this Court after relying on the judgment given by the Apex Court in the case of Bega Begam and others Vs. Abdul Ahad Khan 1979 AIR SC 272 : 1986 SCFBRC 346 held as under:-

"In every case where an order of eviction is passed the tenant will come on the street. The fact that all tenants will come on street if eviction is ordered, is not at all relevant for consideration of a comparative hardship of the respective parties. It is for the tenant to find out alternative accommodation. In absence of any material to show that any attempt was made by the

such tenant to find out alternative accommodation release application cannot be rejected on ground that such tenant would suffer greater hardship if the release application is allowed."

Further, Under Rule 16 of the Rules framed under the Act, various parameters have been provided while considering the comparative hardship of the landlord qua the tenant. The Apex Court in the case of Ganga Devi Vs. District Judge, Nainital and others, 2008(2) ARC 584 while considering the said scheme provided in Rule 16 has held that :-

"The Court would not determine a question only on the basis of sympathy or sentiment. Stricto sensu equity as such may not have any role to play."

In the instant case as stated above, the appellate court had held that the tenant has not made any effort for search of alternative accommodation and it is settled proposition of law that the equity follows law and so does sympathy. If the factors mentioned in Rule 16 are considered, taking into consideration the facts of this case, no doubt it is an old tenancy but there is nothing to show that any real efforts were made by the tenant to find another accommodation, since the date of moving of release application. (See also Govind Narain Vs. 7th Additional District Judge, Allahabad and others [2008(1) ARC 526] and Rani Devi Jain Vs. Badloo and another[2008 (3) ARC 351]) and he has already got a shop in his possession during the pendency of litigation. So the argument as raised by learned counsel for petitioner on the basis of the Rules 16 (2) (A) of the Rules has got no force, rejected."

He has also placed reliance upon the judgment of this Court in the case of Sarju Prasad Vs. VIIIth Additional District Judge, Faizabad and others, 2007 (2) AWC 1068 (L.B.) Paragraphs 9 to 14 of the said judgment are quoted below:-

"In the present case, both the courts below have recorded concurrent findings of facts and have arrived at the conclusion that the need of the landlady was bona fide and genuine. The landlady had a large family consisting of six sons and their dependents. As far as the jurisdiction of the prescribed authority is concerned, the same stood cured as an appeal was filed before the appellate authority, i.e., Additional District Judge, Faizabad. The appellate court has also appreciated the material on record and was of the same opinion that the landlady's need was bona fide, genuine and pressing. The tenant would not suffer greater hardship than the landlady who was having a large family consisting of six grown-up sons. The case of the landlady is squarely covered by the judgment of this Court as in Atma Ram v. Vith Additional District Judge and Ors. 2006 (1) ARC 168.

There is force in the submission made by the learned Counsel for the respondent landlady that on the basis of de facto doctrine and the appellate authority's order, now it cannot be said that the release of the shop was not justified. The above submission is strengthened by the judgments as in Gokaraju Rangaraju v. State of Andra Pradesh; (1981) 3 SCC 132, M/s. Beopar Sahayak (Pvt.) Ltd. and Ors. v. Vishwa Nath and Ors. 1987 (2) ARC 145 : 1987 (2) AWC 1219 (SC) and Union of India and Anr. v. Charanjit S. Gill and Ors., (2000) 5 SCC 742.

It is well-settled that the landlord is the best Judge to assess his residential requirement. He has complete freedom in this matter. Neither the tenant, nor the Court can suggest to the landlord other means to satisfy his need so that the tenant may continue in possession unless those means are equally viable. It is unnecessary to make an endeavour as to how the landlord

could have adjusted himself (vide Vishnu Kant Goswami v. IInd A.D.J., Allahabad and Ors. 2006 (1) ARC 282 ; Braham Kumar and Ors. v. Raja Ram and Ors. 2006 (1) ARC 93 and Kaushal Kumar Gupta v. Bishun Prasad and Ors. 2006 (1) ARC 73).

Both the learned courts below have rightly held that the landlady's need was quite bona fide as she required the shop for establishing some of her sons, who were six in number. A son cannot be compelled to join his father, uncle or other family members in their business in other shops. The landlady's one son or two sons could start business of their own choice from the shop in question independently. Certainly her need was greater than that of the petitioner-tenant. Her case finds support from the judgments as in Hari Narain (Sri) v. VIth A.D.J., Kanpur and Ors. 2006 (1) ARC 81 ; Sushila v. Iind Addtional District Judge, Banda and Ors. 2003 (1) ARC 156 (SC) ; Kafeel Ahmad v. Smt. Satvindra Kaur 2006 (1) ARC 459 : 2006 (2) AWC 1299; Nandani Devi (Smt.) v. 1st Additional District Judge, Varanasi and Ors. 2005 (1) ARC 58 ; Kelawati (Smt.) v. Special Judge (E.C. Act), Moradabad and Ors. 2006 (1) ARC 78 and Abdul Naim Quraishi v. Masi Uddin Khan 2005 (1) ARC 316 : 2005 (2) AWC 1260.

It is also evident that the tenant did not make any effort to search an alternative accommodation. This was sufficient to tilt the balance of comparative hardship against the tenant, (vide B. C. Bhutada v. G.R. Mundada AIR 2003 SC 2713 and Hashmat Ali v. VIth A.D.J. Kanpur Nagar and Ors. 2006 (1) ARC 65).

Learned counsel for the petitioner has failed to persuade this Court to take a different view from what has been taken by the learned courts below. It is well-settled that in exercise of power under Article 226 of the Constitution of India, the High Court will not sit in appeal over the findings arrived at by the prescribed authority and affirmed by the appellate authority, as has been held by the Apex Court in Ranjit Singh v. Ravi Prakash 2004 (1) ARC 613 (SC) : 2004 (2) AWC 1721 (SC).”

He has also placed reliance upon the judgment of this Court in the case of Bachchu Lal Vs. IXth A.D.J. Kanpur and others, 2006 (4) AWC 3467. Paragraph 6 of the said judgment is quoted below:-

"6. In respect of comparative hardship tenant did not show that he made any efforts to search alternative accommodation after filing of the release application. This was sufficient to tilt the balance of comparative hardship against the tenant. The appellate court while allowing the appeal was very much impressed by the fact that for about 65 years the shop in dispute was in tenancy occupation of tenant. Mere long possession is not sufficient to reject the release application. The rent is Rs. 31.25/- per month. For a shop in Kanpur Nagar such rent is rather ridiculous. It is virtually as well as actually no rent. By paying such highly inadequate rent, tenant must have saved lot of money, which he might have been required to pay as proper rent. Money saved is money earned. Moreover, the tenant was doing business from the shop in Kanpur for 65 years. Accordingly he must be in a position either to purchase the shop or to take on good rent another shop. In this direction no efforts were made by the tenant. It is admitted that Radhey Shyam is doing business from another shop. In view of this his hardship is nil. This is an additional ground to allow the release application."

He also placed reliance upon the judgment of Apex Court in the case of India Umbrella Manufacturing Co. and others Vs. Bhaganamdei Agarwalla (Dead) by Lrs. Savitri Agarwalla (Smt) and others, (2004) 3 Supreme Court Cases, 178. Paragraph 6 of the said judgment is quoted below:-

"Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co- owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See: Sri Ram Pasricha Vs. Jagannath & Ors., Dhannalal Vs. Kalawatibai (SCC para 25). This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co- owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co- owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law."

Learned counsel for the respondent has again relied upon a judgment of this Court in the case of Shabbir Ahmed v. Syed Mohammad Ali Ahmed Kabir, 2016 (1) ARC 275. Paragraph 15 of the said judgment is quoted below:-

"In view of the above discussion, on the facts of the present case, it is held that the petitioner's status in the property in dispute will not change with the purchase of a portion of the property from one of the co-owner. His status, vis-a-vis the applicant-landlord, will remain that of the tenant and there would be no question of obtaining his consent as against him. Further, as the other co-owner was not available, there was no question of taking his consent. The release application was perfectly maintainable even in the absence of the consent of the other co-owner. There is no merger of the interest of the lessee/petitioner with that of the interest of lessor/respondent-landlord in the whole of the property and hence, the tenancy cannot be said to have been determined under Section 111(d) of the Transfer of Property Act. The release application was perfectly maintainable and was rightly decided by both the Courts below on its merit."

He has also placed reliance upon the judgment of the Apex Court in the case of K.V.S. Ram Vs. Bangalore Metropolitan Transport Corporation, (2015) 12 Supreme Court Cases 39. Paragraph 11 of the said judgment is quoted below:-

"11. In Syed Yakoob vs. K.S. Radhakrishnan, the Constitution Bench of this Court considered the scope of the High Court's jurisdiction to issue a writ of certiorari in cases involving challenge to the orders passed by the authorities entrusted with quasi-judicial functions under the Motor Vehicles Act, 1939. Speaking for the majority of the Constitution Bench, Gajendragadkar, J. observed as under: (AIR pp. 479- 80, para 7) "7. ...A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where

orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

Learned counsel for the petitioner in rejoinder submitted that the petitioner has alternative accommodation of 25% area for shop in house no. 49/49, Naughara, Kanpur, but the courts below have failed to consider that the said shop is not in ownership of the petitioner, but in ownership of his father and uncle. Further Rule 16(2)(b) of the Rules, 1972 States that the alternative accommodation must be suitable accommodation to which the tenant can shift his business without substantial loss. Both the above condiions have not been considered by the courts below, hence the finding recorded by them on the comparative hardship is illegal and unsustainable in law.

I have considered the rival submissions of the learned counsel for the parties, judgment of the courts below and also judgments of Apex Court and this Court relied upon by the counsels for the parties.

The main emphasis of learned counsel for the petitioner is upon the maintainability of the writ petition. To proceed with to decide this issue, it is necessary to record here that it is undisputed that the petitioner has accepted his tenancy before the prescribed authority as well as appellate authority. It is also undisputed that in capacity of tenant, he has also filed Misc. Case No. 672/70/2014 (Prakash Chandra Gupta Vs. Ritesh Bhargav) under Section 30 of the Act, 1972, which is still pending.

Basic submission of the learned counsel for the petitioner is that jurisdiction cannot be conferred upon the court by consent, acquiescence or waiver and further if new ground goes to the very root of the matter, the same can be raised at any point of time even before the last court though it has not been raised earlier. In support of his contention, he has placed reliance upon the different judgments of the Apex Court as well as this Court. I have perused the aforesaid judgments and none of the judgment is having the similar or near to similar facts as involved in the present controversy. In fact, in the judgment relied upon by learned counsel for the petitioner, it is not the case that after filing the written statement before the prescribed authority accepting the tenancy and also before appellate court, a new plea was taken before the High Court or last court.

In the matter of Ramesh Chandra Yadav (supra), fact of the case was entirely different, where the release application was filed under Section 21 of the Act, 1972, which was partly allowed directing the defendant nos. 1 and 2 to handover possession of vacant premises to plaintiff no. 1 i.e. respondent no. 3. Later on, respondent no. 3 filed another suit seeking eviction on the ground that the Act, 1972 shall not be applicable upon the premises in question since it was completed in the year 1977. The court held that in such circumstances, there would be no resjudicata. In this case, fact was not disputed and further there was nothing like filing of written statement admitting the fact and later on denying the same. In the case of Kiran Singh (supra), the fact is having no similarity with present case. In this matter, the Court was lacking jurisdiction due to incorrect valuation of suit in light of Suits Valuation Act, therefore, it is not relevant in the case of the petitioner. In the case of Gurucharan Singh (supra), the Court has held that it is well settled that a pure question of law going to the root of the case and based on undisputed or proven facts could be raised even before the Court of last resort. Here the issue is entirely different. Emphasis of the Court is upon undisputed and proven fact. It is not undisputed or proved that petitioner was not tenant, contrary to that, it is undisputed before the prescribed authority and appellate authority that the petitioner is tenant. In fact denial of tenancy is disputed fact which is not proved either before the prescribed authority or appellate authority as it has never been raised. In the matter of G.M. Contractor (supra), the facts are altogether different, which were arising out of a contract and certain undertaking, therefore, the same would not be applicable in the present case. Similarly, in the case of Chandra Bhushan Khanna (supra), the fact was altogether different as earlier the case was filed before the Court of Munsif, later on, it was transferred to the Court of Small Causes, which was having no jurisdiction. Both the parties have contested under the bonafide belief that the Small Causes Court is having jurisdiction and they have no occasion to take objection on the ground of maintainability. Apart from that, in that case it was undisputed that there was no relationship of tenant and landlord, but here tenancy is being disputed by petitioner first time before High Court earlier accepting it. Denial of tenancy is highly disputed by landlord-respondent before this Court. Therefore, this judgment would not help the petitioner. Here, it cannot be said that by consent of parties, jurisdiction was conferred upon the Court. In fact, it is required upon the petitioner to raise issue before the Court to enable it to record finding of fact about tenancy upon the objection raised by landlord-respondent. Again in the case of Chiranjilal Shrilal Goenka (supra), the fact was entirely different in which

an arbitrator was appoined with the consent of parties, which was ultimately found contrary to law. Therefore, this judgment relied upon by learned counsel for the petitioner would also not come to help the petitioner.

It is not the case that petitioner has raised a pure legal issue before the Court. In fact, he had taken a plea accepting the tenancy and contested the case, but after losing the same before the Prescribed Authority and Appellate Authority taking U-turn, he has taken entirely different plea which was earlier never raised. Apart from that, undisputedly, he is enjoying privilege of tenant by filing Misc. Case No. 672/70/2014 (Prakash Chandra Gupta vs. Ritesh Bhargav) under Section 30 of the Act, 1972, which is still pending. Therefore, in light of such facts, conduct of the petitioner cannot be appreciated and he cannot be permitted to take benefit of his own wrong.

In the case of Rajasthan State Road Transport Corporation (supra), it was clearly held that it is required on the part of a party to plead the case and produce/adduce the sufficient evidence to substantiate its submission made in the plaint and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas.

In the matter of S.U. Ashram (supra), the Court was also of the same view and held that the objection of the learned counsel for the petitioner is not acceptable only for the reason that he has admitted landlord-tenant relationship in his written statement. The Apex Court in the case of Heeralal (supra) has stated that amendment sought in the written statement was of such nature as to displace the plaintiff's case could not be allowed. In the matter of Nagindas Ramdas (supra), the Apex Court has again taken very same view and held that admissions, if true and clear are by far the best proof of the facts admitted. Admissions in pleading or judicial admissions, admissible under Section 58 of the Evidence Act, 1872 made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The Court again in the matter of Thimmappa Rai (supra) has taken the same view relying upon the Section 58 of the Evidence Act, 1872 and held that any admissions made by the party to the suit in earilier proceeding are also admissible against him.

Section 58 of the Evidence Act is quoted below:-

“Facts admitted need not be proved. --No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

After going through the facts of the case and law laid down by the Apex Court as well as this Court, it is very much clear that the petitioner tenant has never disputed tenancy and also filed Misc. Case No. 672/70/2014 (Prakash Chandra Gupta Vs. Ritesh Bhargav), under Section 30 of the Act, 1972 in the capacity of tenant, therefore, he cannot be permitted to take new plea in light of law discussed above and further no denial of tenancy is required by the landlord-respondent in light of Section 58 of the Evidence Act, 1872.

Considering the judgments of Apex Court as well as this Court, it is very much clear that petitoner has never raised this issue before the Prescribed Authority or Appellate Authority,

where it could be proved by placing evidence whether he is tenant or not, therefore, he cannot be permitted to raise this issue before the High Court in the writ petition. The contention of the learned counsel for the petitioner is also not acceptable that he has raised the issue in the written statement that tenancy is continued from 1960, which was not denied by landlord-respondent in light of Section 58 of Evidence Act. Once the tenancy is accepted, there was no need to landlord to deny the same as the facts admitted need not be proved.

Alternative argument of learned counsel for the landlord-respondent is also having force where he has stated that in case petitioner is not the tenant, then he has no authority to maintain this writ petition as he is not the aggrieved person. There is no doubt that once the petitioner is accepting that he is not tenant and his father is tenant then, he has no right to file this writ petition, only his father could invoke this remedy or any other remedy available under the law. Therefore, in that case, this writ petition would not be maintainable in light of law laid down by the Apex Court as well as this Court and the Court cannot grant any relief in favour of petitioner.

So far as bonafide need is concerned, there is specific finding of fact about the need of shop in question in favour of landlord-respondent, which cannot be normally interfered by this Court. The landlord-respondent has taken specific plea that his business is growing, therefore, he is in need of shop in question coupled with the fact that undisputedly petitioner is having alternative accommodation i.e., 49/99 Naughara, Kanpur Nagar. The Apex Court as well as this Court has repeatedly held that landlord-respondent is best judge of his need and Court may not interfere in the matter. This Court in the matter of S.U. Ashram (supra) has rejected the plea of tenant that landlord is having another shop on the ground that he could not establish that landlord was in possession of any other shop at the place in dispute and landlord is wanted to do his business on his own choice at a particular place. In the present case, undisputedly landlord is not having any another accommodation whereas petitioner is having alternative accommodation at 49/99 Naughara, Kanpur Nagar.

In the case of Rishi Kumar Govil (supra), the Apex Court relying upon the different judgments has held that it is the choice of the landlord to choose the place for the business, which is most suitable for him.

This Court in the case of Sarju Prasad (supra) has clearly held that both the Courts below have recorded concurrent finding of fact and have arrived at the conclusion that need of shop of landlord was bonafide and genuine, which cannot normally be interfered considering the settled position of law. In exercise of power under Article 226 of the Constitution, the High Court will not sit in appeal against the finding arrived at by the Prescribed Authority and confirmed by the Appellate Authority. The Appellate Authority after considering the evidence available on record made it clear that alternative shop is not available to landlord-respondent. The petitioner before this Court could not bring any such fact or law which intends this Court to exercise jurisdiction under Article 226 of the Constitution for bonafide need in his favour.

Thereafter, in light of facts of the present case and law laid down by the Apex Court as well as this Court, this Court cannot exercise the power under Article 226 of the Constitution of India in favour of petitioner for bonafide need, which is not getting support by findings of the Prescribed Authority as well as Apeallate Authority .

So far as comparative hardship is concerned, it is undisputed fact that the petitioner has never attempted to search alternative space for shifting his business and law is very well settled on this point. The Apex Court as well as this Court has repeatedly held that it is necessarily required on the part of tenant to make full endeavour to search alternative accommodation to prove his comparative hardship after receiving copy of release application. In the matter of Rajasthan State Road Transport Corporation (supra), the Court has clearly held that it is required on the part of tenant to make effort for searching alternative accommodation. Again in the matter of Salim Khan (supra), this Court, relying upon the judgments of the Apex Court as well as this Court, was of the view that it is required on the part of petitioner to search accommodation after filing the release application and in the present case there is no dispute that the petitioner had never made any effort to search alternative accommodation. Not only this, the Court has also considered the Rule 16 of the Rules, 1972 and considering the another judgment of Ganga Devi (supra), Court has taken the view that Rule 16 of Rules, 1972 would not come in the rescue of petitioner, in case, petitioner-tenant has not made any effort to search another accommodation. Here in the present case, there is no dispute on the point that petitioner has not made any effort to search alternative accommodation.

In the matter of Sarju Prasad (supra), this Court has again taken the same view and held that in case effort was not made for alternative accommodation, this would be sufficient to tilt the balance of comparative hardship against the tenant. This view was again repeated by this Court in the case of Bachchu Lal (supra) and held that to prove the comparative hardship; it is necessarily required to make effort to search alternative accommodation, which is absolutely missing in the present case.

Therefore, in light of fact that petitioner has never made any effort for searching alternative accommodation coupled with law laid down by the Apex Court as well as this Court, no relief can be granted to the petitioner on the ground of comparative hardship.

Learned counsel for the petitioner has also raised this issue that the landlord is only co-owner of the shop in question, therefore, he cannot file release application, which is not acceptable in light of judgment of Apex Court in the case of India Umbrella Manufacturing Co. (supra) & Shabbir Ahmed (supra). In both the matters, the Court has clearly held that co-owner have full right to file suit for eviction against the tenant and even consent of co-owner is not required to file suit. Therefore, this argument of the learned counsel for the petitioner is not acceptable and no relief can be granted on this ground too.

There is finding of fact by both the courts below in favour of the landlord-respondent and in light of law laid down by the Apex Court in the matter of K.V.S. Ram (supra) the Court has taken clear view that finding of fact recorded by Tribunal cannot be challenged in proceeding for a writ of certiorari on the ground that the relevant facts and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. Case of landlord-respondent is getting full support from this judgment.

In view of the above facts and law laid down by the Apex Court as well as this Court, I am of the view that no good ground for interference is made out by the petitioner. The judgment and orders dated 24.09.2019 passed by XII Additional District Judge, Kanpur Nagar in Rent

Appeal No. 26 of 2017ent and 06.04.2017 passed by prescribed Authority/Judge Small Causes Court, Kanpur in Rent Case No. 18 of 2014 are affirmed. The writ petition is accordingly dismissed. No order as to cost. **[Prakash Chandra vs. Sri Ritesh Bhargawa, 2021 AIR CC 197 (All): AIR Online 2020 All 1805]**

U.P. Zamindari Abolition and Land Reforms Act, 1951 and Provincial Small Cause Courts Act, 1887

Provincial Small Cause Courts Act (9 of 1887), S.15 – U.P. Zamindari Abolition and Land Reforms Act (1 of 1951), Ss. 143, 153 – Eviction – Bhoomidari land – Tenant denying title of landlord – Tenant pleading that land on which tin shed and office constructed is bhumidhari land and provisions of U.P.Z.A. and L.R. Act is applicable and that provisions of U.P. Act of 1972 are not applicable to suit premises – Plea of tenant that due to non-declaration u/s. 143 of U.P.Z.A. and L.R. Act whereupon construction made, property shall vest in State u/S. 156 of Act, not tenable – Due to non-declaration of land, it is deemed to be excluded from provisions of Act – Monthly tenancy established – Tenant not protected under provisions of U.P. Act No. 13 of 1972 – Moreover tenant in written statement admitted that landlord is owner of property – Tenant stopped from denying title of landlord – Eviction, Proper.

Evidence Act (1 of 1872), S.116 – U.P. Urban Buildings (Regulation of Letting Rent and eviction) 13 of 1972), S.20. (Paras 13, 14, 17)

It was observed that after going through the case-laws cited by the learned counsel for the parties, it transpires that there are contradictory decisions of the Court on this particular issue. Thus, the judgments cited above are of no assistance to any of the party. Recently, this Court in WPMS No.2180 of 2018 State of Uttarakhand vs. Amandeep Singh and others, decided on 28.07.2020, has discussed the effect of declaration or non-declaration u/s 143 of UPZA & LR Act and has accordingly held that as soon as a declaration is made under Section 143 of the Act, the land as defined under Section 3(14) of the Act comes out from the purview of the Act, but in the case where the declaration has not been made but in fact land is being used for the purposes not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming, the effect of non-declaration under Section 143 of the Act would also lead to the position that the suit property shall be deemed to be excluded from the provisions of the Act. Relevant paragraphs of the said judgment are reproduced hereunder:

It was observed that since the jurisdiction under Section 143 of the Act is exercisable suo motu and admittedly the bungalows, outhouses and land appurtenant thereto along with trees already exist over the suit property, therefore, a declaration under Section 143 of the Act should have been made by the Assistant Collector-in charge of the sub-division. As soon as a declaration is made under Section 143 of the Act, the land as defined under Section 3(14) of the Act comes out from the purview of the Act, but in the case where the declaration has not been made but in fact land is being used for the purposes not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming, the effect of non-

declaration under Section 143 of the Act would also lead to the position that the suit property shall be deemed to be excluded from the provisions of the Act.

It is the admitted case of the respondent/plaintiff that the suit property was let out to the revisionist/defendant at the rent of ` 16,000/- per month and the tenancy of the defendant is not protected under the provisions of the U.P. Act No.13 of 1972. In the written statement, there is admission of the defendant that the plaintiff is the landlord of the suit property. Thus, in view of the provisions contained in Section 116 of the Evidence Act, the defendant/revisionist is estopped from denying the title of the landlord/respondent. **[Shashi Bhushan vs. Lalit Mohan Singhal, 2021 AIR CC 127 (Utr): AIR Online 2020 Utr 308]**

Amendment in Uttar Pradesh Essential Commodities Act, 1955

1. Short title, extent and commencement. - (1) This Order may be called the Uttar Pradesh Essential Commodities (Regulation of Sale and Distribution Control) (Second Amendment) Order, 2020.

   (2) It shall extend to the whole of Uttar Pradesh.

   (3) It shall come into force with effect from the date of its publication in the Gazette.

2. Amendment of Clause 2.-In the Uttar Pradesh Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016, in clause in Clause 2 for sub-clause (o) the following sub-clause shall be substituted, namely –

   ‘(o)’ "Fair Price Shop Owner" means a person and includes a cooperative society and Self help group authorized to run a fair price shop appointed under provisions of this order."