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Arbitration and Conciliation Act

Ss. 9, 34 and 37, Irrevocable bank guarantee furnished by appellant, as per Court direction, but furnished in terms of alleged inadvertent error in such direction. Subsequent modification of Court direction, to substitute the bank guarantee in accordance with the modification to correct the alleged error. Legality of special leave petition under Article 136 of the Constitution, relating to an interim measure under Section 9 of the A&C Act. In light of disagreement at the Bench, matter referred to larger Bench **(SEPCO Electric Power Construction Corporation v. Power Mech Projects Limited, (2021) 10 SCC 792)**

Ss. 11, 8 and 11(6-A) - Interference by Court at referral stage - Limited scope of, particularly after 2015 Amendment - Contentions as to non-arbitrability When to be left to arbitrator to decide

Held, Court exercising power under S. 11 would refer the matter to arbitration when contentions relating to non-arbitrability are plainly arguable, or when facts are contested - Further, the Court cannot, at the referral stage, enter into a mini trial or elaborate review of the facts and law which would usurp the jurisdiction of the arbitrator

Disputed question of novation of agreement containing arbitration clause - Held, is thus non-determinable by Court at the stage of reference when it would result in a mini trial or elaborate review of facts and law

Arbitration clause contained in the memorandum of understanding (MoU) was invoked by the petitioner but the same was opposed, inter alia, on the premise that the MoU ceased to exist on and from the date of the shareholders' agreement (SHA) which superseded the MoU and novated the same

Held, whether the MoU has been novated by the SHA dt. 12-4-1996 requires a detailed consideration of the clauses of the two agreements, together with the surrounding circumstances in which these agreements were entered into, and a full consideration of the law on the subject

None of this can be done given the limited jurisdiction of a court under S. 11 - Further, detailed arguments on whether an agreement which contains an arbitration clause has or has not been novated cannot possibly be decided in exercise of a limited prima facie review as to whether an arbitration agreement exists between the parties Also, the case did not fall within the category of cases which ousts arbitration altogether, such as matters which are in rem proceedings or cases which, without doubt, concern minors, lunatics or other persons incompetent to contract - In the present case, parties referred to arbitration of a sole arbitrator, with directions to decide the dispute between the parties without reference to any observations made by the Court

By virtue of the Arbitration and Conciliation (Amendment) Act, 2015 ("the 2015 Amendment Act"), by which Section 11(6-A) was introduced, the earlier position as to the scope of the powers of a Court under Section 11, while appointing an arbitrator, are now narrowed to viewing whether an arbitration agreement exists between parties.

The Court at the referral stage can interfere only when it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. All other cases should be referred to the Arbitral Tribunal for decision on merits. Similar would be the position in case of disputed "no-claim certificate" or defence on the plea of novation and "accord and satisfaction". It is not to be expected that commercial men while entering transactions inter se would knowingly create a system which would require that the court should first decide whether the contract should be rectified or avoided or rescinded, as the case may be, and then if the contract is held to be valid, it would require the arbitrator to resolve the issues that have arisen."

When it appears that prima facie review would be inconclusive, or on consideration inadequate as it requires detailed examination, the matter should be left for final determination by the Arbitral Tribunal selected by the parties by consent. The underlying rationale being not to delay or defer and to discourage parties from using referral proceeding as a ruse to delay and obstruct. In such cases a full review by the courts at this stage would encroach on the jurisdiction of the Arbitral Tribunal and violate the legislative scheme allocating jurisdiction between the courts and the Arbitral Tribunal. Centralization of litigation with the Arbitral Tribunal as the primary and first adjudicator is beneficent as it helps in quicker and efficient resolution of disputes.

It is only in the very limited category of cases, where there is not even a vestige of doubt that the claim is ex facie time-barred, or that the dispute is non-arbitrable, that the court may

decline to make the reference. However, if there is even the slightest doubt, the rule is to refer the disputes to arbitration, otherwise it would encroach upon what is essentially a matter to be determined by the tribunal. **(Sanjiv Prakash v. Seema Kukreja and others, (2021) 9 SCC 732)**

Ss. 11(6) and 11(6-A) r/w S. 8 Appointment of arbitrator - Arbitrability of disputes-Court's intervention at the stage of appointment Limitations upon i.e. the issue whether the claims are arbitrable or not, held, ordinarily falls within the domain of the arbitration

An application was preferred under S. 11(6) for appointment of a sole arbitrator on the premise that disputes had arisen and that an arbitration agreement existed between the parties in the term sheet Respondent, opposed the same, contending that disputes sought to be raised were under the non-disclosure agreement and, therefore, not arbitrable, inasmuch as, there was no arbitration agreement in that agreement In the present case, arbitration petition allowed, however, with liberty to respondents to raise the issue of arbitrability before the arbitrator. **(Zostel Hospitality Private Limited through its authorized representative v. Oravel Stays Private Limited through its Director and others, (2021) 9 SCC 765)**

Ss. 11(6) and 11(9) r/w S. 2(1)(f)(i) and S. 2(1)(f)(iii)- International commercial arbitration - Scope of-Disputes between parties, where one of the parties is a sole proprietorship with the proprietor resident outside India. Consideration of, as falling within the realm of international commercial arbitration, even when the address of the sole proprietorship is in India

It has been held that the form that was filled in made it clear that the petitioners applied to become a distributor as a sole proprietorship, it being made clear that the husband, was the sole proprietor/"primary applicant", the wife being a "co-applicant" An analysis of S. 2(1)(f) would show that whatever be the transaction between the parties, if it happens to be entered into between persons, at least one of whom is either a foreign national, or habitually resident in, any country other than India; or by a body corporate which is incorporated in any country other than India; or by the Government of a foreign country, the arbitration becomes an international commercial arbitration notwithstanding the fact that the individual, body corporate, or government of a foreign country referred to in S. 2(1)(f) carry on business in India through a business office in India. This

being the case, Delhi High Court had no jurisdiction to appoint an arbitrator in the facts of this case. **[Amway India Enterprises Private Limited v. Ravindranath Rao Sindhia and another, (2021) 8 SCC 465]**

Limitation period for filing an application under S. 34 challenging arbitral award - Commencement of, from date on which the signed copy of the award is provided to the parties as opposed to the date on which the draft award is circulated

It has been held that the period of limitation for challenging the award under S. 34 commences from the date on which the party making the application has "received" a signed copy of the arbitral award, as required by S. 31(5) i.e. only after a valid delivery of the award (including dissenting opinion, if any) takes place under S. 31(5)

It has been held that in an Arbitral Tribunal if one of the members gives a dissenting opinion, it must be delivered contemporaneously on same date as the final award, and not on a subsequent date, as the Tribunal becomes functus officio upon the passing of the final award Further, the period for rendering the award and dissenting opinion must be within the period prescribed by S. 29-A

It has been held that the dissenting opinion of a minority arbitrator can be relied upon by the party seeking to set aside the award to buttress its submissions in the proceedings under S. 34 Further, at the stage of judicial scrutiny by the Court under S. 34, the Court is not precluded from considering the findings and conclusions of the dissenting opinion of the minority member of the Tribunal

Ss. 31- Signing of award by all arbitrators, including by any dissenting arbitrator.

Held, an award is made when it is authenticated by the person who makes it and the statute makes it obligatory for each of the members of the Tribunal to sign the award, to make it a valid award- The usage of the term "shall" makes it a mandatory requirement and it is not merely a ministerial act, or an empty formality which can be dispensed with Interpretation of Statutes - Subsidiary Rules - Mandatory or directory Use of word "shall"

Section 2(1)(c) of the A&C Act, 1996 defines "arbitral award" to include an interim award. The phrase "arbitral award" has been used in several provisions of the A&C Act, 1996. The statute recognizes only one arbitral award being passed by an Arbitral Tribunal, which may either be a unanimous award, or an award passed by a majority in the case of a panel of members. An award is a binding decision made by the arbitrator(s) on all the issues referred for adjudication. The award contains the reasons assigned by the Tribunal on the adjudication of the rights and obligations of the parties arising from the underlying commercial contract. The award must be one which decides all the issues referred for arbitration. The view of a dissenting arbitrator is not an award, but his opinion. However, a party aggrieved by the award, may draw support from the reasoning and findings assigned in the dissenting opinion.

The reference to the phrase "arbitral award" in Sections 34 and 36 refers to the decision of the majority of the members of the Arbitral Tribunal. A party cannot file a petition under Section 34 for setting aside or under Section 36 for enforcement of a dissenting opinion. What is capable of being set aside under Section 34 is the "arbitral award" i.e. the decision reached by the majority of members of the Tribunal. Similarly, under Section 36 what can be enforced is the "arbitral award" passed by the majority of the members.

Legal requirement of signing the award

The legal requirement of signing the arbitral award by a sole arbitrator, or the members of a Tribunal is found in Section 31 of the A&C Act, 1996, which provides the form and content of an arbitral award.

Section 31(1) is couched in mandatory terms, and provides that an arbitral award shall be made in writing and signed by all the members of the Arbitral Tribunal. If the Arbitral Tribunal comprises of more than one arbitrator, the award is made when the arbitrators acting together finally express their decision in writing, and is authenticated by their signatures. An award takes legal effect only after it is signed by the arbitrators, which gives it authentication. There can be no finality of the award, except after it is signed, since signing of the award gives legal effect and validity to it. The making and delivery of the award are different stages of an arbitration proceeding. An award is made when it is authenticated by the person who makes it. The statute makes it obligatory for each of the members of the Tribunal to sign the award, to make it a valid

award. The usage of the term "hall" makes it a mandatory requirement. It is not merely a ministerial act, or an empty formality which can be dispensed with.

Sub-section (1) of Section 31 read with sub-section (4) makes it clear that the Act contemplates a single date on which the arbitral award is passed i.e. the date on which the signed copy of the award is delivered to the parties. Section 31 (5) enjoins upon the arbitrator/Tribunal to provide the signed copy of the arbitral award to the parties. The receipt of a signed copy of the award is the date from which the period of limitation for filing objections under Section 34 would commence. This would be evident from the language of sub-section (3) of Section 34.

The period of limitation for filing an application under Section 34 would commence only after a valid delivery of the award takes place under Section 31(5) of the A&C Act, 1996.

Section 32 provides that the arbitral proceedings shall be terminated after the final award is passed. With the termination of the arbitral proceedings, the mandate of the Arbitral Tribunal terminates, and the Tribunal becomes functus officio. **[Dakshin Haryana Bijli Vitran Nigam Limited v. Navigant Technologies Private Limited, (2021) 7 SCC 657]**

S. 34-Jurisdiction of Court - Scope of Modification of arbitral award by Court under - Power of Court under S. 34 to "set aside" award does not include power to modify such an award

Section 34 of the A&C Act, 1996 provides only for setting aside awards on very limited grounds, such grounds being contained in sub-sections (2) and (3) of Section 34 of the A&C Act, 1996. Further, as the marginal note of Section 34 of the A&C Act, 1996 indicates, "recourse" to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-sections (2) and (3) of Section 34 of the A&C Act, 1996. "Recourse" is defined as the enforcement or method of enforcing a right. Where the right is itself truncated, enforcement of such truncated right can also be only limited in nature. What is clear from a reading of the said provisions is that, given the limited grounds of challenge under sub-sections (2) and (3), an application can only be made to set aside an award. This becomes even clearer in view of sub-section (4) of Section 34 of the A&C Act, 1996 under which, on receipt of an application under sub-section (1) of Section 34 of the A&C Act, 1996, the Court may adjourn the Section 34 proceedings and give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or take such action as will eliminate the grounds for setting aside the arbitral award. Here again, it is the opinion of the Arbitral Tribunal which counts in order to eliminate the grounds for setting aside

the award, which may be indicated by the court hearing the Section 34 of the A&C Act, 1996 application.

Under the scheme of the old 1940 Act, an award could be remitted, modified or otherwise set aside given the grounds contained in Section 30 of the Arbitration Act, 1940, which are broader than the grounds contained in Section 34 of the A&C Act, 1996. Section 34 of the A&C Act, 1996 proceeding does not contain any challenge on the merits of the award.

Thus, there can be no doubt that given the law laid down by the Supreme Court, Section 34 of the A&C Act, 1996 cannot be held to include within it a power to modify an award. To state that the judicial trend appears to favour an interpretation that would read into Section 34 of the A&C Act, 1996 a power to modify, revise or vary the award would be to ignore the previous law contained in the Arbitration Act, 1940; as also to ignore the fact that the A&C Act, 1996 was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 of the A&C Act, 1996 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the A&C Act, 1996.

To assimilate the Section 34 of the A&C Act, 1996 jurisdiction with the revisional jurisdiction under Section 115 CPC is again fallacious. Section 115 CPC expressly sets out the three grounds on which a revision may be entertained and then states that the High Court may make "such order as it thinks fit". These latter words are missing in Section 34 of the A&C Act, 1996, given the legislative scheme of the A&C Act, 1996.

It can be seen from Section 20-A of the Specific Relief Act that the speeding up of acquisition of land needed for national highways has been achieved. The challenge process to an award passed will, of necessity, take its own time, both under Section 3-G of the 1856 Act as well as under the provisions of the Land Acquisition Act. This being the case, it is a little difficult to appreciate as to why the wholesome regime of appeals under the Land Acquisition Act has been replaced by a regime in which an award passed by an arbitrator, who is not consensually appointed but appointed by the Central Government, can only be challenged not on merits, but on the limited grounds contained in Section 34 of the A&C Act, 1996.

There can be no doubt that differential compensation cannot be awarded on the ground that a different public purpose is sought to be achieved. Also, the legislature cannot say that, however

laudable the public purpose and however important it is to expedite the process of land acquisition, differential compensation is to be paid depending upon the public purpose involved or the statute involved. There can be no doubt that discrimination would be writ large in such cases. In present case even after declaring the law and setting aside the High Court judgment on law, there is no warrant for interfering with the judgment on facts, as the justice of the case does not require interference under Article 136 of the Constitution. Given the fact that in several similar cases, the NHAI has allowed similarly situated persons to receive compensation at a much higher rate than awarded, there is no warrant to exercise of jurisdiction under Article 136 of the Constitution in favour of the appellants on the facts of these cases not warranted. Also, given the fact that most of the awards in these cases were made 7-10 years ago, it would not, at this distance in time, be fair to send back these cases for a de novo start before the very arbitrator or some other arbitrator not consensually appointed, but appointed by the Central Government. The appeals are, therefore, dismissed. **[Project Director, National Highways No. 45E and 220 National Highways Authority of India v. M Hakeem and another, (2021) 9 SCC 1]**

Ss. 34(2A), 18-Setting aside of arbitral award-Scope of interference-Explained

It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of public policy of India, which has been held to mean the fundamental policy of Indian law. A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Section 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the most basic notions of morality or justice. It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award. **[PSA SICAL**

Terminals Pvt. Ltd. vs. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin, AIR 2021 SC 4661]

Civil Procedure Code

S. 9- Jurisdiction of civil court to entertain civil suit based on Industrial Disputes Act, 1947. Challenge to termination order founded on provisions of Industrial Disputes Act, 1947. It was held that civil court lacks jurisdiction to entertain suit structured on provisions of the ID Act and any decree passed by court without jurisdiction is nullity. Further, plea of decree being nullity can also be raised at execution stage. **(Milkhi Ram v. Himachal Pradesh State Electricity Board, (2021) 10 SCC 752)**

S. 11, O. 14 Rr. 1, 2—Res judicata—Issue as to—Whether can be decided as preliminary issue—

In Mathura Prasad Bajoo Jaiswal v. Dossibai N.B Jeejeebhoy (1970) 1 SCC 613, the application of the plaintiff in the Court of the Civil Judge for the determination of Standard Rent under Section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act 1947 was dismissed on the ground that the statute did not apply to a case of open land let for the construction of buildings. This decision was affirmed in appeal. However, in view of another decision of the Bombay High Court which held that the statute would be applicable to leased land, the plaintiff filed a fresh proceeding in the Court of Small Causes. The Trial Court and the High Court held that the subsequent suit was barred by res judicata. However, Justice J C Shah writing for a 3-judge bench held that the subsequent suit was not barred by res judicata:

> 5. But the doctrine of res judicata belongs to the domain of procedure: it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties: the matter in issue may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent Court is finally determined between the parties and cannot be re-opened between them in another

proceeding. The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata.

11.The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression the matter in issue in Section 11 of the Code of Civil Procedure means the right litigated between the parties i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land.

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

An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of res judicata if there arises a new fact which has to be proved. However, the plea of res judicata may in an appropriate case be determined as a preliminary issue

when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it. **[Jamia Masjid vs. K.V. Rudrappa (Since Dead) by Lrs. AIR 2021 SC 4523]**

S. 47—Execution of decree—Power to order property attached to be sold—Suit for recovery of money—Executing Court should cause proclamation of intended sale to be drawn up in language of Court—

It must be pointed out at this stage that under Order XXI, Rule 66 (1) the executing court should cause proclamation of the intended sale to be drawn up in the language of the court. Under sub rule (2) of Rule 66 of Order XXI, such proclamation should be drawn up after notice to the decree holder and the judgment−debtor. Order XXI, Rule 66 reads as follows:−

> Proclamation of sales by public auction.− (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.
>
> (2) Such proclamation shall be drawn up after notice to the decree−holder and the judgment−debtor and shall state the time and place of sale, and specify as fairly and accurately as possible
>
> (a) the property to be sold, or, where a part of the property would be sufficient to satisfy the decree, such part;
> (b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;
> (c) any incumbrance to which the property is liable;
> (d) the amount for the recovery of which the sale is ordered; and
> (e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property:
>
> Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment− debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment− debtor unless the Court otherwise directs:
> Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the parties.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub−rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

S. 65 of the Code says that, where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute. The sale of a property becomes absolute under Order XXI, Rule 92(1) after an application made under Rule 89, Rule 90 or Rule 91 is disallowed and the court passes an order confirming the same. After the sale of an immovable property becomes absolute in terms of Order XXI, Rule 92(1), the Court has to grant a certificate under Rule 94. The certificate has to bear the date and the day on which the sale became absolute. Thus a conjoint reading of Section 65, Order XXI, Rule 92 and Order XXI, Rule 94 would show that it passes through three important stages (other than certain intervening stages). They are, (i) conduct of sale; (ii) sale becoming absolute; and (iii) issue of sale certificate. After all these three stages are crossed, the 4th stage of delivery of possession comes under Rule 95 of Order XXI. It is at this 4 th stage that the appellants have raised the objection relating to Order XXI, Rule 64. It is not as if the appellants were not aware of the fact that the property in entirety was included in the proclamation of sale. Therefore, the claim on the basis of Order XXI, Rule 64 was rightly rejected by the High Court. **[Dipali Biswas vs. Nirmalendu Mukherjee, AIR 2021 SC 4756]**

S. 96 r/w Order 41, Rule 31 of Civil Procedure Code, 1908 - Compliance with requirements of Order 41, Rule 31 is mandatory.

Contract and Specific Relief Specific Relief Act, 1963 - S. 16 Readiness and willingness of plaintiff to perform his part of the contract Reiterated, is mandatory for grant of specific performance. In the absence thereof conduct of defendant in not evicting tenants and handing over vacant possession to plaintiff was held not relevant. Nor is non-refund of consideration amount

with interest by defendant relevant, if plaintiff could not establish his readiness and willingness to perform his part of the contract. **(K. Karuppuraj v. M. Ganesan, (2021) 10 SCC 777)**

Order 2, Rule 2—Bar as to civil suit—On ground that both suits containing same cause of action

The plaintiff had filed the first suit on 27.1.1995 after the tenanted premises were demolished. The right to claim damages for loss of the property including goods and machines was available to the plaintiff on the said date. In fact, in the second suit, the plaintiff has pleaded that the cause of action arose to him on 9.1.1995. The Order II Rule 2 CPC reads thus:

> "**2. Suit to include the whole claim**. – (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.
>
> (2) Relinquishment of part of claim .—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.
>
> (3) Omission to sue for one of several reliefs .—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."

A perusal of the above Rule would show that every suit shall include whole of the claim which the plaintiff is entitled to make in respect of the cause of action. The cause of action is a bundle of facts and relief of damages is construed to be a component of such bundle of facts. The plaintiff was conscious of the fact that he wants to sue for damages which is evident from his averment in para 9 of the plaint of the first suit but the plaintiff was required to obtain leave of the Court before filing suit for damages subsequently. The High Court has clearly erred in law in holding that the cause of action for both the suits is different. **[Abdul Khuddus vs. H.M. Chandiramani (Dead) By Lrs. AIR 2021 SC 4321]**

Order 7, Rule 11-- Transfer of Property Act, Sec. 3 Expln. II—Rejection of plaint

The 2 ingredients of the relevant part of Section 3 providing as to when “a person is said to have notice”, are matters of fact to be established through evidence. It is not the case of respondents that the plaintiffs had real or constructive notice of the proceedings by virtue of such a public notice. It is not even known whether a public notice was ever published. Therefore, the plea of constructive notice raised with a view to sustain the plea of limitation cannot be accepted at the stage of dealing with an application for rejection of plaint. **[Salim D. Agboatwala vs. Shamalji Oddhavji Thakkar, AIR 2021 SC 5212]**

Or. 7 Rr. 11, 2(2) and S. 96- Rejection of plaint - Order of trial court rejecting plaint is covered in definition of "decree" in S. 2(2) CPC- Hence, such order of trial court is subject to first appeal under S. 96 CPC

The issues for determination before the Supreme Court were:

(i) Whether an order rejecting plaint under Order 7 Rule 11 CPC is subject to a first appeal under Section 96 CPC and hence, the proper remedy is not a writ petition under Article 227 of the Constitution?

(ii) Whether the order of the trial court while rejecting the plaint under Order 7 Rule 11(d) CPC and granting the appellant-plaintiff liberty to amend plaint by seeking appropriate reliefs and paying court fee is a valid order?

The definition of "decree" in Section 2(2) CPC expressly provides that a "decree" "shall be deemed to include the rejection of a plaint". Hence, the order of the trial court rejecting the plaint is subject to a first appeal under Section 96 CPC. The writ petition filed by the appellant was liable to be rejected on that ground. Therefore judgment of the High Court rejecting the writ petition is affirmed.

The proviso to Order 7 Rule 11 deals with a situation where time has been fixed by the court for the correction of the valuation or for supplying of the requisite stamp paper. Under the above proviso, the time so fixed shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented. by a cause of an exceptional nature from complying within the time fixed by the court and that a refusal to extend time would cause grave injustice to the plaintiff. The proviso only covers the cases falling within the ambit of clauses (b) and (c) of Order 7 Rule 11 CPC and has no application to a rejection of a plaint under Order 7 Rule 11(d). In the circumstances, the High Court was justified in coming to the conclusion that the further direction that was issued by the trial Judge granting to the appellant-plaintiff liberty to amend the plaint by seeking appropriate reliefs and paying the court fee was not in consonance with law.

Since the dismissal of the writ petition has been upheld on the ground that the order rejecting the plaint operates as a decree within the meaning of Section 2(2) CPC, the appellant is at liberty to take recourse to the remedy against the rejection of the plaint as prescribed by the CPC. **[Sayyed Ayaz Ali v. Prakash G Goyal and Others, (2021) 7 SCC]**

Order 7, R. 11—Partnership Act, Secs. 40, 42, 43, 44, 48—Rejection of plaint—Averments in plaint not disclosing cause of action and reliefs as sought in plaint cannot be granted to plaintiff—Rejection of plaint, proper

No doubt that only on the basis of the averments made in the plaint, it could be ascertained as to whether a cause of action is made out or not. It is equally true that for finding out the same, the entire pleadings in the plaint will have to be read and that too, at their face value. At this stage, the defence taken by the defendants cannot be looked into.

Reading of the averments made in the plaint should not only be formal but also meaningful. It has been held that if clever drafting has created the illusion of a cause of action, and a meaningful reading thereof would show that the pleadings are manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, then the court should exercise its power under Order VII Rule 11 of CPC. It has been held that such a suit has to be nipped in the bud at the first hearing itself.

> (31) It is trite law that the partners of a firm are entitled only to the profits of the firm and upon dissolution of the firm they are entitled to the surplus of the sale proceeds of the assets and properties of the firm, if any, after meeting the liabilities of the firm, in the share agreed upon in the partnership deed. The partners do not have any right, title or interest in respect of the assets and properties of a firm so long as the firm is carrying on business.

It is settled law that only the partners of a firm can seek dissolution of the firm. Admittedly, the plaintiffs are not partners of the said firm. Sec. 39 of the Partnership Act provides that the dissolution of partnership between all the partners of a firm is called 'the dissolution of the firm'. Sec. 40 provides that a firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners. Sec. 41 provides for compulsory dissolution of a firm. Sec. 42 stipulates that happening of certain contingencies will cause dissolution of a firm but this is subject to contract between the partners. A partnership−at− will may be dissolved by any partner giving notice in writing to the other partners of his intention to dissolve the firm, as provided in

Sec. 43 of the Act. Sec. 44 empowers the Court to dissolve a firm on the grounds mentioned therein on a suit of a partner.

Thus, it is clear that it is only a partner of a firm who can seek dissolution of the firm. The dissolution of a firm cannot be ordered by the court at the instance of a non− partner. Hence, the plaintiffs are not entitled to claim dissolution of the said firm. Consequently, they are also not entitled to pray for accounts for the purpose of dissolution of the firm.

(32) What should the Court do if it finds that even taking the averments in the plaint at face value, not one of the reliefs claimed in the plaint can be granted? Should the Court send the parties to trial? We think not. It will be an exercise in futility. It will be a waste of time, money and energy for both the plaintiffs and the defendants as well as unnecessary consumption of Court's time. It will not be fair to compel the defendants to go through the ordinarily long drawn process of trial of a suit at huge expense, not to speak of the anxiety and un−peace of mind caused by a litigation hanging over one's head like the Damocles's sword. No purpose will be served by allowing the suit to proceed to trial since the prayers as framed cannot be allowed on the basis of the pleadings in the plaint. The plaintiffs have not prayed for leave to amend the plaint. When the court is of the view just by reading the plaint alone and assuming the averments made in the plaint to be correct that none of the reliefs claimed can be granted in law since the plaintiffs are not entitled to claim such reliefs, the Court should reject the plaint as disclosing no cause of action. The reliefs claimed in a plaint flow from and are the culmination of the cause of action pleaded in the plaint. The cause of action pleaded and the prayers made in a plaint are inextricably intertwined. In the present case, the cause of action pleaded and the reliefs claimed are not recognized by the law of the land. Such a suit should not be kept alive to go to trial..

It could thus be seen that this Court has held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. However, under Order VII Rule 11 of CPC, the duty is cast upon the court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. This Court has held that the underlying object of Order VII Rule 11 of CPC is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted. **[Rajendra Bajoria vs. Hemant Kumar Jalan, AIR 2021 SC 4594]**

Order 7 Rule 11(d) and Section 11 of the Civil Procedure Code, 1908 - Rejection of plaint where suit appears from statement in plaint to be barred by any law - Applicability of bar of res judicata cannot be determined at stage of rejection of plaint-The same can only be determined upon trial of the suit

Guiding principles for deciding application under Order 7 Rule 11(d) re-emphasized that law summarized - Only the averments in the plaint may be considered at this stage

On a perusal of the authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) CPC can be summarized as follows:

(1) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.

(2) The defence made by the defendant in the suit must not be considered while deciding the merits of the application.

(3) To determine whether a suit is barred by res judicata, it is necessary that (i) the "previous suit" is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.

(4) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the "previous suit", such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused.

Thus, the plaint was not liable to be rejected under Order 7 Rule 11(d) and the findings of the trial court and the High Court are affirmed. **[Srihari Hanumandas Totala v. Hemant Vithal Kamat and Others, (2021) 9 SCC 99]**

Order 21, R.16 Expln., Ss. 47, 146—Execution by transferee by decree

The Law Commission recommended amending Order XXI Rule 16 to clarify that it does not affect the provisions of Section 146 and that a transferee of rights in the subject matter of the suit can obtain execution of a decree without separate assignment of the decree. The objective appears to be to not have multifarious proceedings to determine the issue of assignment, but to determine the issue of assignment in the execution proceedings itself.

In the conspectus of the aforesaid we are of the view that the objective of amending Order XXI Rule 16 of the CPC by adding the Explanation was to avoid separate suit proceedings being filed therefrom and to that extent removing the distinction between an assignment pre the decree and an assignment post the decree. Thus, what has been discussed even in the judgment in

Jugalkishore Saraf (supra) as a view based on the equitable principle was sought to be incorporated in Order XXI Rule 16 of the CPC by adding the Explanation, something which had not been done earlier. Once the legislative intent is clear, and the law is amended, then the earlier position of law cannot be said to prevail post the amendment and it is not in doubt that the present case is one post the amendment.

The Explanation clearly stipulates that nothing in Order XXI Rule 16 of the CPC would affect the provisions of Section 146 and the transferee of the right in property which is subject matter of a suit may apply for execution of the decree without separate assignment of the decree as required by law. No doubt the appellants are not parties in the suit proceedings but they claim as assignees of the decree holder. **[Vaishno Devi Construction Rep. Thr. Sole Proprietor (D) Thr. Lrs vs. Union of India, AIR 2021 SC 5309]**

Order XXIII, Rules 3 and 3-A-Contract Act, 1872 – Section 10 –High Court held that suit was barred by Order XXIII, Rule 3-A, CPC and only remedy available was to question the compromise decree in the same suit - High Court dismissed both the appeals – Appeals against – Rule 3-A provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful - Reading Rule 3 with Proviso and Explanation, it is clear that an agreement or compromise, which is void or voidable, cannot be recorded by the Courts and even if it is recorded the Court on challenge of such recording can decide the question - Explanation refers to Indian Contract Act - Contract Act provides as to which contracts are void or voidable – An agreement or compromise which is clearly void or voidable shall not be deemed to be lawful and the bar under Rule 3-A shall be attracted if compromise on the basis of which decree was passed was void or voidable – Appeals are partly allowed.

Contract Act, 1872 – Sections 10, 13 and 14 – Civil Procedure Code, 1908 – Order XXIII, Rule 3- A conjoint reading of Sections 10, 13 and 14 indicates that when consent is obtained by coercion, undue influence, fraud, misrepresentation or mistake, such consent is not free consent and the contract becomes voidable at the option of the party whose consent was caused due to coercion, fraud or misrepresentation - An agreement, which is void or voidable under the Contract Act, shall not be deemed to be lawful as is provided by Explanation to Rule 3 of Order XXIII.
The above judgments contain a clear ratio that a party to a consent decree based on a compromise to challenge the compromise decree on the ground that the decree was not lawful, i.e., it was void or voidable has to approach the same court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable. In Suit No.1101 of 1987, the

plaintiff prayed for a declaration declaring that the decree passed in O.S. No. 37 of 1984 is sham and nominal, ultravires, collusive, unsustainable invalid, unenforceable and not binding on the plaintiffs. We have noted the grounds as contained in the plaint to challenge the consent decree in foregoing paragraphs from which it is clear that the compromise, which was recorded on 06.08.1984 was sought to be termed as not lawful, i.e., void or voidable. On the basis of grounds which have been taken by the plaintiff in Suit No.1101 of 1987, the only remedy available to the plaintiff was to approach the court in the same case and satisfy the court that compromise was not lawful. Rule 3A was specifically added by the amendment to bar separate suit to challenge the compromise decree which according to legislative intent to arrest the multiplicity of proceedings. We, thus, do not find any error in the judgment of trial court and High Court holding that Suit No.1101 of 1987 was barred under Order XXIII Rule 3A. **R. Janakiammal vs. S.K. Kumarasamy (Deceased) through LRs. and others, 2021 (153) RD 591 (SC) – Ashish Kumar Singh vs. Addl. District & Session Judge, 2021 (153) RD 637 (Alld. HC- Lucknow Bench)**

Constitution of India

Arts. 14, 15 & 16– Cap on percentage of Reservation – Right of Equality and Social Change

Hon'ble Supreme Court had drawn the following conclusions;

i. The greatest common measure of agreement in six separate judgments delivered in Indra Sawhney case is:
    a) Reservation under Article 16(4) should not exceed 50%.
    b) For exceeding reservation beyond 50%, extraordinary circumstances as indicated in para 810 of B.P. Jeevan Reddy, J. should exist for which extreme caution is to be exercised.

ii. The 50% rule spoken in M.R. Balaji, AIR 1963 SC 649 and affirmed in Indra Sawhney case is to fulfill the objective of equality as engrafted in Article 14 of which Articles 15 and 16 are facets. 50% is reasonable and it is to attain the object of equality. To change the 50% limit is to have a society which is not founded on equality but based on caste rule.

iii. The cap on percentage of reservation as has been laid down by the Constitution Bench in *Indra Sawhney case* is with the object of striking a balance between the rights under Articles 15(1) and 15(4) as well as Articles 16(1) and 16(4). The cap on percentage is to

achieve the principle of equality and with the object to strike a balance which cannot be said to be arbitrary or unreasonable.

iv. Providing reservation for advancement of any socially and educationally backward class in public services is not the only means and method for improving the welfare of backward class. The State ought to bring other measures including providing educational facilities to the members of backward class free of cost, giving concession in fee, providing opportunities for skill development to enable the candidates from the backward class to be self-reliant.

v. There can be no quarrel that society changes, law changes, people change but that does not mean that something which is good and proven to be beneficial in maintaining equality in the society should also be changed in the name of change alone.

vi. When the Constitution Bench in *Indra Sawhney case* held that 50% is the upper limit of reservation under Article 16(4), it is the law which is binding under Article 141 and to be implemented.

vii. The Constitution Bench judgment in *Indra Sawhney case* is also fully applicable in reference to Article 15(4) of the Constitution.

viii. The setting aside of the 50% ceiling by the eleven-Judge Bench in *T.M.A. Pai Foundation, (2002) 8 SCC 481* as was laid down by St. *Stephen's College, (1992) 1 SCC 558* i.e. 50% ceiling in admission in aided minority institutions has no bearing on the principle of 50% ceiling laid down by *Indra Sawhney case* with respect to reservation. *T.M.A. Pai Foundation case* was in reference to rights of minorities under Article 30 and is not relevant for reservation under Articles 16(4) and 15(4) of the Constitution.

ix. The Constitution (Eighty-first Amendment) Act, 2000 by which clause (4-B) was inserted in Article 16 makes it clear that the ceiling of 50% "has now received constitutional recognition".

x. The extraordinary situations indicated in para 810 of *Indra Sawhney case* were only illustrative and cannot be said to be exhaustive. However, the said para 810 does not provide only a geographical test. The use of the expression "on being out of the mainstream of national life", is a social test, which also needs to be fulfilled for a case to be covered by exception.

xi. There is no substance in any of the 10 grounds urged by the petitioners for revisiting and referring the judgment of *Indra Sawhney case* to a larger Bench.

xii. What was held by the Constitution Bench in *Indra Sawhney case* on the relevance and significance of the principle of stare decisis clearly binds this Bench. The judgment of *Indra Sawhney case* has stood the test of time and has never been doubted by any judgment of the Supreme Court. The Constitution Bench judgment in *Indra Sawhney case* neither needs to be revisited nor referred to a larger Bench for consideration.

xiii. The Constitution Bench in *M. Nagaraj, (2006) 8 SCC 212* does not contain any ratio that the ceiling of 50% reservation may be exceeded by showing quantifiable contemporary data relating to backwardness. The Commission has completely misread the ratio of the

judgment, when the Commission took the view that the quantifiable data ceiling of 50% can be breached.

xiv. The Commission and the High Court found existence of the extraordinary situations with regard to exceeding 50% ceiling in respect to grant of separate reservation to Marathas because the population of backward class is 80% and reservation limit is only 50%, containing the Marathas in pre existing reservation for OBC shall not be justice to them, which circumstance is not covered under the parameters indicated in Indra Sawhney case as extraordinary circumstance to breach 50% ceiling.

xv. It has been found that no extraordinary circumstances were made out in granting separate reservations of the Maratha community by exceeding the 50% ceiling limit of reservation. The MSEBC Act, 2018 violates the principle of equality as enshrined in Article 16. The exceeding of ceiling limit without there being any extraordinary circumstances clearly violates Articles 14 and 16 of the Constitution which makes the enactment ultra vires.

xvi. The proposition is well settled that Commissions' reports are to be looked into with deference. However, one of the parameters of scrutiny of the Commission's report as approved by the Supreme Court is that on the basis of data and materials referred to in the report whether conclusions arrived by the Commission are justified.

xvii. The measures taken under Articles 15(4) and 16(4) can be examined as to whether they violate any constitutional principle, and are in conformity with the rights under Articles 14, 15 and 16 of the Constitution. The scrutiny of measures taken by the State, either executive or legislative, thus, has to pass the test of constitutional scrutiny.

xviii. The word "adequate" is a relative term used in relation to representation of different castes and communities in public employment. The objective of Article 16(4) is that the backward class should also be put in the mainstream to enable the sharing of power of the State by affirmative action. To be part of public service, as accepted by the society of today, is to attain social status and play a role in governance.

xix. The issues regarding representation of Marathas in State services on the basis of facts and materials compiled by the Commission and obtained from the States and other sources, have been examined. The representation of Marathas in public services in Grades A, B, C and D comes to 33.23%, 29.03%, 37.06% and 36.53% computed from out of the open category filled posts, is adequate and satisfactory representation of Maratha community. One community bagging so many posts in public services is a matter of pride for the community and its representation in no manner can be said to be not adequate in public services.

xx. The constitutional precondition for providing reservation as mandated by Article 16(4) is that the backward class is not adequately represented in the public services. The Commission laboured under the misconception that unless the Maratha community is not represented equivalent to its proportion, it is not adequately represented. Indra Sawhney case has categorically held that what is required by the State for providing reservation under Article 16(4) is not proportionate representation but adequate representation.

xxi. The constitutional precondition as mandated by Article 16(4) being not fulfilled with regard to Maratha class, both the Gaikwad Commission's Report/Report of the Gaikwad Commission and consequential legislation are unsustainable.

xxii. Having disapproved the grant of reservation under Article 16(4) to Maratha community, the said decision becomes relevant and shall certainly have effect on the decision of the Commission holding Marathas to be socially and educationally backward. Sufficient and adequate representation of the Maratha community in public services is an indicator that they are not socially and educationally backward. From the facts and figures as noted by the Gaikwad Commission in its Report regarding representation of Marathas in public services, the percentage of Marathas in admission to engineering, medical colleges and other disciplines, their representation in higher academic posts, the conclusion drawn by the Commission is not supportable from the data collected. The data collected and tabled by the Commission as noted in the Report clearly proves that Marathas are not socially and educationally backward class.

Order

Hence, it is ordered as follows on Points (1) to (3) on which all five Judges constituting this Bench unanimously agree:

i. Section 2(j) of the MSEBC Act, 2018 insofar as it declares Marathal community Educationally and Socially Backward Category is held to be ultra vires to the Constitution and struck down.

ii. Section 4(1)(a) of the MSEBC Act, 2018 as amended by the 2019 Act insofar as it grants reservation under Article 15(4) to the extent of 12% of total seats in educational institutions including private institutions whether aided or unaided by the State, other than minority educational institutions, is declared ultra vires to the Constitution and struck down.

iii. Section 4(1)(b) of the MSEBC Act, 2018 as amended by the 2019 Act granting reservation of 13% to the Maratha community of the total. appointments in direct recruitment in public services and posts under the State, is held to be ultra vires to the Constitution and struck down.

iv. Those admissions insofar as postgraduate medical courses which were already held not to affect by order dated 9-9-2020, which shall not be affected by this judgment. Hence, those students who have already been admitted in postgraduate medical courses prior to 9-9-2020 shall be allowed to continue.

v. The admissions in different courses, medical, engineering and other streams which were completed after the judgment of the High Court dated 27-6-2019 till 9-9-2020 are saved. Similarly, all the appointments made to the members of the Maratha community in public services after the judgment of the High Court dated 27-6-2019 till the order passed by the Supreme Court on 9-9-2020 are saved. However, no further benefit can be claimed by such

Maratha students admitted in different course or Maratha members who were appointed in public services in the State under the MSEBC Act, 2018.

After the order was passed on 9-9-2020 neither any admission can be taken in the educational institutions nor any appointment can be made in public services and posts in accordance with the MSEBC Act, 2018. **[Dr. Jaishri Laxmanrao Patil v. Chief Minister and others, (2021) 8 SCC 1]**

Articles 14, 19(1)(g) & 226 of Constitution of India – Scope and extent of regulation of Right of private unaided schools to determine their school fees. Every private unaided school is free to devise its own fee structure depending upon the quality of education it provides. But reiterated that commercialization, profiteering and/or charging of capitation fee is not permissible as in such case, Government can direct a school to reduce its fees. **(Indian School, Jodhpur and another v. State of Rajasthan and others, (2021) 10 SCC 517)**

Art. 19(1) (a) Open court Citizens have right to information relating to court proceedings, except in-camera proceedings - This includes the right to know the observations/remarks made by Judges during course of hearing, not forming part of judgment or binding decision, which the media is free to report

Art. 19(1) (a) Freedom of Press - Includes reporting and commenting on court proceedings-Courts have to be engaged with evolving technology

Art. 19(1) (a) — Open court - Freedom of Press-Media reporting and public discourse on court proceedings, including reporting of observations/remarks made by Judges during course of hearing, not forming part of judgment or binding decision-Augment integrity of judiciary and cause of justice as a whole - Courts should not prevent new media forums with advanced technology from reporting real time updates to a wider audience which would constitute virtual extension of open court

Courts, Tribunals and Judiciary Judicial Process - Judicial decision/Judicial function - What is Observations/remarks made by Judges during course of hearing, not forming part of judgment or binding decision - Reveal only Judge's mind in regard to any tentative point of view so as to facilitate process of adjudication Exchange of views from Bench is intrinsic process of open and transparent judging, and the media is free to report them- Though to

maintain the dignity of the institution, Judges should exercise proper restraint in the language they use in open court

Courts, Tribunals and Judiciary Judicial Process - Judicial decision/Judicial function- What is - Oral remarks made by Judges during course of hearing Independence of judiciary - Freedom of expression of Judges in court and constraints on judicial conduct - Balancing role of superior court

Arts. 19 and 21- Right to identity - Sanctity of identity and protection of identity of individual, guaranteed under the Constitution - Control of one's name and freedom to modify or change one's name.

Identity being an amalgam of various internal and external factors including acquired characteristics and one's name being one of the foremost indicators of identity, held, individual must be in complete control of her name and law must enable her to exercise such control freely "for all times." Guaranteed right to freedom of speech and expression under Art.19 (1) (a) includes freedom to lawfully express one's identity in manner of one's liking i.e. expression of identity is a protected element of freedom of expression under the Constitution.

Further held, change of identity cannot be regarded as formally or legally complete until State and its agencies take note thereof in their records However, right to get changed name recorded in official records is not an absolute right and reasonable restrictions may be imposed to observe consistency, obviate confusion and deceptive attempts, as a matter of public policy and in larger public interest - In present case, held, CBSE Board dealing with maintenance of educational standards cannot arrogate to itself power to impact identity of students enrolled with it - Right to control one's identity must remain with individual, subject to reasonable restrictions imposed by law.

It has been held that CBSE is "State" within the meaning of Art. 12 as it is the only central body for conducting examination in country created by resolution of Central Government for educational governance. Despite being packaged as registered society CBSE performs essential public function for Government CBSE Board is a public authority functioning in public interest

for performance of public function **[Jigya Yadav (Minor) (Through Guardian/Father Hari Singh) v. Central Board of Secondary Education and others, (2021) 7 SCC 535]**

Art. 22- Preventive Detention - Grounds of detention - Basis of detention - "Public order", "security of State" and "law and order" - Acts committed by detenu at best amounting to offences which would affect "law and order", but, held, were not such as to disturb "public order" which was the ground given for issuance of detention order - Grant of anticipatory bail/bail to detenu, further held, did not change this position as release on bail again only created apprehension of "law and order" being affected and not "public order" Hence, detention order set aside - Authorities free to pursue proper remedy

In instant case, allegations in the five FIRs pertain to the realm of "law and order" in that various acts of cheating are ascribed to the detenu which are punishable under the three sections of the Penal Code set out in the five FIRs. A close reading of the detention order makes it clear that the reason for the said order is not any apprehension of widespread public harm, danger or alarm but is only because the detenu was successful in obtaining anticipatory bail/bail from the courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the detenu, the harm, danger or alarm or feeling of insecurity among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make-believe and totally absent in the facts of the present case.

When a person is preventively detained, it is Articles 21 and 22 that are attracted and not Article 19. Further, preventive detention must fall within the four corners of Article 21 read with Article 22 and the statute in question. To therefore argue that a liberal meaning must be given to the expression "public order" in the context of a preventive detention statute is wholly inapposite and incorrect. On the contrary, considering that preventive detention is a necessary evil only to prevent public disorder, the Court must ensure that the facts brought before it directly and inevitably lead to a harm, danger or alarm or feeling of insecurity among the general public or any section thereof at large.

Thus, it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the detenu, if set free, will continue to cheat gullible persons. This may be a good ground to appeal against the bail orders granted and/or to cancel bail but certainly cannot provide the springboard to move under a preventive detention statute. Consequently, the detention order is hereby quashed. **[Banka Sneha Sheela v. State of Telangana and others, (2021) 9 SCC 415]**

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Arts. 226 and 136- Alternative remedy - Misconceived prayer for exercise of writ jurisdiction, rejected

The basis of the application seeking a restraint on the media on reporting court proceedings was that nothing apart from what forms a part of the official judicial record should be reported. This prayer of EC strikes at two fundamental principles guaranteed under the Constitution-open court proceedings; and the fundamental right to the freedom of speech and expression.

Courts must be open both in the physical and metaphorical sense. Save and except for in-camera proceedings in an exceptional category of cases, such as cases involving child sexual abuse or matrimonial proceedings bearing on matters of marital privacy, our legal system is founded on the principle that open access to courts is essential to safeguard valuable constitutional freedoms. The concept of an open court requires that information relating to a court proceeding must be available in the public domain. Citizens have a right to know about what transpires in the course of judicial proceedings. The dialogue in a court indicates the manner in which a judicial proceeding is structured. Oral arguments are postulated on an open exchange of ideas. It is through such an exchange that legal arguments are tested and analyzed. Arguments addressed before the court, the response of opposing counsel and issues raised by the court are matters on which citizens have a legitimate right to be informed. An open court proceeding ensures that the judicial process is subject to public scrutiny.

Public scrutiny is crucial to maintaining transparency and accountability. Transparency in the functioning of democratic institutions is crucial to establish the public's faith in them. There

are multiple ways in which an open court system contributes to the working of democracy. An open court system ensures that Judges act in accordance with law and with probity. Public scrutiny fosters confidence in the process. Public discussion and criticism may work as a restraint on the conduct of a Judge. Cases before the courts are vital sources of public information about the activities of the legislature and the executive. An open court serves an educational purpose as well. The court becomes a platform for citizens to know how the practical application of the law impacts upon their rights. Hence, while in-camera proceedings may be necessary in certain exceptional circumstances to preserve countervailing interests such as the rights to privacy and fair trial, public scrutiny of the court process remains a vital principle for the functioning of democracy.

Freedom of speech and expression extends to reporting the proceedings of judicial institutions as well. Courts are entrusted to perform crucial functions under the law. Their work has a direct impact, not only on the rights of citizens, but also the extent to which the citizens can exact accountability from the executive whose duty it is to enforce the law. Citizens are entitled to ensure that courts remain true to their remit to be a check on arbitrary exercises of power. The ability of citizens to do so bears a direct correlation to the seamless availability of information about what happens in a court during the course of proceedings. Therein lies the importance of freedom of the media to comment on and write about proceedings. It is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during and after trial, without violating the presumption of innocence. This principle is recognized within Indian jurisprudence, where the media has full freedom to report on ongoing litigation before the courts, within certain limitations, bearing on the need to ensure that justice between parties is not derailed. The rights of the media to report and disseminate issues and events, including court proceedings that are a part of the public domain, is not merely an aspect of protecting the rights of individuals and entities on reporting, but also a part of the process of augmenting the integrity of the judiciary and the cause of justice as a whole.

The media has over the years, transitioned from the predominance of newspapers in the printed form, to radio broadcasts, television channels and now, to the internet for disseminating news, views and ideas to wide audiences extending beyond national boundaries. The courts should engage with evolving technology. Technology has shaped social, economic and political structures beyond description. The world is adapting to technology at a pace which is often difficult to catalogue, and many of our citizens are becoming digital natives from a young age. They will look

towards modern forms of media, such as social media websites and applications, while consuming the news. This would also include information reported about the functioning of courts. Hence, it would do no good to prevent the new forms of media from reporting on courts' work. Acceptance of a new reality is the surest way of adapting to it. Our public constitutional institutions must find better responses than to complain.

The court should do nothing to discourage fair and accurate reports of proceedings. An open court and transparent dispensation of justice in all its modalities, is an end in itself. Technology is an accelerant in this endeavour, but not the harbinger of this thought. Media reporting has operated alongside formalized court processes for close to a century. With the advent of technology reporting proliferate through social media forums which provide real-time updates to a much wider audience. This constitutes a "virtual" extension of the open court. This phenomenon is a not a cause of apprehension, but a celebration of our constitutional ethos which bolsters the integrity of the judiciary by focusing attention on its functions. It would be retrograde for the Supreme Court to promote the rule of law and access to justice on one hand, and shield the daily operations of the High Courts and the Supreme Court from the media in all its forms, by gagging the reporting of proceedings, on the other. **(Chief Election Commissioner of India v. M R Vijayabhaskar and others, (2021) 9 SCC 770)**

Art. 243-K and 243-ZA of the Constitution of India - Elections to Panchayats and Municipalities - State Election Commissioner to be appointed under Art. 243-K/Art. 243-ZA Person(s) who may be appointed as - All State Election Commissioners appointed under Art. 243-K/Art. 243-ZA in the length and breadth of India, held, have to be independent persons who cannot be persons who are occupying a post or office under the Central or any State Government. If there are any such persons holding such post of State Election Commissioner in any State, such persons must be asked forthwith to step down from such office and State Government concerned be bound to fulfill the constitutional mandate of Art. 243-K/Art. 243-ZA by appointing only independent persons to this high constitutional office.

Arts. 243-ZG, 243-0, 243-ZA, 243-K & 243-T and Arts. 226 & 227 - Municipal and Panchayat Elections - Bar to judicial interference contained in Art. 243-ZG.

Thus held, statutory provisions dealing with delimitation and allotment of seats cannot, therefore, be questioned in any court. However, orders made under such statutory provisions can be questioned in courts provided the statute concerned does not give such orders the status of a statutory provision Any challenge to orders relating to delimitation or allotment of seats including preparation of electoral rolls, not being part of the election process, can also be challenged in the manner provided by the statutory provisions dealing with delimitation of constituencies and allotment of seats to such constituencies.

Further held, if the assistance of a writ court is required in sub serving the progress of the election and facilitating its completion, the writ court may issue orders provided that the election process, once begun, cannot be postponed or protracted in any manner.

Judicial review of State Election Commission's order is available on grounds of review of administrative orders - Here again, the writ court must adopt a hands-off policy while the election process is on and interfere either before the process commences or after such process is completed unless interfering with such order sub serves and facilitates the progress of the election. **[State of Goa and another v. Fouziya Imtiaz Shaikh and another, (2021) 8 SCC 401]**

Caste/Tribe Certificate- SCs, STS, OBCs and Minorities Caste/Tribe Certificate -Claim of belonging to Schedule Tribe "Halba" Claim negated by Caste Scrutiny Committee - Hence held, no advantage can be extended to appellant which would run counter to the 2000 Act, as well as authoritative pronouncement of Supreme Court in *Food Corpn. of India, (2017) 8 SCC 670* which held that the 2000 Act must be given full and unhindered effect and operation. **(Chandrabhan v. State of Maharashta and others, (2021) 9 SCC 804)**

SCs, STS, OBCs and Minorities-Caste/Tribe Certificate-Genuineness Verification of-Intended only to avoid false and bogus claims - Repeated inquiries for verification of caste certificates would be detrimental to the members of Scheduled Castes and Scheduled Tribes - Reopening of inquiry into caste certificates can be only in cases where the allegations are that they are vitiated by fraud or that they were issued without proper inquiry

Once District-Level Vigilance Committee, after inquiry, upheld community certificate issued by Tahsildar in 1985 certifying appellant as belonging to SC, in absence of any challenge there against in any forum, same attained finality and appellant's government service regularized in 2000 on that basis- Thereafter, State (T.N.) Level Scrutiny Committee, held, had no jurisdiction

to reopen the matter and remand inquiry pertaining to certificate of appellant to District Vigilance Committee in 2006. **(J Chitra v. District Collector and Chairman, State Level Vigilance Committee, Tamil Nadu and others, (2021) 9 SCC 811)**

Consumer Protection Act

Medical practitioners/services - Medical negligence Res ipsa loquitur may be considered applicable where negligence alleged is glaring, in the facts and circumstances of a case, if the evidence on record establishes the same. Emphasized, that findings of medical negligence of doctors and/or the hospital, must be based on proper medical evidence on crucial medical aspects. Court or Consumer Forums cannot take decision on basis of mere legal principles and general standard of assessment sans expert medical evidence on highly technical medical issues. Such decision would amount to a situational perception by the court or the Consumer Forums In present case, allegations of medical negligence, in absence of supporting medical evidence, in the facts and circumstances, was held, not made out. NCDRC erred in holding appellants guilty of medical negligence and awarding compensation to respondent claimants. **(Dr. Harish Kumar Khurana v. Joginder Singh and others, (2021) 10 SCC 291)**

Contempt of Court Act

Contempt of Court - Civil Contempt Interpretation/doubt as to order-Willful disobedience/contumacious conduct - What is - Even accepting the contentions of the contempt petitioners for the sake of argument, view taken by alleged contemnors, held, being a possible view/interpretation of the judgment in question, they cannot be held liable for contempt of court

Service Law Recruitment Process Irregularities/Malpractice/ Illegalities Cancellation of entire selection process - When warranted Sufficiency of material available with authorities concerned - Natural justice i.e. opportunity of hearing to candidates concerned before cancelling the selection process Dispensation with - Circumstances envisaged Interpretation of Supreme Court order in this regard

It was held while setting aside termination order dt. 11-8-2017 solely on ground of violation of principles of natural justice, liberty was granted to respondents to pass fresh order in accordance with law including by undertaking exercise of segregating tainted from untainted candidates Thus, Court expected that before taking any adverse action, opportunity of hearing must be afforded to petitioners - However, said observation was only contextual and would be applicable depending upon opinion eventually formed after due consideration of material collected by respondents on possibility of segregating tainted from untainted candidates.

It was further held that the fact that placed persons had filed petitions before High Court which were pending, can be no impediment for Supreme Court from deciding instant petition since issue regarding purport of orders passed by Supreme Court needs to be answered appropriately only by the Supreme Court. Not open to High Court to interpret or explain orders passed by Supreme Court in previous proceedings. High Court can only follow dictum of Supreme Court which is binding on it. **[Abhishek Kumar Singh v. G. Pattanaik and others, (2021) 7 SCC 613]**

Criminal Procedure Code

Ss. 156 (3) & 482 - Extraordinary relief of stay of further proceedings in complaint cases, including stay on arrest of accused persons.

It is permissible for High Court to pass an interim order under S. 482 CrPC of the nature impugned herein, in exceptional cases with caution and circumspection, giving at least brief reasons What is not permissible is the tendency of the courts to pass blanket, cryptic, laconic, non-speaking orders reading merely "no coercive steps shall be adopted" It was held that in present case, the grant of such relief by High Court was justified and granted in the proper manner with detailed reasons therefore. **[A P Mahesh Cooperative Urban Bank Shareholders Welfare Association v. Ramesh Kumar Bung and Others, (2021) 9 SCC 152]**

S. 170- Guiding principle for Magistrate while exercising power under Section 170- Powers of Magistrate

It was held, that the guiding principle for a Magistrate while exercising powers under Section 170, Cr.P.C. which had been set out. The Magistrate or the Court empowered to take

cognizance or try the accused has to accept the charge sheet forthwith and proceed in accordance with the procedure laid down under Section 173, Cr.P.C. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him.

Insofar as the present case is concerned and the general principles under Section 170 Cr.P.C., accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge sheet has been filed would be contrary to the governing principles for grant of bail.

It cannot be disputed that the prosecution did not seek the interrogation of the appellant on or before filing of the charge sheet. Charge sheet has been filed. This being the position, learned counsel for the appellant confines the relief only to appear before the Trial Court and apply for regular bail and he be not arrested in that period of time. I

In the given factual situation, we grant protection to the appellant for a period of 8 weeks, within which he may apply for regular bail before the Trial Court and obtain necessary orders. **Aman Preet Singh v. C.B.I. through Director, 2021 Cri.L.J. 4531: AIR Online 2021 SC 689**

S. 204—Penal Code, 1860, Ss. 427, 447, 506, 120B, 34—Issuance of summons—Vicarious liability—Allegations of mischief, criminal trespass and criminal intimidation—

Hon’ble Supreme Court discussed about the issuance of summons and by vicarious liability of Managers of a company or a firm and held, that in the case of GHCL Employees Stock Option Trust v. India Infoline Limited (2013)4 SCC 505, in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings

against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director/Executive Director and/or Deputy General Manager and/or Planner/Supervisor of A1 & A6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A1 & A6.

From the order passed by the learned Magistrate issuing the process against the respondents herein – accused nos. 1 to 8, there does not appear that the learned Magistrate has recorded his satisfaction about a prima facie case against respondent nos. 2 to 5 and 7 & 8. Merely because respondent Nos. 2 to 5 and 7 & 8 are the Chairman/Managing Director/Executive Director/Deputy General Manager/Planner & Executor, automatically they cannot be held vicariously liable, unless, as observed hereinabove, there are specific allegations and averments against them with respect to their individual role. Under the circumstances, the High Court has rightly dismissed the revision applications and has rightly confirmed the order passed by the learned Sessions Court quashing and setting aside the order passed by the learned Magistrate issuing process against respondent nos. 1 to 8 herein – original accused nos. 1 to 8 for the offences punishable under Sections 427, 447, 506 and 120B read with Section 34 IPC.

In the case of Sunil Bharti Mittal (supra), it is observed by this Court in paragraphs 42 to 44 as under:

"(iii) Circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person

> 42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661, the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company."

In the case of Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668, in paragraph 13, it is observed and held as under:

"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious

liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

As observed by this Court in the case of Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 and even thereafter in catena of decisions, summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. In paragraph 28 in Pepsi Foods Limited (supra), it is observed and held as under:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

As held by this Court in the case of India Infoline Limited (supra), in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director/Executive Director and/or Deputy General Manager and/or Planner/Supervisor of A1 & A6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A1 & A6. **[Ravindranatha Bajpe vs. Mangalore Special Economic Zone Ltd., AIR 2021 SC 4587]**

Ss. 218, 223(a)—Retrial—Offences of rape, lapse in investigation and abetment of suicide case

The power to order a retrial has been consistently held to be of an exceptional nature beginning with the formulation of the principles by the Constitution Bench in **Ukha Kolhe (supra) and the resultant formulation, more recently, by the two judge Bench in Ajay Kumar Ghoshal (supra).** Directing a joint trial is not mandatory but lies within the discretion of the Court under Section 223 of the CrPC. Clause (d) of Section 223 permits persons accused of different offences committed in the course of the same transaction to be charged and tried together. While explaining the ambit of the corresponding provision of the Code of 1898, this Court in **Chandra Bhal (supra)** has emphatically ruled that:

(i) The statutory provision neither renders a joint trial imperative nor does it bar or prohibit separate trials;

(ii) The matter is required to be determined by the trial court at the beginning of the trial and it is not to be determined on the basis of the result of the trial; and

(iii) Where the issue is raised in the court of appeal, clear prejudice must be established as having been caused as a result of the separate trial.

The High Court in the present case was conscious of the fact that the appellant Nasib Singh was tried together with the other appellants during the trials in both the FIRs in view of Section 223(a) CrPC 24. The appellant was acquitted in the Sessions trial arising out of FIR 96 on 29 November 2014 and in the trial arising out of FIR 187/2012 on 29 January 2015. Though the High Court noted that "he had earned a right and we should be slow in disturbing the same", it yet remanded both the cases back for retrial "to maintain balance and delivery of justice". There is merit in the submission which had been urged both by counsel for the appellant and for the State of Punjab that the order of retrial wipes out the entire record of evidence. The evidence which has been recorded during the separate trials cannot exist for some of the accused and not for the others. The effect of the decision of the High Court is to relegate the appellant to a fresh trial together with the other accused. The High Court has in fact directed that the trial would be conducted afresh by observing that the accused be charged together for the different offences committed by them. **[Nasib Singh vs. State of Punjab, AIR 2021 SC 5175]**

Ss. 227, 228 and 482 of Criminal Procedure Code, 1973 - Quashment - Stage of framing of charge - Principles that must kept in mind by High Court while exercising jurisdiction under S. 482 at the stage of framing of charges.

At the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence. At that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. At such stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded that the accused charge-sheeted or against whom the charge is framed is likely to be convicted or not. **[Saranya v. Bharathi and another, (2021) 8 SCC 583]**

S. 227 and 498A, 304B of IPC, Ss. 3 and 4 Dowry Prohibition Act

Hon’ble Allahabad High Court while discussing the rejection of discharge application under offences of dowry death and cruelty held that it shall be advantageous to refer to the observations made by the Hon'ble Apex Court in the case of State of Bihar v. Ramesh Singh 1977 (4) SCC 39 which are as follows :- "4. Under S. 226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and State by what evidence he proposes to prove the guilt of the accused. Thereafter, comes at the initial stage, the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either u/s. 227 or u/s. 228 of the Code. If "the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", so enjoined by s. 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which ..... (b) in exclusively triable by the court, he shall frame in writing a charge against the accused," as provided in S. 228.

Aforesaid case was again referred to in another Apex Court's decision Superintendent and Remembrancer of Legal Affairs, West Bengal Versus Anil Kumar Bhunja; AIR 1980 (SC) 52 and the Apex Court proceeded to observe as follows:-

"18. It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had, therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in State of Bihar v. Ramesh Singh; AIR 1977 SC 2018, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged; may justify the framing of charge against the accused in respect of the commission of that offence."

In yet another case of Palwinder Singh Vs. Balvinder Singh; AIR 2009 SC 887, the Apex Court had the occasion to reflect upon the scope of adjudication and its ambit at the time of framing of the charge and also about the scope to consider the material produced by the accused at that stage. Following extract may be profitably quoted to clarify the situation :-

"12. Having heard learned counsel for the parties, we are of the opinion that the High Court committed a serious error in passing the impugned judgment insofar as it entered into the realm of appreciation of evidence at the stage of the framing of the charges itself. The jurisdiction of the learned Sessions Judge while exercising power under Section 227 of the Code of Criminal Procedure is limited. Charges can be framed also on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. This aspect of the matter has been considered by this Court in State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568 wherein it was held as under :-

"23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's Case holding that the trial Court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided."

The following observations made by the Hon'ble Supreme Court in the case of Sanghi Brothers (Indore) Pvt. Ltd. v. Sanjay Choudhary; AIR 2009 SC 9 also reiterated the same position of law :-

"10. After analyzing the terminology used in the three pairs of sections it was held that despite the differences there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of a prima facie case to be applied.
A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. But it shall suffice to observe that the perusal of the complaint, the summoning order and also all other the material available on record makes out a prima facie case against the accused at this stage and this Court does not find any justifiable ground to set aside the impugned order refusing the discharge of the accused. This court has not been able to persuade itself to hold that no case against the accused has been made out or to hold that the charge is groundless. **Babita and another v. State of U.P., 2021 Cri.L.J. 4947: AIR Online 2021 All. 659**

S. 319-- Addition of new accused—Murder case—

In Hardeep Singh v. State of Punjab and Others (2014) 3 SCC 92 and Labhuji Amratji Thakor and Others v. State of Gujarat and Another AIR 2019 SC 734.

While this Court has approved of relying upon deposition which has not suffered cross examination for the purpose of invoking Section 319 Cr.P.C., it is relevant to note the standards which have been fixed by this Court for invoking the power under Section 319 Cr.P.C. The statement of law in this regard is contained in paragraphs 105 and 106 of Hardeep Singh (supra):

> 105. Power under Section 319 Cr.P.C. 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.

106. 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused." **[Ramesh Chandra Srivastava vs. State of U.P., AIR 2021 SC 5107]**

S. 319—Power to array additional accused

Court refrains from dilating on the details of the evidence to avoid any prejudice being caused to either side during the trial of the case. Suffice it to notice that the FIR mentions the names of the respondent Nos. 3 to 5 as also the statements of the prosecution witnesses recorded during the investigation and given before the Court.

In Court's opinion, the Trial Court commit ted manifest error in rejecting the application for summoning and proceeding against respondent in connection with the offence despite the above position.

Accordingly, the impugned orders passed by the High Court and the Trial Court are set aside. Instead, application No. 18kh filed by the prosecution for issuing summons only qua respondent nos. 3 to 5 herein, stands allowed. **[Gulshan vs. State of U.P., AIR 2021 SC 4318]**

Ss. 353, 354—Judgment—Fact that decision is accurate is not adequate

It is not adequate that a decision is accurate; it must also be reasonable, logical and easily comprehensible. The judicial opinion is to be written in such a way that it elucidates in a

convincing manner and proves the fact that the verdict is righteous and judicious. What the court says, and how it says it, is equally important as what the court decides.

Every judgment contains four basic elements and they are (i) statement of material (relevant) facts, (ii) legal issues or questions, (iii) deliberation to reach at decision and (iv) the ratio or conclusive decision. A judgment should be coherent, systematic and logically organised. It should enable the reader to trace the fact to a logical conclusion on the basis of legal principles. It is pertinent to examine the important elements in a judgment in order to fully understand the art of reading a judgment. In the Path of Law, Holmes J. has stressed the insentient factors that persuade a judge. A judgment has to formulate findings of fact, it has to decide what the relevant principles of law are, and it has to apply those legal principles to the facts. The important elements of a judgment are:

i) Caption
ii) Case number and citation
iii) Facts
iv) Issues
v) Summary of arguments by both the parties
vi) Application of law
vii) Final conclusive verdict

The judgment replicates the individuality of the judge and therefore it is indispensable that it should be written with care and caution. The reasoning in the judgment should be intelligible and logical. Clarity and precision should be the goal. All conclusions should be supported by reasons duly recorded. The findings and directions should be precise and specific. Writing judgments is an art, though it involves skilful application of law and logic. We are conscious of the fact that the judges may be overburdened with the pending cases and the arrears, but at the same time, quality can never be sacrificed for quantity. Unless judgment is not in a precise manner, it would not have a sweeping impact. There are some judgments that eventually get overruled because of lack of clarity. Therefore, whenever a judgment is written, it should have clarity on facts; on submissions made on behalf of the rival parties; discussion on law points and thereafter reasoning and thereafter the ultimate conclusion and the findings and thereafter the operative portion of the order. There must be a clarity on the final relief granted. A party to the litigation must know what actually he has got by way of final relief. The aforesaid aspects are to be borne

in mind while writing the judgment, which would reduce the burden of the appellate court too. We have come across many judgments which lack clarity on facts, reasoning and the findings and many a times it is very difficult to appreciate what the learned judge wants to convey through the judgment and because of that, matters are required to be remanded for fresh consideration. Therefore, it is desirable that the judgment should have a clarity, both on facts and law and on submissions, findings, reasonings and the ultimate relief granted. **[Shaluntala Shukla vs. State of U.P., AIR 2021 SC 4384]**

S. 319 Cr.P.C. – Summoning of additional accused – Refusal of

Hon'ble Apex Court while discussing the summoning of additional accused framed certain questions which fell for consideration before the court, while answering one of the question namely, whether the word "evidence" used in Section 319(1) CrPC means as arising in examination-in-chief or also together with cross-examination, in the aforesaid decision, this Court has observed and held as under:

The second question referred to herein is in relation to the word "evidence" as used under Section 319 CrPC, which leaves no room for doubt that the evidence as understood under Section 3 of the Evidence Act is the statement of the witnesses that are recorded during trial and the documentary evidence in accordance with the Evidence Act, which also includes the document and material evidence in the Evidence Act. Such evidence begins with the statement of the prosecution witnesses, therefore, is evidence which includes the statement during examination-in-chief. In Rakesh, (2001) 6 SCC 248 : AIR 2001 SC 2521] , it was held that: (SCC p. 252, para 10)

> "10. … It is true that finally at the time of trial the accused is to be given an opportunity to cross-examine the witness to test its truthfulness. But that stage would not arise while exercising the court's power under Section 319 CrPC. Once the deposition is recorded, no doubt there being no cross-examination, it would be a prima facie material which would enable the Sessions Court to decide whether powers under Section 319 should be exercised or not."

In Ranjit Singh [Ranjit Singh v. State of Punjab, (1998) 7 SCC 149 : AIR 1998 SC 3148, this Court held that: (SCC p. 156, para 20)

"20. … it is not necessary for the court to wait until the entire evidence is collected for exercising the said powers."

In Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : AIR 2007 SC 1899, it was held that the prerequisite for exercise of power under Section 319 CrPC is the satisfaction of the court to proceed against a person who is not an accused but against whom evidence occurs, for which the court can even wait till the cross-examination is over and that there would be no illegality in doing so. A similar view has been taken by a two-Judge Bench in Harbhajan Singh v. State of Punjab, (2009) 13 SCC 608. Supreme Court in Hardeep Singh v. State of Punjab, (2009) 16 SCC 785, seems to have misread the judgment in Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : AIR 2007 SC 1899] , as it construed that the said judgment laid down that for the exercise of power under Section 319 CrPC, the court has to necessarily wait till the witness is cross-examined and on complete appreciation of evidence, come to the conclusion whether there is a need to proceed under Section 319 CrPC.

We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases. Once examination-in-chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.

As held in Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : AIR 2007 SC 1899, and Harbhajan Singh (2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135, all that is required for the exercise of the power under Section 319 CrPC is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the prima facie view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s). It is essential to note that the section also uses the words "such person could be tried" instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-

examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross examination at all, for in light of sub-section (4) of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of examination-in-chief, the court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.

In the case of Rajesh v. State of Haryana (2019) 6 SCC 368, after considering the observations made by this Court in Hardeep Singh (supra) referred to hereinabove, this Court has further observed and held that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 CrPC and even those persons named in FIR but not implicated in charge sheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused."

The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under Section 319 CrPC can be summarized as under:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);

(xvii) while exercising the powers under Section 319 CrPC the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.

Now so far as the submission on behalf of the private respondents that though a common judgment and order was passed by the High Court in CRR No.3238 of 2018 at that stage the appellant herein did not prefer appeal against the impugned judgment and order passed by the High Court in CRR No.28 of 2018 and therefore this Court may not exercise the powers under Section Article 136 is concerned the aforesaid has no substance. Once it is found that the Learned trial Court as well as the High Court ought to have summoned the private respondents herein as additional accused, belated filing of the appeal or not filing the appeal at a relevant time when this Court considered the very judgment and order but in CRR No.3238 of 2018 cannot be a ground not to direct to summons the private respondents herein when this Court has found that a prima facie case is made out against the private respondents herein and they are to be summoned to face the trial.

Now so far as the submission on behalf of the private respondents that though in the charge-sheet the private respondents herein were put in column no.2 at that stage the complainant side did not file any protest application is concerned, the same has been specifically dealt with by this Court in the case of Rajesh (Supra). This Court in the aforesaid decision has specifically observed that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial Court to summon other persons as well as who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of Section 319 CrPC.

Private respondents herein that after the impugned judgment and order passed by the High Court there is a much progress in the trial and therefore at this stage power under Section 319 CrPC may not be exercised is concerned, the aforesaid has no substance and cannot be accepted. As per the settled preposition of law and as observed by this Court in the case of Hardeep Singh (Supra), the powers under Section 319 CrPC can be exercised at any stage before the final conclusion of the trial. Even otherwise it is required to be noted that at the time when the application under Section 319 CrPC was given only one witness was examined and examination-in-chief of PW1 was recorded and while the cross-examination of PW1 was going on, application under Section 319 CrPC was given which came to be rejected by the Learned trial Court. The Order passed by the Learned trial Court is held to be unsustainable. If the Learned trial Court would have summoned the private respondents herein at that stage such a situation would not have arisen. Be that as it may as observed herein powers under Section 319 CrPC can be exercised at

any stage from commencing of the trial and recording of evidence/deposition and before the conclusion of the trial at any stage.

In view of the above and for the reasons stated above the impugned judgment and order passed by the High Court and that of the Learned trial Court dismissing the application under Section 319 CrPC submitted on behalf of the complainant to summon the private respondents herein as additional accused are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. Consequently the application submitted on behalf of the complainant to summon the private respondents herein is hereby allowed and the Learned Trial Court is directed to summon the private respondents herein to face the trial. **(Manjeet Singh v. State of Haryana and Others, AIR 2021 (SC) 4274)**

S. 321 Cr.P.C. – Withdrawal of Prosecution

Hon'ble Apex Court vividly explained principles of withdrawal of prosecution as under Section 321 of Cr.P.C. are formulated -

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

(ii) The public prosecutor may a withdraw from a prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice.

(iii) The public prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution;

(iv) While the mere fact that the initiative has come from the government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the public prosecutor was satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons;

(v) In deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature. Before deciding whether to grant its consent the court must be satisfied that:

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

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

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

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

(e) The permission has not been sought with an ulterior purpose unconnected with the vindication of the law which the public prosecutor is duty bound to maintain;

(vi) While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinizing the nature and gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated; and

(vii) In a situation where both the trial judge and the revisional court have concurred in granting or refusing consent, this Court while exercising its jurisdiction under Article 136 of the Constitution would exercise caution before disturbing concurrent findings. The Court may in exercise of the well-settled principles attached to the exercise of this jurisdiction, interfere in a case where there has been a failure of the trial judge or of the High Court to apply the correct principles in deciding whether to grant or withhold consent.

The true function of the court when an application under Section 321 is filed is to ensure that the executive function of the public prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes. The court will grant its consent if it is satisfied that it sub-serves the administration of justice and the purpose of seeking it is not extraneous to the vindication of the law. It is the broad ends of public justice that must guide the decision. The public prosecutor is duty bound to act independently and ensure that they have applied their minds to the essential purpose which governs the exercise of the powers. Whether the public prosecutor has acted in good faith is not in itself dispositive of the issue as to whether consent should be given. Good faith is one and not the only consideration. The court must also scrutinize whether an application suffers from such improprieties or illegalities as to cause manifest injustice if consent is given.

A plain reading of Section 197 of the CrPC clarifies that it applies only if the public servant can be removed from office by or with the sanction of the government. However, MLAs cannot be removed by the sanction of the government, as they are elected representatives of the people of India. They can be removed from office, for instance when disqualified under the Xth Schedule of the Constitution for which the sanction of the government is not required. Further, sanction under Section 197 is only required before cognizance is taken by a court, and not for the initiation of the prosecution.

The video recording of the incident was seized from the Electronic Control Room. Various local and national news channels carried telecasts of snippets of the incident of 13 March 2015 on the very same day. The 2002 Instructions permit broadcasting of proceedings after obtaining the prior permission of the Speaker for recording. Therefore, if permission for recording the proceedings has been provided to the news channels, then the broadcast would usually be a publication 'under the authority of the House'. However, Clause 7 of the 2002 Instructions denies permission to record any interruption/disorder during the address. Since the 2002 Instructions grant permission for the recording of the proceedings subject to conditions such as that mentioned in clause 7, any recording that contravenes the conditions stipulated is not a recording 'under the authority of the House'. When the recording of such an incident is itself without authority, the publication/broadcasting of it would also have no authority of the House. Thus, though the video recording of the incident that was broadcast in the local and national news channels would fall within the purview of the word 'publication', it did not have the authority of the House to be recorded, and thus the members cannot be granted immunity. In addition to this, it is also worth mentioning that the video recording that was procured from the Electronic Control Room of the Assembly is not a copy of the broadcast of the incident in the local or national television but was a part of the internal records of the Assembly. Thus, the stored video footage of the incident was not broadcast, or in other words, published, for dissemination to the public. Since it was not a "publication" of the House, it does not enjoy the protection of immunity under Article 194(2) of the Constitution. **State of Kerala v. Ajith and others, 2021 Cr.L.J. 4058: AIR Online 2021 SC 385**

S. 378 –Appeal

Trial court acquitted Respondents 2 to 6 who were tried under Ss. 302/149, 304-B & 498-A IPC and Ss. 3 & 4 of the Dowry Prohibition Act. Appellant (original informant) assailed judgment of trial court before High Court by filing application for leave to appeal. However, by impugned judgment, High Court dismissed aforesaid application.

It was held that the impugned judgment of High Court does not meet requirements which are to be observed, consistent with provisions of S. 378 CrPC where High Court hears application for leave to appeal against order of acquittal.

High Court must set forth its reasons, indicating at least in brief, an application of mind to nature of evidence and findings which have been arrived at. In other words, merely observing that order of trial Judge has taken a possible view without application of mind to evidence and findings, is not consistent with duty which is cast upon High Court while determining whether leave should be granted to appeal against order of acquittal. **[Brijesh Singh v. State of Uttar Pradesh and others, (2021) 8 SCC 392]**

S. 438 Anticipatory bail High Court exercising its power of granting ad interim protection from arrest to accused, without recording any reasons - Matter remitted back to High Court for decision afresh after recording reasons in support of its order

Penal Code, 1860 Ss. 376(2)(f), (n), 377, 354-A, 354-D, 503, 506 Pt. 1 and 509 - Information Technology, Internet, Computer and Cyber Laws - Information Technology Act, 2000, Ss. 66-E and 67-A

From the perusal of the impugned order, it could clearly be seen, that no reason even for namesake has been recorded in the impugned order. We therefore remit the matter to the High Court. Let the matter be placed before the learned Single Judge concerned of the High Court dealing with the applications for anticipatory bail on 07-06-2021, on which date the High Court would consider the question of grant of anticipatory bail or ad interim anticipatory bail by recording reasons in support of its order. **[Sorathia Bindi v. State of Gujarat and another, (2021) 7 SCC 817]**

S. 438—High Court, while dismissing the anticipatory bail application of the respondents-accused, granted them 90 days to surrender before the Trial Court to seek regular bail and granted them protection from coercive action for the said period

The Hon'ble Supreme Court discussed that the only guidance relating to what is to take place once an application under Section 438, Cr.P.C. is rejected is found in the proviso to Section 438(1), Cr.P.C., which specifically provides that once an application is rejected, or the Court seized with the matter refuses to issue an interim order, it is open to the police to arrest the applicant. It is this proviso that the present appellants have relied upon to argue that the High Court, once it rejected the anticipatory bail applications of the respondent saccused, did not have the power to grant any further relief.

When the proviso to Section 438(1), Cr.P.C. is analyzed in line with the above dictum, it is clear that the proviso does not create any rights or restrictions. Rather, the sole purpose of the proviso appears to be clarificatory in nature. It only restates, inter alia, the obvious proposition that unless an individual has obtained some protection from the Court, the police may arrest them. In line with the ruling in Gurbaksh Singh Sibbia case the proviso cannot be read as constituting a bar on the power of the Court.

If the proviso to Section 438(1), Cr.P.C. does not act as a bar to the grant of additional protection to the applicant, the question still remains as to under what provision of law the Court may issue relief to an applicant after dismissing their anticipatory bail application.

Without going into the question of whether Section 438, Cr.P.C. itself allows for such a power, as it is not necessary to undertake such an exercise in the present case, it is clear that when it comes to the High Court, such a power does exist. Section 482, Cr.P.C explicitly recognizes the High Court's inherent power to pass orders to secure the ends of justice. This provision reflects the reality that no law or rule can possibly account for the complexities of life, and the infinite range of circumstances that may arise in the future.

The Hon'ble Court further held that the Court must take into account the statutory scheme under Section 438, Cr.P.C., particularly, the proviso to Section 438(1), Cr.P.C., and balance the concerns of the investigating agency, complainant and the society at large with the concerns/interest of the applicant. Therefore, such an order must necessarily be narrowly tailored to protect the interests of the applicant while taking into consideration the concerns of the investigating authority. Such an order must be a reasoned one. **[Nathu Singh vs. State of U.P., 2021 (117) ACC 339 (SC)]**

S. 439 Art. 134 and Ss. 147,148,341,323,307,427,302,149 IPC

Hon'ble Supreme Court while discussing the validity of offences registered and grant of bail thereto held that the submission on behalf of the accused that the accused were alleged to have been armed with lathis and therefore they were released on bail is concerned, at the outset, it is required to be noted that all the accused are charged for the offences punishable under Sections 302 and 307 read with Section 149 of the IPC. At this stage, the individual role of the accused is not required to be considered when they are alleged to have been the part of the unlawful assembly. There were 26 injuries found on the dead body of the deceased and 11 injuries on the injured Vikram Singh by blunt and sharp weapons. Therefore, merely because they were armed with lathis cannot be a ground to release them on bail, in the facts and circumstances of the case, more

particularly when they are charged for the offences punishable under Sections 302 and 307 read with Section 149 of the IPC as well as Sections 147 and 148 of the IPC.

The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In Neeru Yadav v. State of U.P., the accused was granted bail by the High Court. In an appeal against the order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J.

"12. … It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court."

For the reasons which we have indicated above and the manner in which the High Court has disposed of the bail applications which can be said to be substantially one paragraph order, we are of the opinion that the orders granting bail to the respondents – accused suffers from perversity. Impugned orders passed by the High Court granting bail to the respondents – accused do not pass the test laid down by this Court on grant of bail and exercising of powers of the appellate court laid down in various decisions through Mahipal (Supra), Neeru Yadav (Supra); Gulabrao Baburao Deokar (Supra) referred to hereinabove. Therefore, the impugned orders passed by the High Court

deserve to be quashed and set aside. **Kumer Singh v. State of Rajasthan, 2021 Cri.L.J. 4244: AIR Online 2021 SC 398**

S. 439—IPC, Ss. 147, 148, 149, 323, 341, 307, 302, 336—Bail—Grant of

While granting bail in the present case, the High Court has observed that "no overt act is assigned to her (the second respondent) in the present case". These observations are erroneous. The final report under Section 173 of the CrPC indicates that the investigation has revealed that :

(i) The second respondent was using as many as four simcards and was in touch with one of the sharp-shooters who was hired to commit the crime; and

(ii) She was the custodian of the weapons which were stored at the rental premises where she resided.

In deciding as to whether the fifth bail application of the second respondent should be allowed, the High Court has failed to consider the seriousness and gravity of the crime and the specific role which is attributed to the second respondent. The deceased was due to testify in the trial in the prior case under Section 307 of the IPC and the murder was committed barely a fortnight prior to the date on which he was to depose. The High Court had rejected four previous bail applications. There was no change in circumstances. In this backdrop, the High Court having failed to notice material circumstances bearing upon the grant of bail to the second respondent and, as noted above, having proceeded on a palpable erroneous basis, a case for the setting aside of the order of the High Court has been duly established.

The application for bail filed by the second respondent shall consequently stand rejected. The second respondent shall surrender on or before 7 November 2021. **[Bhoopendra Singh vs. State of Rajasthan, AIR 2021 SC 5514]**

Ss. 439 and 437 - Guidelines have been issued for grant of bail, but without fettering the discretion of the courts concerned and keeping in mind the statutory provisions.

It was held that where the accused have not cooperated in the investigation nor appeared before the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the benefit of the above guidelines cannot be given to such accused

Lastly, held, it is not as if economic offences not covered by Special Acts, are completely taken out of the aforesaid guidelines but do form a different nature of offences. Thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor.

While issuing notice to consider bail, the trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which did not warrant arrest. However, the bail application to be ultimately considered would be guided by the statutory provisions and the guidelines issued herein.

Sections 437 and 439 of Criminal Procedure Code, 1973: Bail Forwarding accused along with charge-sheet was held not necessary, when the accused was not arrested during investigation and he cooperated throughout in the investigation including appearing before investigating officer whenever called. **(Satender Kumar Antil v. Central Bureau of Investigation and another, (2021) 10 SCC 773)**

S. 439—IPC, Ss. 302, 201—Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Sec. 3(2)(v)—Bail—Cancellation of

While granting bail to the first respondent, the High Court in its order dated 7 November 2019 only recorded the submission of counsel for the first respondent. There is absolutely no reasoning in the order of the High Court granting bail, after recording the submissions of the first respondent's counsel apart from noting that the public prosecutor had opposed the bail. The High Court held that it was just and expedient to release the first respondent on bail "keeping in view the facts and circumstances of the case". Such orders cannot pass muster. The duty to record reasons cannot be obviated by recording submissions, followed by an omnibus "in the facts and circumstances" formula. Brief reasons which indicate the basis for granting bail are essential, for it is the reasons adduced by the court which indicate the basis of the order.

Before the High Court granted bail by its order dated 7 November 2019, the final report had been submitted on 6 September 2018. The final report under Section 173 CrPC contains a detailed analysis of the call data records of the accused who were in continuous contact with each other, as well as of their location in close proximity to the date and time of the incident. The bail order does not make any mention of factors that are relevant for the grant of bail, which are (i) the seriousness and gravity of the offence; and (ii) the role attributed to the first respondent in the commission of the crime. In this backdrop, the order of the High Court in granting bail cannot pass muster. Aggrieved by the order, the appellant had filed an application16 seeking its recall. The

Single Judge of the High Court by the impugned order dated 8 June 2021 simply reiterated that the bail was granted on the basis of the statement of the wife of the deceased, PW.2, once again failing to show any engagement with the considerations that govern the grant of bail.

The appeal is accordingly allowed and the impugned order of the Single Judge of the High Court of Judicature at Rajasthan dated 8 June 2021 in S.B. Crl Bail Cancellation Application No. 21/2020 is set aside. The order granting bail to the S.B. Criminal Miscellaneous Bail Cancellation Application No.21/2020 first respondent dated 7 November 2019 shall stand set aside. The first respondent shall surrender into custody on or before 7 November 2021. **[Hariram Bhambhi vs. Satyanarayan, AIR 2021 SC 5610]**

Ss. 457 and 451- Seizure of property pending trial and Release of mutual funds. Directions for adoption of pragmatic approach in respect of matters of high value commercial assets **(Securities and Exchange Board of India v. IL & FS Securities Services Limited and others, (2021) 10 SCC 389)**

Ss. 482, 193, 207, 209, 460, 190(1)—Quashing of Proceedings—Second proviso to S. 14 pf SC/ST (Prevention of Atrocities) Act confers powers upon Special Court also to directly take cognizance of offences under Atrocities Act

Second proviso to Section 14 of the Atrocities Act which has been inserted by Act 1 of 2016 w.e.f. 26.1.2016 confers power upon the Special Court so established or specified for the purpose of providing for speedy trial also shall have the power to directly take cognizance of the offences under the Atrocities Act. Considering the object and purpose of insertion of proviso to Section 14, it cannot be said that it is not in conflict with the Sections 193, 207 and 209 of the Code of Criminal Procedure, 1973. It cannot be said that it takes away jurisdiction of the Magistrate to take cognizance and thereafter to commit the case to the Special Court for trial for the offences under the Atrocities Act. Merely because, learned Magistrate has taken cognizance of the offences and thereafter the trial / case has been committed to Special Court established for the purpose of providing for speedy trial, it cannot be said that entire criminal proceedings including FIR and charge-sheet etc. are vitiated and on the aforesaid ground entire criminal proceedings for the offences under Sections 452, 323, 325, 504, 506(2) and 114 of the Indian Penal Code and under Section 3(1)(x) of the Atrocities Act are to be quashed and set aside. It may be noted that in view of insertion of proviso to Section 14 of the Atrocities Act and considering the object and purpose, for which, the proviso to Section 14 of the Atrocities Act has been inserted i.e. for the purpose of providing for speedy trial and the object and purpose stated herein above, it is advisable that the Court so established or specified in exercise of powers under Section14, for the purpose of providing for speedy trial directly take cognizance of the offences under the Atrocities Act. But at

the same time, as observed herein above, merely on the ground that cognizance of the offences under the Atrocities Act is not taken directly by the Special Court constituted under Section 14 of the Atrocities Act, the entire criminal proceedings cannot be said to have been vitiated and cannot be quashed and set aside solely on the ground that cognizance has been taken by the learned Magistrate after insertion of second proviso to Section 14 which confers powers upon the Special Court also to directly take cognizance of the offences under the Atrocities Act and thereafter case is committed to the Special Court / Court of Session.

In support of the above conclusion, the words used in second proviso to Section 14 are required to be considered minutely. The words used are "Court so established or specified shall have power to directly take cognizance of the offences under this Court". The word "only" is conspicuously missing. If the intention of the legislature would have to confer the jurisdiction to take cognizance of the offences under the Atrocities Act exclusively with the Special Court, in that case, the wording should have been "that the Court so established or specified only shall have power to directly take cognizance of offences under this Act". Therefore, merely because now further and additional powers have been given to the Special Court also to take cognizance of the offences under the Atrocities Act and in the present case merely because the cognizance is taken by the learned Magistrate for the offences under the Atrocities Act and thereafter the case has been committed to the learned Special Court, it cannot be said that entire criminal proceedings have been vitiated and same are required to be quashed and set aside.

The issue involved in the present appeal is also required to be considered from another angle. The accused is to be tried for the offences under the Atrocities Act by Special Court / Exclusive Special Court constituted under Section 14 of the Atrocities Act. Even those rights are also available to the victim for the offences under the Atrocities Act in which the trial is by the Special Court/Exclusive Special Court constituted under Section 14 of the Atrocities Act. Therefore, unless and until those rights which flow from Section 14 of the Atrocities Act are affected, the accused cannot make any grievance and it cannot be said that taking cognizance by the learned Magistrate for the offences under the Atrocities Act and thereafter to commit the case to the Special Court, he is prejudiced.

Even considering Section 460 of the Code of Criminal Procedure, if any Magistrate not empowered by the law to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 190, takes cognizance, such irregularities do not vitiate proceedings. At the most, it can be said to be irregular proceedings for which, it does not vitiate the proceedings. In view of the above and for the reasons stated above, the view taken by the High Court that as in the present case the learned Magistrate has taken cognizance for the offences under the Atrocities Act and thereafter the case is committed to the learned Special Court and therefore, entire criminal proceedings are vitiated, cannot be accepted and is unsustainable. If on the aforesaid ground entire criminal proceedings are quashed, in that case, it will be given a premium to an accused who is alleged to have committed the offence under the Atrocities Act. Assuming for the sake of argument

that the procedure adopted is irregular, in that case, why should victim who belonged to Scheduled Castes and Scheduled Tribes community be made to suffer.

In view of the above and for the reasons stated above, the impugned judgment and order dated 09.05.2019 passed by the High Court of Gujarat passed in Special Criminal Application No.5670 of 2017 quashing and setting aside the entire criminal proceedings for the offences punishable under Sections 452, 323, 325, 504(2) and 114 of the Indian Penal Code and under Section 3(1)(x) of the Atrocities Act, in exercise of powers under Section 482 of the Code of Criminal Procedure r/w Article 226 of the Constitution of India is hereby quashed and set aside. Now, accused be tried by the learned Special Court having jurisdiction for the aforesaid offences. Present appeal is allowed to the aforesaid extent. **[Shantaben Bhurabhai Bhuriya vs. Anand Athabhai Chaudhari, AIR 2021 SC 5368]**

S. 482—Penal Code, Sec. 306—Quashing of FIR—Offences registered under S. 306 of IPC—

It is a solemn duty of a teacher to instill discipline in the students. It is not uncommon that teachers reprimand a student for not being attentive or not being upto the mark in studies or for bunking classes or not attending the school. The disciplinary measures adopted by a teacher or other authorities of a school, reprimanding a student for his indiscipline, in our considered opinion, would not tantamount to provoking a student to commit suicide, unless there are repeated specific allegations of harassment and insult deliberately without any justifiable cause or reason. A simple act of reprimand of a student for his behaviour or indiscipline by a teacher, who is under moral obligations to inculcate the good qualities of a human being in a student would definitely not amount to instigation or intentionally aid to the commission of a suicide by a student.

Thus, the appellant having found the deceased boy regularly bunking classes, first reprimanded him but on account of repeated acts, brought this fact to the knowledge of the Principal, who called the parents on telephone to come to the school. No further overt act has been attributed to the appellant either in the First Information Report or in the statement of the complainant, nor anything in this regard has been stated in the alleged suicide note. The alleged suicide note only records insofar as, the appellant is concerned, THANKS GEO (PTI) OF MY SCHOOL. Thus, even the suicide note does not attribute any act or instigation on the part of the appellant to connect him with the offence for which he is being charged.

Considering the facts that the appellant holds a post of a teacher and any act done in discharge of his moral or legal duty without their being any circumstances to even remotely indicate that there was any intention on his part to abet the commission of suicide by one of his own pupil, no mens rea can be attributed. Thus, the very element of abetment is conspicuously missing from the allegations levelled in the FIR. In the absence of the element of abetment missing from the allegations, the essential ingredients of offence under section 306 IPC do not exist.

In the absence of any material on record even, prima-facie, in the FIR or statement of the complainant, pointing out any such circumstances showing any such act or intention that he intended to bring about the suicide of his student, it would be absurd to even think that the appellant had any intention to place the deceased in such circumstances that there was no option available to him except to commit suicide.

In the absence of any specific allegation and material of definite nature, not imaginary or inferential one, it would be travesty of justice, to ask the appellant-accused to face the trial. A criminal trial is not exactly a pleasant experience and the appellant who is a teacher would certainly suffer great prejudice, if he has to face prosecution on absurd allegations of irrelevant nature. **[Geo Varghese vs. State of Rajasthan, AIR 2021 SC 4764]**

Criminal Trial

Reformation and clarity of procedure and practices relating to investigation, prosecution, trial, evidence, judgment and bail. Draft Rules of Criminal Practice, 2021 annexed to present order, held, to be finalized and read in terms of discussion in present order. All High Courts and State Governments should incorporate the Draft Rules of Criminal Practice, 2021 annexed to the present order read with clarifications and directions herein

Evidence Act, 1872 Ss. 148, 132 and 165 - Duty and authority of trial Judge to decide on the validity or relevance of questions asked to witnesses. Ss. 207/208 - Right of accused to properly defend himself/herself by having access to all statements, documents and material objects under Ss. 207/208 CrPC- R. 4(i) of the Draft Rules of Criminal Practice, 2021 should be so modified that while furnishing the list of statements, documents and material objects under Ss. 207/208 CrPC,

the Magistrate should also ensure that a list of other materials (such as statements or objects/documents seized but not relied on) should be furnished to the accused. Allegedly, the accused are only furnished with a list of documents and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory, or absolve or help the accused. Following directions issued:

1. Body sketch to accompany medico-legal certificate, post-mortem report and inquest report
2. Photographs and videographs of post-mortem in certain cases
3. Scene mahazar/spot panchnama
4. Supply of documents under Sections 173, 207 and 208 CrPC
5. Recording of evidence
6. Recording of evidence: Format of witnesses
7. Exhibiting of material objects and evidence
8. Subsequent references to accused, witness, exhibits and material objects.
9. References to statements under Section 161 and 164 CrPC
10. Marking of confessional statements.
11. Every judgment shall contain the following:
    (i) Start with a preface showing the names of parties as per Form A to the Rules.
    (ii) A tabular statement as per Form B to the Rules.
    (iii) An appendix giving the list of prosecution witnesses, defence witnesses, court witnesses, prosecution exhibits, defence exhibits and court exhibits and material objects as per Form C to the Rules.
12. In compliance with Sections 354 and 355 CrPC, in all cases, the judgments shall contain:
    (i) the point or points for determination,
    (ii) the decision thereon, and
    (iii) the reasons for the decision.
13. In case of conviction, the judgment shall separately indicate the offence involved and the sentence awarded. In case there are multiple accused, each of them shall be dealt with separately. In case of acquittal and if the accused is in confinement, a direction shall be given to set the accused at liberty, unless such accused is in custody in any other case.
14. In the judgment the accused, witnesses, exhibits and material objects shall be referred to by their nomenclature or number and not only by their names or otherwise. Wherever, there is a need to refer to the accused or witnesses by their name, the number shall be indicated within brackets.
15. The judgment shall be written in paragraphs and each paragraph shall be numbered in seriatim. The Presiding Officers, may, in their discretion, organise the judgment into different sections.

16. Bail
17. Separation of prosecutors and investigators
18. Directions for expeditious trial

(Criminal Trail Guidelines Regarding Inadequacies and Deficiencies, In Re v. State of Andhra Pradesh and others, (2021) 10 SCC 598)

Election Law

Criminalization of politics/Electoral Reform Right to information of voter : Direction issued to political parties to publish information regarding criminal antecedents of candidates on homepage of their websites with caption "Candidates with Criminal Antecedents" Detailed directions also issued to Election Commission of India (ECI) so as to make such information freely available and to spread awareness re criminal antecedents of all contesting candidates. Held, issuing such a direction would amount to entering into legislative arena and as such, such a direction cannot be issued - Representation of the People Act, 1951, S. 8 **(Brajesh Singh v. Sunil Arora and others, (2021) 10 SCC 241)**

Election of Local Government/Bodies/Municipalities/Panchayats/ Autonomous and Other Bodies - Reservation for SCs/STs/Backward Class citizens/Women in proportion to population of such category Provision for rotation of the different reserved categories in Office of Mayor across the State, by draw of lots as mandated by scheme of Act and Rules concerned read with Article 243-T of the Constitution.

Election Local Government/Bodies/Municipalities/Panchayats/ Autonomous and Other Bodies Reservation - 2006 Rules are mechanism for giving effect to constitutional mandate under Art. 243-T of the Constitution for providing reservation for SCs, STs, Backward Class citizens, in proportion to their population and to provide procedure for reservation of office of Mayor in the Corporation in rotation for SCs, STs, Backward Class citizens and Women as mandated under S. 19(1-A) of the 1949 Act - Harmonious interpretation of the Rules is required to give effect to both constitutional and statutory mandate. **(Sanjay Ramdas Patil v. Sanjay and others, (2021) 10 SCC 306)**

Evidence Act

Ss. 101 and 106 : Burden of proving guilt of accused - In case governed by circumstantial evidence, if chain of circumstances which is required to be established by prosecution is not established. Failure of accused to discharge burden under S. 106 of the Evidence Act in such case.

Penal Code, 1860- Ss. 302 and 201 : Wife of appellant-accused herein dying due to burn injuries in her matrimonial home - Post-mortem report showing cause of death as "asphyxia due to pressure around neck by hand and blunt substance" - Case based on circumstantial evidence - Appellant's conviction under Ss. 302 and 201 IPC, upheld by High Court.

Under Section 101 of the Evidence Act, whoever desires any court to give a judgment as to a liability dependent on the existence of facts, he must prove that those facts exist. Therefore, the burden is always on the prosecution to bring home the guilt of the accused beyond a reasonable doubt.

Section 106 of the Evidence Act, constitutes an exception to Section 101 of the Evidence Act. Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

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

Five golden principles (Panchsheel) laid down by Supreme Court in Sharad Birdhichand Sarda, (1984) 4 SCC 116, which govern such a case reiterated. **(Nagendra Sah v. State of Bihar, (2021) 10 SCC 725)**

Hon'ble Apex Court while discussing the proof regarding rape and its appreciation held that, Hon'ble Supreme Court in (2012)7 SCC 171:AIR 2012 SC 2281 Narendra Kumar v. State (NCT of Delhi) held that where the evidence of the prosecutrix is found suffering from inconsistencies and infirmities with other material, no reliance can be placed thereon. The relevant para 22 is reproduced as under:

> "Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. (vide Suresh N. Bhusare v. State of Maharashtra (1999) 1 SCC 220:AIR 1998 SC 3131"

In (2010)14 SCC 534: AIR Online 2010 SC 87, Jai Krishna Mandal v. State of Jharkhand, Supreme Court reiterated that the improbable statement of the prosecutrix cannot be believed. Relevant portion of para 4 is reproduced as under :

> "4……...The only evidence of rape was the statement of the prosecutrix herself and when this evidence was read in its totality, the story projected by the prosecutrix was so improbable that it could not be believed."

In Raju v. State of M.P (2008) 15 SCC 133: AIR 2009 SC 858, Hon'ble Supreme Court held that no doubt, a false allegation of rape can cause equal distress, humiliation and damage to the accused as well and interest of the accused must also be protected. Relevant portion of paras 10 and 11 are reproduced as under :

> "10…….. that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on par with that of an injured witness and if the evidence is reliable, no corroboration is necessary.
>
> "11…….It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against

the possibility of false implication….. there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

Similar view has been taken by Hon'ble Supreme Court in Tameezuddin v. State (NCT of Delhi (2009)15 SCC 566: AIR 2009 SC (Supp) 2519.

In view of the aforesaid discussion, considering the totality of facts and circumstances as well as the law laid down by the Apex Court, it will not be safe to convict the appellant and to uphold the impugned conviction and sentence of the accused on this kind of evidence.

I, therefore, allow this appeal and set aside the order of conviction and sentence recorded against the appellant. **Chandan v. State of U.P., 2021 Cri.L.J. 4398 : AIR Online 2021 All. 2341**

Family/Personal Laws

Hindu Law- Partition/Family Arrangement/Settlement Reunion of family : The acts and conduct of the parties subsequent to registered partition of 7-11-1960 amply prove that there was reunion between three brothers to revert to the status of joint Hindu family

It has been held that real intendment of the parties to terminate the status of joint family is a relevant factor to determine the status of Hindu undivided family Though there was a registered partition in 1960, the same was to take benefit of land ceiling laws The intention of the parties when they partitioned their properties in the year 1960 is a relevant fact-Yet, the said registered partition of 1960 cannot be ignored - However, even if there was partition and severance of status in 1960 vide the registered partition deed, acts and conduct of the parties subsequent thereto (such as constructing a new joint home and living in the same jointly, buying immovable properties together, running/continuing to run joint businesses, etc.), held, amply prove that there was reunion between the three brothers to revert to the status of joint Hindu family, and to be joint thereafter-Joint status continued until point of time when property in question was purchased jointly in 1979, and thereafter at least till 1981.

Partition/Family Arrangement/ Settlement - Reunion Admission as to reunion/status of Hindu family, in addition to acts and conduct that clearly established reunion - Registered

partition taking place in 1960-Acts and conduct of parties established that there was reunion thereafter Property in dispute purchased in 1979

An individual member of joint Hindu family can very well file his separate returns both under Income Tax Act as well as Wealth Tax Act-Filing of such returns is not conclusive of status of family.

Civil Procedure Code, 1908 - Or. 23 Rr. 3-A and 3 - Compromise decree - Separate suit for setting aside on the ground that it was unlawful is not maintainable - To challenge compromise decree on ground that decree was not lawful, the party to consent decree based on compromise has to approach same court, which recorded compromise.

Forum for challenging compromise decree on ground that it was "unlawful"

Order 23 Rule 3-A CPC bars the suit to set aside the decree on the ground that compromise on which decree was passed was not lawful. The word "lawful" has been used in Order 23 Rule 3 CPC and the Explanation of Order 23 Rule 3 CPC states that "an agreement or compromise which is void or voidable under the Contract Act, 1872, shall not be deemed to be lawful". Thus, an agreement or compromise which is clearly void or voidable shall not be deemed to be lawful and the bar under Order 23 Rule 3-A CPC shall be attracted if compromise on the basis of which decree was passed was void or voidable.

By adding the proviso along with an Explanation to Order 23 Rule 3 CPC, the purpose and the object of the amending Act of 1976 is to compel the party challenging the compromise, to question the same before the court which had recorded the compromise in question. That court is enjoined to decide the controversy whether the parties have arrived at an adjustment in a lawful manner.

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

Concept of Reunion of Family

Hindu joint family even if partitioned can revert back and reunite to continue the status of joint family. A reunion can take place between any person who were parties to the original

partition. Only males can reunite. A member of such a joint family can separate himself from other members of joint family and is on separation entitled to have his share in the the joint family ascertained and partitioned off for him, and that the remaining coparceners, without property of any special agreement amongst themselves, may continue to be coparceners and to enjoy as members of a joint family what remained after such a partition of the family property. If a joint Hindu family separates, the family or any members of it may agree to reunite as a joint Hindu family, but such a reuniting is for obvious reasons, which would apply in many cases under the law of the Mitakshara, of very rare occurrence, and when it happens it must be strictly proved as any other disputed fact is proved.

The mutual love, affection arising from blood relationship and the desire to reunite proceeding therefrom, constitutes the very foundation of reunion. Reunion therefore is a reversal of the process of partition. Therefore, it is reasonable to take the view that reunion is not merely an agreement to live together as tenants in common, but is intended to bring about a fusion in interest and estate among the divided members of an erstwhile HUF so as to restore to them the status of HUF once again and therefore reunion creates right on all the reuniting coparceners in the joint family properties which were the subject-matter of partition among them to the extent they were not dissipated away before the date of reunion.

In fact, the presumption is in favour of union until a partition is made out, so after a partition the presumption would be against a reunion. To establish it, it is necessary to show, not only that the parties already divided, lived or traded together, but that they did so with the intention of thereby altering their status and of forming a joint estate with all its usual incidents. It requires very cogent evidence to satisfy the burden of establishing that by agreement between them, the divided members of a joint Hindu family have succeeded in so altering their status as to bring themselves within all the rights and obligations that follow from the fresh formation of a joint undivided Hindu family.

Under Hindu Law, any member of the joint family can separate himself from joint family. The intention of the parties to terminate the status of joint family is a relevant factor to determine the status of Hindu undivided family.

Thus all three branches of the family have equal share in the residential property in question in Original Suit No. 1101 of 1987. This residential property being not a part of OS No. 37 of 1984, there is no bar in seeking partition of the said property by the plaintiff. Accordingly, plaintiff

Defendant 7, Defendant 1 and Defendant 4 are declared entitled to 1/3rd share jointly in the aforesaid residential property (1/3rd share each to R branch, K branch and C branch). Accordingly, a preliminary decree for partition shall be drawn for the aforesaid property. **[R Janakiammal v. S K Kumarasamy (Deceased) v. through legal representatives and others, (2021) 9 SCC 114]**

Human and Civil Rights

Humanitarian and Natural Disasters, - Epidemics and Pandemics COVID-19 Pandemic Phase 3 vaccination drive Vaccine production, procurement and distribution model - Procurement not on best prices, though it could have been bargained; distribution of vaccines to State Governments and private hospitals on prefixed pro rata quota based on population ignoring all other factors, thus, prima facie not being realistic Issues required clarification regarding - the liberalized vaccination policy.

Liberalized vaccination drive - Sharing of responsibility between Central Government and State/UT Governments and issues concerning cold storages for vaccines

Judicial review of government policies Normal times vis-à-vis public health emergency situations - Wider margin to executive during public health emergency situations

Liberalized Vaccination Policy - Vaccination by private hospitals under the Liberalized Vaccination Policy - Salient features and effect - Clarifications sought

Liberalized Vaccination Policy Whether digital registration for vaccination justified in view of digital divide Statistics indicated digital divide particularly between the rural and urban areas

We direct the UrI to file an affidavit, which shall address the issues and questions raised in Section E, wherein it shall ensure that each issue is responded to individually and no issue is missed out. We also direct that the affidavit should provide the following information:

The data on the *percentage of population* that has been vaccinated (with one dose and both doses), as against eligible persons in the first three phases of the vaccination drive. This shall include data pertaining to the percentage of rural population as well as the percentage of urban population so vaccinated.

The complete data on the Central Government's purchase history of all the COVID-19 vaccines till date (Covaxin, Covishield and Sputnik V). The data should clarify: (a) the dates of all procurement orders placed by the Central Government for all 3 vaccines; (b) the quantity of vaccines ordered as on each date; and (c) the projected date of supply.

An outline for how and when the Central Government seeks to vaccinate the remaining population in Phases 1, 2 and 3.

The steps being taken by the Central Government to ensure drug availability for mucormycosis.

While filing its affidavit, UoI shall also ensure that copies of all the relevant documents and file notings reflecting its thinking and culminating in the vaccination policy are also annexed on the vaccination policy. Hence, we direct the Uol to file its affidavit within 2 weeks.

We also note that UoI's stated position in its affidavit dated 9-5-2021 is that every State/UT Government shall provide vaccination free of cost to its population. It is important that individual State/UT Governments confirm/deny this position before this Court. Further, if they have decided to vaccinate their population for free then, as a matter of principle, it is important that this policy is annexed to their affidavit, so that the population within their territories can be assured of their right to be vaccinated for free at a State vaccination centre. Hence, we direct each of the State/UT Governments to also file an affidavit within 2 weeks, where they shall clarify their position and put on record their individual policies. **[Distribution of Essential Supplies and Services During Pandemic, In Re, (2021) 7 SCC 772]**

Human and Civil Rights of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act

Ss. 32, 33 & 47 of the Human and Civil Rights Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Reservation in promotion for persons with disabilities - Legislative mandate of equal opportunity for career progression including promotion - Reservation in promotion cannot be denied to persons with disabilities as it cannot be confined to initial stage of induction of service resulting in stagnation of disabled.

Further held, operation of reservation and computation must be made with reference to total number of vacancies in cadre strength and no distinction should be made between posts to be filled by direct recruitment and by promotion. Moreover, Rules must be framed providing for promotion from feeder cadre to promotional posts and posts must be identified in terms of S. 32 in promotional cadre capable of being filled by persons with disabilities, directions issued in *Rajeev Kumar Gupta, (2016) 13 SCC 153 and Siddaraju, (2020) 19 SCC 572* noted. State directed to implement said judgments and to provide for reservation in all identified promotional posts.

It was also clarified that the 2016 Act has now taken care of how to deal with the aspect of reservation in promotion. The principles clarified herein are required as a large number of cases may still arise in the context of the 1995 Act. **[State of Kerala and others v. Leesamma Joseph, (2021) 9 SCC 208]**

Human and Civil Rights & Humanitarian and Natural Disasters

Ss. 12(iii), 48, 6(1) and 6(2)(g) - Notified disaster-Ex gratia monetary compensation to families of deceased who have succumbed to pandemic of COVID-19 Word "shall" used in S. 12 cannot be interpreted and considered as "may". It is mandatory for National Authority to recommend guidelines for minimum standards of relief to be provided to persons affected by disasters including ex gratia assistance on account of loss of life.

Arts 21, 32 and 226 of the Constitution of India - Issue of writs - Mandamus-COVID-19 Pandemic-While recommending other guidelines for minimum standards of relief, National Authority failed to perform its statutory duty cast under S. 12 of the DMA, 2005 and therefore a writ of mandamus is to be issued to National Authority to recommend appropriate guidelines for ex gratia assistance on account of loss of life due to COVID-19 Pandemic.

Natural Disasters, Epidemics and Pandemics Disaster Management Act, 2005 — Ss. 12 and 2(d) COVID-19 Pandemic Writ of mandamus directing Central Government/National Authority/State Governments to pay a particular amount by way of ex gratia assistance cannot be issued. Government has to decide its own priorities and reliefs to different sectors.

In a catena of decisions and time and again the Supreme Court has considered the limited scope of judicial review in economic policy matters. From its various decisions, the Supreme Court has consistently observed and held that: (i) The Court will not debate academic matters or concern itself with intricacies of trade and commerce; (ii) It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review; (iii) Economic and fiscal regulatory measures are a field where Judges should encroach upon very varily as Judges are not experts in these matters. However, at the same time, if the statutory authority/authority has failed to perform its statutory duty cast under the statute or constitutional duty, a mandamus can be issued directing the authority to perform its duty cast under the statute In such a situation, the Court would be absolutely justified in issuing a writ of mandamus directing the authority to perform its statutory duty/constitutional duty

Section 12 of the DMA, 2005 specifically provides that the National Authority "shall" recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which "shall" include, (i) the minimum requirements to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation; (ii) the special provisions to be made for widows and orphans; and (iii) ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood. Therefore, it is the statutory duty cast upon the National Authority to recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which shall include the reliefs, as stated hereinabove.

The language used in the provision is very plain and unambiguous. As per the settled proposition of law laid down by the Supreme Court in a catena of decisions, when the language of the provision is plain and unambiguous, statutory enactments must ordinarily be construed according to its plain meaning. The beneficial provision of the legislation must be literally construed so as to fulfill the statutory purpose and not to frustrate it.

In view of the above and for the reasons stated above, the present writ petitions are disposed of with the following directions:

(1) National Disaster Management Authority is directed to recommend guidelines for ex gratia assistance on account of loss of life to the family members of the persons who died due to COVID-19, as mandated under Section 12(iii) of the DMA, 2005 for the minimum standards of relief to be provided to the persons affected by disaster. COVID-19 Pandemic, over and above the guidelines already recommended for the minimum standards of relief to be provided to persons affected by COVID-19. However, what reasonable amount to be offered towards ex gratia assistance is left to the wisdom of National Authority which may consider determining the amount taking into consideration the observations made hereinabove, such as, requirement/availability of the fund under the NDRF/SDRF for other reliefs and the priorities determined by the National Authority/Union Government and the fund required for other minimum standards of relief and fund required for prevention, preparedness, mitigation and recovery and other reliefs to carry out the obligation under the DMA, 2005. The aforesaid exercise and appropriate guidelines be recommended, as directed hereinabove, within a period of six weeks from the date of this order.

The appropriate authority is directed to issue simplified guidelines for issuance of death certificates/official document stating the exact cause of death i.e. "Death due to COVID-19", to the family members of the deceased who died due to COVID-19. **[Reepak Kansal v. Union of India and others, (2021) 9 SCC 251]**

Epidemics and Pandemics - COVID-19 Pandemic Public health response Daily requirement of 700 MT of oxygen for National Capital Territory of Delhi (NCTD) and obligation of Central Government. Directions and clarifications issued and Central Government directed to remedy the situation forthwith.

COVID-19 Pandemic - Public health response should be Rational, scientific, effective, efficient, equitable, transparent and professional approach. Constitution of National Task Force, its powers, functions and duties, terms of reference and interim solution for medical oxygen availability and allocation for all States and Union Territories (UTS) and preparedness to meet future eventualities Directions and guidelines issued.

Broad issues

The broad areas of concern herein are as follows:

i. Determination of the quantum of oxygen required by each State and Union Territory ("UT") by the application of a rational and scientific methodology.
ii. Allocation of the resources of oxygen to States/UTs on the basis of such a methodology.

iii. Ensuring efficiency in the distribution of oxygen from the points of supply through distribution network which reach the ultimate users institutional and individual, as the case may be.
iv. Monitoring the supply and distribution of oxygen.
v. Adopting steps for augmenting the available resources, on the basis of the present demand and projected increase of demand, based on the stage of the pandemic.
vi. Designing and monitoring an efficient system of transportation and other logistical arrangements which ensure seamless movement across the supply chain.
vii. Creating buffer stocks capable of being accessible in the case of emergencies.

Specific issue herein

The specific issue herein pertains to the allocation and distribution of oxygen to the National Capital Territory of Delhi ("NCTD"). The High Court vide order dated 30-4-2021, issued specific directions to the Central Government to remedy the situation by supplying 700 MT of oxygen daily to NCTD as per the projected demand. It is directed that there shall be no reduction in the allocation and availability of medical oxygen to NCTD and the direction in regard to the provision of 700 MT per day shall continue to be observed.

Rationale for constituting National Task Force

The rationale for constituting a Task Force at a national level is to facilitate a public health response to the pandemic based on scientific and specialized domain of knowledge. It is expected that the leading experts in the country shall associate with the work of the Task Force both as members and resource persons. This will facilitate a meeting of minds and the formulation of scientific strategies to deal with an unprecedented human crisis. The establishment of this Task Force will enable the decision-makers to have inputs which go beyond finding ad hoc solutions to the present problems. The likely future course of the pandemic must be taken into contemplation at the present time. This will ensure that projected future requirements can be scientifically mapped in the present and may be modulated in the light of experiences gained. Estimating projected needs is crucial to ensure that the country remains prepared to meet future eventualities, which will cause a demand for oxygen, medicines, infrastructure, manpower and logistics. The establishment of the Task Force will provide the Central Government with inputs and strategies for meeting the challenges of the pandemic on a transparent and professional basis, in the present and in future.

Directions to Central Government

The Central Government shall continue with the present practice of making allocations of oxygen (as modified by the judicial orders) until the Task Force has submitted its recommendations in regard to proposed modalities. The Central Government shall on receipt of the recommendations of the Task Force should take an appropriate decision in regard to the allocation of oxygen and on all other recommendations. The tenure of the Task Force shall be six months initially. The Central Government shall provide all necessary assistance to the Task Force and nominate two Nodal Officers to facilitate its work. The Nodal Officers shall also arrange for logistics, including communication with the members and arranging the virtual meetings, of the Task Force.

All concerned directed to cooperate and provide complete and real time data for facilitating the work of the Task Force as and when necessary

The Union Government and State Governments, Ministries, agencies and departments shall provide complete and real time data for facilitating the work of the Task Force as and when necessary. All private hospitals and other health care institutions shall cooperate with the Task Force.

National Task Force directed to commence its work immediately and submit its recommendations from time to time to the Court

The Task Force shall also submit its recommendations from time to time to the Court. Task Force requested to commence work immediately, taking up the pressing issue of determining the modalities for oxygen expeditiously within a week. **[Union of India v. Rakesh Malhotra and another, (2021) 9 SCC 222]**

Income Tax Act

S. 14-A-Disallowance on expenditure incurred for earning tax-free income in cases where assessees do not maintain separate accounts for the investments and other expenditures incurred for earning the tax-free income- Whether permissible under S. 14-A

Held, the proportionate disallowance of interest is not warranted under S. 14-A for investments made in tax-free bonds/securities which yield tax-free dividend and interest to

assessee Banks in those situations where, interest-free own funds available with the assessee, exceeded their investments - This is because in present case nexus has not been established between expenditure disallowed and earning of exempt income and the Revenue failed to substantiate their argument that assessee was required to maintain separate accounts **(South Indian Bank Limited v. Commissioner of Income Tax, (2021) 10 SCC 153)**

Indian Penal Code

Ss. 101 and 106 of Evidence Act, 1872 : Burden of proving guilt of accused - In case governed by circumstantial evidence, if chain of circumstances which is required to be established by prosecution is not established. Failure of accused to discharge burden under S. 106 of the Evidence Act in such case.

Penal Code, 1860- Ss. 302 and 201 : Wife of appellant-accused herein dying due to burn injuries in her matrimonial home - Post-mortem report showing cause of death as "asphyxia due to pressure around neck by hand and blunt substance" - Case based on circumstantial evidence - Appellant's conviction under Ss. 302 and 201 IPC, upheld by High Court.

Under Section 101 of the Evidence Act, whoever desires any court to give a judgment as to a liability dependent on the existence of facts, he must prove that those facts exist. Therefore, the burden is always on the prosecution to bring home the guilt of the accused beyond a reasonable doubt.

Section 106 of the Evidence Act, constitutes an exception to Section 101 of the Evidence Act. Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. However, in a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden

under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused.

Five golden principles (Panchsheel) laid down by Supreme Court in Sharad Birdhichand Sarda, (1984) 4 SCC 116, which govern such a case reiterated. **(Nagendra Sah v. State of Bihar, (2021) 10 SCC 725)**

Ss. 146 & 147 of the Indian Penal Code, 1860 - Rioting Force or violence - Need not be by all accused, because every member of the unlawful assembly is guilty of the offence of rioting even though he may not have himself used force or violence

Thus, once the unlawful assembly is established in prosecution of the common object i.e. in the present case, "to snatch the voters list and to cast bogus voting", each member of the unlawful assembly is guilty of the offence of rioting. The use of the force, even though it be the slightest possible character by any one member of the assembly, once established as unlawful constitutes rioting. It is not necessary that force or violence must be by all but the liability accrues to all the members of the unlawful assembly. Some may encourage by words, others by signs while others may actually cause hurt and yet all the members of the unlawful assembly would be equally guilty of rioting. In the present case, all the accused herein are found to be the members of the unlawful assembly in prosecution of the common object i.e. "to snatch the voters list and to cast bogus voting" and PWs 5, 8, 10 and 12 sustained injuries caused by members of the unlawful assembly, the appellant-accused are rightly convicted under Section 147 IPC for the offence of rioting.

S. 147 - Sufficiency of Sentence - All the accused persons held guilty, being members of the unlawful assembly in prosecution of the common object, namely, "to snatch the voters list and to cast bogus voting" - Sentence of only six months' simple imprisonment was not sufficient

Freedom of voting is a part of the freedom of expression. Secrecy of casting vote is necessary for strengthening democracy. In direct elections of Lok Sabha or State Legislature, maintenance of secrecy is a must and is insisted upon all over the world in democracies where direct elections are involved to ensure that a voter casts his vote without any fear or being victimized if his vote is disclosed. Democracy and free elections are a part of the basic structure of the Constitution. The election is a mechanism which ultimately represents the will of the people.

The essence of the electoral system should be to ensure freedom of voters to exercise their free choice. Therefore, any attempt of booth capturing and/or bogus voting should be dealt with iron hands because it ultimately affects the rule of law and democracy. Nobody can be permitted to dilute the right to free and fair election. However, as the State has not preferred any appeal against imposing of only six months' simple imprisonment, the Supreme Court rests the matter there.

Ss. 147, 148, 323, 324 and 326 - Evidentiary value of Injured witnesses evidence of injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard their evidence.

The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Minor discrepancies do not corrode the credibility of an otherwise acceptable evidence. Mere non-mention of the name of an eyewitness does not render the prosecution version fragile. In cases where there are large number of assailants, it can be difficult for witnesses to identify each assailant and attribute specific role to him. When incident stood concluded within few minutes, it is natural that exact version of incident revealing every minute detail i.e. meticulous exactitude of individual acts, cannot be given by eyewitnesses. Where witness to occurrence was himself injured in the incident, testimony of such witness is generally considered to be very reliable, as he is a witness that comes with an inbuilt guarantee of his presence at the scene of crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. Thus, deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on basis of major contradictions and discrepancies therein. Evidence of injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard their evidence. Further, being injured witnesses, their presence at the time and place of occurrence cannot be doubted. **[Lakshman Singh v State of Bihar (Now Jharkhand), (2021) 9 SCC 191]**

Ss. 299 to 304-Considerations that should weigh with court in discerning whether an act is punishable as murder or culpable homicide not amounting to murder. Use of word "likely" in several places in respect of culpable homicide, but absence thereof in definition of murder Significance of, explained

Ss. 302, 304 Pt. I [Ss. 299 and 300] Death of SI due to coming under rear wheels of truck fleeing away after breaking Forest Department barrier and colliding with a motorcycle. Appellant-accused herein, driver of aforesaid truck, allegedly pushed deceased out of truck, when deceased boarded truck for stopping it on road in front of police station, resulting in deceased getting run over by rear wheels of truck, causing his death. Appellant fled with truck. Conviction of appellant under S. 302 upheld by High Court.

The question of whether in a given case, a homicide is murder, punishable under Section 302 IPC or culpable homicide of either description, punishable under Section 304 IPC, has engaged the attention of courts in India for over one-and-a-half century, since the enactment of the IPC. A welter of case law, on the aforesaid aspect exists, including perhaps several hundred rulings by the Supreme Court. The use of the term "likely" in several places in respect of culpable homicide, highlights the element of uncertainty that the act of the accused may or may not have killed the person. Section 300 IPC which defines "murder", however refrains from the use of the term likely, which reveals absence of ambiguity left on behalf of the accused. The accused is for sure that his act will definitely cause death. It is often difficult to distinguish between culpable homicide and murder as both involve death. Yet, there is a subtle distinction of intention and knowledge involved in both the crimes. Such difference lies in the degree of the act. There is a very wide variance of degree of intention and knowledge among both the crimes. **(Mohd. Rafiqalias Kallu v. State of Madhya Pradesh, (2021) 10 SCC 706)**

S. 304 – Part I & II and 201, IPC : Death of deceased after being hit with a rod on his head. Available evidence clearly shows that incident was result of sudden fight on the spur of moment taking place in the heat of passion upon a sudden quarrel. It was not a premeditated one and there was no intention on part of appellant and co-accused either to cause death or cause such bodily injury as is likely to cause death. Hence, High Court erred in convicting appellant under S. 304 Pt. I. Therefore, appellant's conviction stands modified from Ss. 304 Pt. 1/34 to one under Ss. 304 Pt. II/34. However, his conviction under S. 201 stands maintained. **(Kala Singh alias Gurnam Singh v. State of Punjab, (2021) 10 SCC 744)**

Ss. 323 & 319 - Production of an injury report is not a sine qua non for establishing case under S. 323 Non-visible injuries and even causing bodily pain was held to come within the

ambit of causing "hurt" Non-Production of injury report is not fatal, when offence under S. 323 proved otherwise based on evidence on record.

S. 364-A - Kidnapping for ransom - Necessity to prove each and every ingredient prescribed in S. 364-A - All conditions as enumerated in S. 364-A must be fulfilled before recording conviction under S. 364-A - First essential condition, held, must mandatorily be established with at least any one of the three conditions mentioned thereafter also being affirmatively established, to ground conviction under S. 364-A.

Kidnapping or abduction of child of a tender age for ransom - Merely from tender age of child, held, it cannot be assumed that there is inherent threat to cause death and the second condition i.e. "threatens to cause death or hurt to such person" or at least one of the other conditions mentioned thereafter in S. 364-A is therefore not required to be affirmatively proved by leading evidence. In every case, to establish guilt under S. 364-A prosecution must establish the first essential condition, and must also affirmatively establish at least any one of the three conditions mentioned thereafter.

The issues that arose before the Supreme Court were:

(i) Whether each and every ingredient as mentioned under Section 364-A needs to be proved for securing conviction under Section 364-A and non-establishment of any of the conditions may vitiate the conviction under Section 364-A IPC?

(ii) Whether the Sessions Judge as well as the High Court recorded any finding that all ingredients of Section 364-A were proved by the prosecution?

(iii) Whether there was any evidence or findings by the courts below that the accused had threatened to cause death or hurt to the victim or by his conduct gave rise to a reasonable apprehension that victim may be put to death or hurt?

It was held that after paraphrasing of Section 364-A, the following is deciphered:

i. Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction

ii. and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt,

iii. or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organization or any other person to do or abstain from doing any act or to pay a ransom.

iv. shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

The first essential condition as incorporated in Section 364-A is "whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction". The second condition begins with conjunction "and". The second condition has also two parts i.e. (a) threatens to cause death or hurt to such person or (b) by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt. Either part of above condition, if fulfilled, shall fulfill the second condition for offence. The third condition begins with the word "or" i.e. or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organization or any other person to do or abstain from doing any act or to pay a ransom. Third condition begins with the words "or causes hurt or death to such person in order to compel the Government or any foreign State to do or abstain from doing any act or to pay a ransom". Section 364-A contains a heading "kidnapping for ransom, etc." The kidnapping by a person to demand ransom is fully covered by Section 364-A.

After the first condition the second condition is joined by conjunction "and", thus, whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person. The use of conjunction "and" has its purpose and object. Section 364-A uses the word "or" nine times and the whole section contains only one conjunction "and", which joins the first and second condition. Thus, for covering an offence under Section 364-A, apart from fulfillment of first condition, the second condition i.e. "and threatens to cause death or hurt to such person" also needs to be proved in case the case is not covered by subsequent clauses joined by "or".

For obtaining a conviction for commission of an offence under Section 364-A, it is necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organization or any other person to do or abstain from doing any act or to pay a ransom.

Thus, after establishing first condition, one more condition has to be fulfilled since after first condition, word used is "and". Thus, in addition to first condition either Condition (ii) or (iii) has to be proved, failing which conviction under Section 364-A cannot be sustained. **[Shaik Ahmed v. State of Telangana, (2021) 9 SCC 59]**

S. 376(2)(f), 511, 354 IPC, S. 3 Indian Evidence Act

Hon'ble Supreme Court held that there is a visible distinction between 'preparation' and 'attempt' to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of 'preparation' consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission of the offence. Whereas, an 'attempt' to commit the offence, starts immediately after the completion of preparation. 'Attempt' is the execution of mens rea after preparation. `Attempt' starts where `preparation' comes to an end, though it falls short of actual commission of the crime. However, if the attributes are unambiguously beyond the stage of preparation, then the misdemeanours shall qualify to be termed as an 'attempt' to commit the principal offence and such 'attempt' in itself is a punishable offence in view of Section 511 IPC. The 'preparation' or 'attempt' to commit the offence will be predominantly determined on evaluation of the act and conduct of an accused; and as to whether or not the incident tantamount to transgressing the thin space between `preparation' and 'attempt'. If no overt act is attributed to the accused to commit the offence and only elementary exercise was undertaken and if such preparatory acts cause a strong inference of the likelihood of commission of the actual offence, the accused will be guilty of preparation to commit the crime, which may or may not be punishable, depending upon the intent and import of the penal laws. 'Attempt' is the direct movement towards the commission after the preparations are over. It is essential to prove that the attempt was with an intent to commit the offence. An attempt is possible even when the accused is unsuccessful in committing the principal offence. Similarly, if the attempt to commit a crime is accomplished, then the crime stands committed for all intents and purposes.

Section 511 IPC is a general provision dealing with attempts to commit offences which are not made punishable by other specific sections of the Code and it provides, inter alia, that, "whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the

case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both".

An attempt may be described to be an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime.

In order to find an accused guilty of an attempt with intent to commit rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part.

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

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

In our considered opinion, the act of the respondent of luring the minor girls, taking them inside the room, closing the doors and taking the victims to a room with the motive of carnal knowledge, was the end of 'preparation' to commit the offence. His following action of stripping the prosecutrices and himself, and rubbing his genitals against those of the victims was indeed an endeavour to commit sexual intercourse. These acts of the respondent were deliberately done with manifest intention to commit the offence aimed and were reasonably proximate to the consummation of the offence. Since the acts of the respondent exceeded the stage beyond preparation and preceded the actual penetration, the Trial Court rightly held him guilty of attempting to commit rape as punishable within the ambit and scope of Section 511 read with

Section 375 IPC as it stood in force at the time of occurrence. **State of Madhya Pradesh v. Mahendra alias Golu, 2021 Cri.L.J. 4915: AIR Online 2021 sc 928.**

Ss. 397, 392

Hon'ble Apex Court held that in a case related to robbery and decoity. The name of accused or mark of identification were not spelt out in FIR. There was no other evidence regarding identification of accused. During testimony the capacity of witness to sufficiently identify of accused was doubtful. It was held that mere factum of recovery of some money from house of accused by itself, would not be sufficient to sustain order of conviction. Hence, accused is entitled to benefit of doubt. The court acquitted him of all the charges leveled against him. **Rajjan Khan v. State of Madhya Pradesh, 2021 Cri.L.J. 4305 : AIR Online 2021 SC 353**

Ss. 511, 375—Attempt to commit rape

In our considered opinion, the act of the respondent of luring the minor girls, taking them inside the room, closing the doors and taking the victims to a room with the motive of carnal knowledge, was the end of 'preparation' to commit the offence. His following action of stripping the prosecutrices and himself, and rubbing his genitals against those of the victims was indeed an endeavour to commit sexual intercourse. These acts of the respondent were deliberately done with manifest intention to commit the offence aimed and were reasonably proximate to the consummation of the offence. Since the acts of the respondent exceeded the stage beyond preparation and preceded the actual penetration, the Trial Court rightly held him guilty of attempting to commit rape as punishable within the ambit and scope of Section 511 read with Section 375 IPC as it stood in force at the time of occurrence. **[State of M.P. vs. Mahendra alias Golu, AIR 2021 SC 5242]**

Judicial Process

Courts, Tribunals and Judiciary - Judicial Process - Role of the Bar, Administration and Public Institutions/Officers - Expunction of adverse remarks made against appellant, a

senior lawyer, by High Court while deciding four cases in which appellant was representing one of the contesting parties.

It was held that while it is of fundamental importance in realm of administration of justice to allow Judges to discharge their functions freely and fearlessly without interference from anyone, it is equally important for Judges to exercise restraint and avoid unnecessary remarks on conduct of counsel which has no bearing on adjudication of dispute. On perusing offending remarks recorded in High Court judgment, it is found that those were unnecessary for deciding the dispute and could have been avoided. Moreover, they were based on personal perception of Judge which cast aspersion on professional integrity of appellant demeaning him amongst his professional colleagues. Besides, no opportunity of hearing was given to him before recording adverse remarks negating principles of audi alteram partem. Furthermore, requisite degree of restraint and sobriety expected in such situations also found missing in offending comments. Offending remarks directed to be expunged to avoid any further harm to appellant's reputation or his work as a member of the Bar. **[Neeraj Garg v. Sarita Rani and others, (2021) 9 SCC 92]**

Land Acquisition Act

Land Acquisition and Requisition

Resettlement/Rehabilitation or Restoration/ Reallotment - Employment in lieu of acquisition of lands - Scheme for Entitlement under the scheme concerned. Determination of Need for strict compliance with eligibility criteria specified in the scheme concerned.

Rehabilitation employment scheme providing that a claimant would be eligible for grant of employment if land acquired for purposes of project is at least 2 acres - No documentary evidence to indicate that respondent had title to land in excess of two acres - Holding of relatives and others cannot be included in holding of respondent merely on basis of self-serving affidavits which would not amount to a conveyance of title - In different rehabilitation schemes compensation and rehabilitation are provided to "family", which includes wife, children, and dependant families only. Relatives who are not dependent on claimant will constitute a separate family unit for purposes of compensation and rehabilitation. **[Eastern Coal Fields Limited v. Anadinath Banerjee (Dead) and others, (2021) 8 SCC 593]**

S. 23 - Determination of Market Value - Matters which may be considered - Exemplar sales which had taken place subsequent to acquisition notification. Where different lands belonging to different survey number were acquired for same purpose and they have identical features, categorization of lands by Reference Court. On facts, it was held that High Court had adopted valid approach in determination of market value, appeals dismissed. **(Manmohan Lal Gupta (Dead) through legal representatives v. Market Committee, Bhikhi and others, (2021) 10 SCC 395)**

Local Government, Municipalities and Panchayats

Municipalities W.B. Municipal Act, 1996 (6 of 1996) Ss. 217 and 218 - Sanction of building plan or cancellation of sanction and direction for demolition - Competent authority - Chairman, Board of Councilors, held, has no jurisdiction to decide dispute on issue of misrepresentation or fraudulent statement in application seeking sanction of building plan, for passing order to cancel sanction and to demolish structure Decision in this regard has to be taken by Municipal Council.

Civil Procedure Code, 1908 - S. 9- Jurisdiction of civil court - R-3 sold ground floor of his two-storeyed building to appellant inter alia with common right to roof - Dispute pertaining to right of R-3 to make construction on roof of first floor in which he resides, requires to be decided by civil court and not Municipality Property Law - Use and Enjoyment of Property. W.B. Municipal Act, 1996 (6 of 1996), S. 217. **(Debabrata Saha v. Serampore Municipality and others, (2021) 9 SCC 818)**

Local Government, Municipalities and Panchayats Town Planning - Building plans/Rules/Regulations/Bye-Laws/Building permission 1 Construction in violation of building regulations - Collusion between officers of development/planning authority with developer, leading to construction of buildings in violation of building regulations

A breach by development/planning authority of its obligation to ensure compliance with building regulations, held, is actionable at instance of residents whose rights are infringed by violation of law - Their quality of life is directly affected by failure of planning authority to enforce compliance - Hence, law must step in to protect their legitimate concerns - Thus, when planning

and building regulations are violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards - Hence, illegal constructions have to be dealt with strictly to ensure compliance with the rule of law

In present case, illegal constructions directed to be demolished at cost of the developer under supervision of experts to ensure that existing buildings were not affected

Appellant developer directed to pay costs of Rs 2 crores to respondent RWA representing the interests of residents of the pre-existing flats

Monies deposited by those who had purchased flats in the buildings to be demolished, to be refunded with 12% interest (detailed directions issued re different categories of such purchasers)

Directions of High Court for sanctioning prosecution under S. 49 of the U.P. UD Act, as incorporated by S. 12 of the U.P. IAD Act, 1976, against the officials of the appellant developer and officers of the planning authority (Noida) for violations of the U.P. IAD Act, 1976 and U.P. Apartments Act, 2010, affirmed

Public Accountability, Vigilance and Prevention of Corruption Corruption/Abuse of Power Real Estate Frauds Collusion between officers of Development Authority with developer, permitting illegal constructions in violation of planning and building regulations - Directions of High Court for sanctioning prosecution under S. 49 of the U.P. UD Act, as incorporated by S. 12 of the U.P. IAD Act, 1976, against the officials of the developer and officers of development/planning authority (Noida) for violations of the U.P. IAD Act, 1976 and U.P. Apartments Act, 2010, affirmed - U.P. Urban Planning and Development Act, 1973 (11 of 1973) - S. 49 - U.P. Industrial Area Development Act, 1976 (6 of 1976), S. 12

Local Government, Municipalities and Panchayats Town Planning - Building plans/Rules/Regulations/Bye-Laws/Building permission - Distance requirements between buildings in apartment block complex Manner in which to be interpreted - Distance requirement under Building Regulations between two "building blocks" as prescribed in Regn. 33.2.3 of the NBR 2006-Manner in which to be interpreted-Held, expressions must be given a meaning which accords with common sense and in furtherance with the object and purpose of the Regulations

Local Government, Municipalities and Panchayats Town Planning - Building plans/Rules/Regulations/Bye-Laws/Building permission Distance requirements between buildings in apartment block complex Distance between "building blocks" and that between "buildings

within - blocks" - Initial part of Regn. 24.2.1(6) of the NBR 2010 provides for distance between building blocks, latter part stipulates distance between buildings of height above 18 m - Hence, contention that Regn. 24.2.1(6) of the NBR 2010 only provides for distance between "building blocks" and not buildings within blocks, rejected

Local Government, Municipalities and Panchayats Town Planning - Building plans/Rules/Regulations/Bye-Laws/Building permission - Interpretation of provisions in planning and building regulations - When phrases or words are free from ambiguity and when there is only one meaning that phrase would take when fairly construed, it will have to be literally construed, and courts must not resort to a liberal interpretation which will defeat intent, purpose and object of a provision in a planning regulation

Local Government, Municipalities and Panchayats Town Planning -Building plans/Rules/Regulations/Bye-Laws/Building permission - Distance requirements between buildings in apartment block complex Regn. 24.2.1(6) of the NBR 2010 Exception provided in - Applicability Expression "dead-end sides of buildings". Meaning of, considered and explained in detail

Local Government, Municipalities and Panchayats Town Planning - Building plans/Rules/Regulations/Bye-Laws/Building permission Distance requirements between buildings in apartment block complex - Minimum distance required between two adjacent blocks, held, must not be measured through direct line positions of units but along ground - Words and Phrases — "Distance between buildings", "direct line positions"

Local Government, Municipalities and Panchayats - Town Planning Noida Building Regulations and Directions, 2010- Regn. 24.2.1(6) Violation of National Building Code 2005- Exception under Para 8.2.3.2 of the NBC 2005 is only applicable if deficiency in open spaces can be made good by setbacks at upper level

Local Government, Municipalities and Panchayats - Town Planning - Building plans/Rules/Regulations/Bye-Laws/Building permission Fire safety norms - - Distance requirements between buildings in apartment block complex - Violation of National Building Code of India, 2005

Housing and Real Estate - U.P. Ownership of Flats Act, 1975 (50 of 1975) - Ss. 2 and 10- Applicability of 1975 Act- No declaration in terms of S. 2 for applicability of Act in present case - However, lease deed executed by development authority in favour of developer containing

stipulation that rules/regulations of U.P. Flat Ownership Act, 1975 shall be applicable Tripartite sub-lease between development authority, developer and flat owner containing similar stipulations - Held, developer was duty-bound to comply with provisions of the U.P. Act, 1975

Local Government, Municipalities and Panchayats - Town Planning - Building plans/Rules/Regulations/Bye-Laws/Building permission - Duty of intending promoter to sell apartments of making a full and true disclosure in writing to intending purchaser and competent authority under Ss. 4, 2 and 5 of the U.P. Act of 2010-Held, applicable even to persons who had purchased apartments in already existing towers

Local Government, Municipalities and Panchayats - Town Planning -Building plans/Rules/Regulations/Bye-Laws/Building permission Construction of new apartment towers without consent of owners of apartments in already existing towers - Held, constituted violation of 1975 Act and 2010 Act

Local Government, Municipalities and Panchayats Town Planning - Building plans/Rules/Regulations/Bye-Laws/Building permission Construction of new apartment towers in existing apartment block (A) Requirement of consent of owners of apartments in already existing towers, and (B) Duty of developer of making a full and true disclosure in writing to such pre-existing owners under the relevant State Acts - Held, it is not necessary that any resident welfare association (RWA) be in existence for the same, since these duties are owed to each and every individual pre-existing owner

Housing and Real Estate – U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 (16 of 2010) - Not retrospective **(Supertech Limited v. Emerald Court Owner resident Welfare Association and others, (2021) 10 SCC 1)**

Maharashtra Police Act

Ss. 51 to 56 of the Maharashtra Police Act, 1951 (22 of 1951) - Object-Externment order based on satisfaction of authority when deserves interference by Court.

Drastic action under these provisions should only be taken in exceptional cases to maintain law and order in a locality and/or prevent breach of tranquility and peace Fundamental rights of citizens guaranteed under Arts. 19(1)(d) and (e) of the Constitution cannot be taken away under these provisions on frivolous grounds.

Sections 56 to 59 of the Act are intended to prevent lawlessness and deal with a class of lawless elements in society who cannot be brought to book by established methods of penal action, upon judicial trial. An externment order may sometimes be necessary for maintenance of law and order. However the drastic action of externment should only be taken in exceptional cases, to maintain law and order in a locality and/or prevent breach of public tranquility and peace. **[Rahmat Khan alias Rammu Bismillah v. Deputy Commissioner of Police, (2021) 8 SCC 362]**

Motor Vehicles Act

S. 166—CPC, S. 2(11)—Claim petition

Coming to the facts of the case, the fourth appellant was the motherinlaw of the deceased. Materials on record clearly establish that she was residing with the deceased and his family members. She was dependent on him for her shelter and maintenance. It is not uncommon in Indian Society for the motherinlaw to live with her daughter and soninlaw during her old age and be dependent upon her soninlaw for her maintenance. Appellant no.4 herein may not be a legal heir of the deceased, but she certainly suffered on account of his death. Therefore, we have no hesitation to hold that she is a "legal representative" under Section 166 of the MV Act and is entitled to maintain a claim petition. **[N.Jayasree vs. Cholamandalam Ms General Insurance Company Ltd., AIT 2021 SC 5218]**

S. 166—Compensation—Permanent disability

Learned counsel for the appellant did seek to persuade us that this is not the only methodology available and it should not be adopted. We are of the view that in cases where the degree of disability is high, there is mental disability, it is a case of a young person etc. without it being possible to anticipate all possibilities, the course followed aforesaid would be the appropriate course. We are not saying that the aforesaid can be the only course, and in a different scenario, lump sum amount can be assessed as has been as done in Lalan D. @ Lal & Another v. Oriental Insurance Company Limited, (2020) 9 SCC 805 and Parminder Singh v. New India Assurance Company Limited & Others, (2019) 7 SCC 217. Learned Senior Counsel for the appellant also sought to point out another course followed in Mallikarjun v. Divisional Manager, National Insurance Company Limited & Another, (2014) 14 SCC 396, wherein cases of children suffering

disability on account of motor vehicle accident, a broad principle was sought to be laid down in the following terms:-

> "12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents."

The aforesaid only shows that there is more than one option available i.e, there may be a lump sum amount specified on general principles as enunciated aforesaid; or in cases where the factual scenario requires, same multiplier method can be followed as in the case of Kajal (supra). **[HDFC Ergo General Insurance Co. Ltd. Vs. Mukesh Kumar, AIR 2021 SC 4010]**

Motor Insurance

Comprehensive insurance policy Own-damage claim Exclusion clause re driving "under influence of intoxicating liquor" - When excludes liability of insurer For such exclusion clause to apply so as to exempt insurer from liability, held, it must be shown in the facts and circumstances of each case that the consumption of liquor had, if not caused the accident, which undoubtedly would bring the accident within the mischief of the clause, but at least contributed in a perceptible way to the causing of the accident

Consumer Protection - Claim of insured person cannot be granted if insurer is successfully able to establish applicability of exclusion clause in the policy

Burden of proof of applicability of exclusion clause would normally be on insurer - But under fact situation of the case, insurer was not in a position to prove through breath test or blood test that insured was under influence of alcohol - Principle of S. 106 of the Evidence Act would apply to proceedings under Consumer Protection Act, even if S. 106 of the Evidence Act as such is not applicable. Hence, onus of proving facts relating to alcohol consumed by insured driver which are within his special knowledge, would be on him

Motor Vehicles Act, 1988 - Ss. 185 and 203-205- Drunken driving made criminal offence - Objective criterion of alcohol blood level of driver prescribed to constitute offence under S. 185-Ingredients of the offence must be proved beyond reasonable doubt

Motor Vehicles Act, 1988-S. 185-Blood alcohol concentration (BAC) Meaning - Permissible limits of BAC level - Variables which affect BAC level-Criminal Trial - Medical Jurisprudence/Evidence- Intoxication

Medical Jurisprudence – Alcohol - How acts at neurological level?

The exclusion from the liability of the insurer would depend upon the exact terms of the insurance. The present case is concerned with own damage and the clause which extricates the insurer on the basis of the driver being under the influence of alcohol, inter alia. The expression "under the influence of intoxicating liquor" does not appear to be of recent origin in a contract of insurance. There are two variants in this regard. One of the models is represented by the American cases where all that required is that the person has in his body alcohol in any degree. Under the said model, it need not influence his conduct and it is not necessary for the insurer to show that person concerned was intoxicated or under the influence of intoxicating liquor. The other model is applicable in the facts of the case viz. the insurer must show that the person driving the vehicle was under the influence of liquor. It must be shown in the facts and circumstances of each case that the consumption of liquor had, if not caused the accident, which undoubtedly would bring the accident within the mischief of the clause but at least contributed in a perceptible way to the causing of the accident. Thus the decisions of the English courts are closer home and of assistance in the laying down of the law.

A person can be said to be under the influence of alcohol, if his faculties are so disturbed that his driving ability, is impaired. To be under influence of alcohol must be understood as, a question going to the facts and a matter to be decided with reference to the impact of consumption of alcohol on the particular driver. If in a case, without there being any blood test, circumstances, associated with effects of consumption of alcohol, are proved, it may certainly go to show that the person who drove the vehicle had come under the influence of alcohol. The manner, in which the vehicle was driven, may again, if it unerringly points to the person having been under the influence of alcohol, be reckoned. Evidence, if forthcoming, of an unsteady gait, smell of alcohol, the eyes being congested, apart from, of course, actual consumption of alcohol, either before the

commencement of the driving or even during the process of driving, along with the manner in which the accident took place, may point to the driver being under the influence of alcohol. It would be a finding based on the effect of the pleadings and the evidence.

Brain chemistry is affected by alcohol through alteration of neurotransmitters. Neurotransmitters are chemical messengers that send out the signals all through the body and control thought processes, behaviour and sensation processes. Neurotransmitters are either excitatory (excite brain electrical motion) or inhibitory (decrease brain electrical motion). Alcohol increases the effects of the inhibitory neurotransmitter GABA in the brain. GABA causes the lethargic movements and garbled speech that often occur in alcoholics. At the same time, alcohol inhibits the excitatory neurotransmitter glutamate, which results in a suppression of a similar type of physiological slowdown. In addition, alcohol also increases the amount of chemical dopamine in the brain centre, which creates the feeling of pleasure after drinking alcohol. Just after a few drinks, the physical effects of alcohol become perceptible. The level of blood alcohol concentration (BAC) rises when the body takes up alcohol faster than it can release it.

BAC is the concentration of alcohol in a person's blood. In India, the permissible BAC level is pegged at 30 mg of alcohol in 100 ml of blood in Section 185 of the MV Act, 1988. This corresponds to 0.03 percentage of alcohol in the blood, beyond which, it is an offence under Section 185 to drive or attempt to drive as declared. BAC is correlated to a number of variables. It is affected by gender and body weight. The male has more water content than a female. On same quantity drunk, the latter builds up greater BAC than the former. BAC is also affected clearly on whether the person drank on an empty stomach or not. The liver metabolizes ordinarily a standard drink at the rate of a drink in an hour. The frequency at which the drinks are taken impacts the BAC level. Even the genes play their part. The presumptive laws provide for presumptive limits for alcohol consumption, contravening which, would result in the presumption subject to it being rebuttable, that a person was driving under the influence of alcohol. There are lower BAC levels or zero tolerance levels for under aged drivers.

Section 185 of the MV Act creates a criminal offence. It purports to deal with driving by a drunken person or by a person under the influence of drugs. The offence as far as driving by a drunken person is concerned, was built around breach of an objective standard viz. the presence of alcohol in the driver in excess of 30 mg per 100 ml of blood detected in a test of breath analyzer. The section mandates the proving of the objective criteria. Being a criminal offence, the ingredients

of the offence must be proved beyond reasonable doubt and evidence must clearly indicate the level of alcohol in excess of 30 mg in 100 ml blood and what is more such presence must be borne out by a test by a breath analyzer with effect from 1-9-2019, the following words have been added to Section 185, that is "or in any other test including laboratory test".

Drunken driving, a criminal offence, under Section 185 of the MV Act along with its objective criteria of the alcohol-blood level, is not the only way to prove that the person was under the influence of alcohol. If the breath analyzer or any other test is not performed for any reason, the insurer cannot be barred from proving his case otherwise. The requirement under Section 185 of the Motor Vehicles Act is not to be conflated to what constitutes driving under the influence of alcohol under the policy of insurance in an own-damage claim. Such a claim must be considered on the basis of the nature of the accident, evidence as to drinking before or during the travel, the impact on the driver and the very case set up by the parties. The claim involved in this case, is in regard to the liability alleged with the insurer under the clause which deals with own-damage claim. There is nothing in law which would otherwise disentitle the appellant from setting up the case that the exclusion clause regarding driving under influence of intoxicating liquor, would disentitle the respondent from succeeding. As to whether it is a case of driving of the vehicle under the influence of alcohol is a different matter, altogether as the requirement of Section 185 is in the context of a criminal offence. It may be true that if there is a conviction under Section 185, it would, undoubtedly, fortify the insurer in successfully invoking exclusion Clause 2(c). But if prosecution has not filed a case under Section 185, that would not mean that a competent forum in an action alleging deficiency of service, under the Consumer Protection Act, is disabled from finding that the vehicle was being driven by the person under the influence of alcohol. The presence of alcohol in excess of 30 mg per 100 ml of blood is not an indispensable requirement to enable an insurer to successfully invoke the clause. What is required to be proved is driving by a person under the influence of alcohol.

While dealing in the case with construction of words in a contract between the parties, there appears no case for the respondent that the terms of the contract to exclude the liability of the appellant, are in any way illegal. The proposition that should the insurer fail to establish a case in terms of Section 185 BAL (Blood Analyzer Test), it would fail, may not be the proper approach to the issue. It is not difficult to contemplate that the accident may take place with the driver being under the influence of alcohol and neither the breath test nor the laboratory test is done. A driver

after the accident may run away. A test may never be performed. However, there may be evidence available which may indicate that the vehicle in question was being driven at the time of the accident by a person under the influence of alcohol. It cannot then be said that merely because there is no test performed, the insurer would be deprived of its right to establish a case which is well within its rights under the contract.

It is not necessary for the insurer to establish that there was acute alcohol intoxication and equally, it need not be shown that the vehicle was driven by a person who was a chronic alcoholic. All that is required is to show that at the time of driving the vehicle, resulting in the accident, the driver was under the influence of alcohol.

The respondent set up the case that the driver had not consumed any alcohol. In the very next sentence, it is pleaded that further assuming that he had consumed alcohol, as he was not intoxicated the exclusion clause is not attracted. When it came to affidavit evidence, however, the driver has not deposed that he had not consumed intoxicating liquor. He has only stated that he was neither under the influence of intoxicating liquor nor drugs at the time of the accident. In view of the evidence that pointed to the driver smelling of alcohol and the absence of any evidence by even the driver that he has not consumed alcohol and as even found by the National Commission, it would appear to be clear that the car was driven by the driver after having consumed alcohol. In such a case various facts relating to the alcohol would certainly be facts within the special knowledge of the person who has consumed the alcohol.

In this case, there are no interrogatories served on the driver by the appellant. Having regard to the nature of the proceeding under the Consumer Protection Act, the proceeding being summary, cross-examination be conducted ordinarily through the modality of interrogatories. Unlike in proceeding in a court, ordinarily the insurers may not be in a position to cross-examine. It is no doubt true that since the principle of Section 106 of the Evidence Act only casts the burden on the person who has special knowledge of the facts, apart from the facts viz. where it was consumed, the quality and quantity of alcohol consumed, the time at which it was consumed, whether it was accompanied by food which can clearly be said to be within the knowledge of the person who drove the vehicle, the effects of the drinking by way of signs discernible, after the accident took place, in the facts, cannot be said to be within the knowledge of the driver only. This is for the reason that according to FIR, the Police Constable on patrol has purported to describe the happening of the accident and was present at that time. According to his version, he has with the

aid of his companion officer helped the driver and the co-passenger out of the vehicle and they were taken to the hospital. At the hospital, in the medico legal report, there is reference to breath of alcohol (+). It is, however, true that the insurer or his agent may not have been given notice at that stage. It would not be proper or legal to hold that in such circumstances, the insurer would still be in a position to prove through a breath test or blood test that the driver was under the influence of alcohol. If the driver having regard to the fact did not suffer any fresh injury is discharged from the hospital and goes away, it is inconceivable as to how the insurer could be at fault for not having a breath or blood test conducted. It may be true that the insurer could have obtained material in the form of affidavit evidence from the police officer or the medical practitioner concerned regarding any other facts regarding consumption of alcohol by the driver.

The State Commission has applied the principle of *res ipsa loquitur*. The question to be answered is not whether the driver of the vehicle was negligent. *Res ipsa loquitur* is used in cases of tort and where the facts without anything more clearly and unerringly point to negligence. The principle of *res ipsa loquitur*, as such, appears to be inapposite, when, what is in question, is whether the driver was under the influence of alcohol. It may be another matter that though the principle as such is inapplicable, the manner in which the accident occurred may along with other circumstances point to the driver being under the influence of alcohol.

As far as establishing the contention by the insurer in a clause of the nature viz. a case where the insurer alleges that the driver was driving the vehicle under the influence of alcohol, it is all very well, if there is a criminal case and evidence is obtained therein, which shows that the driver had 30 mg/100 ml or more or in other words, if the BAC level was 0.03 or more. In a case where, there is a blood test or breath test, which indicates that there is no consumption at all, undoubtedly, it would not be open to the insurer to set up the case of exclusion. However, in cases, where there is no scientific material, in the form of test results available, as in the present case, it may not disable the insurer from establishing a case for exclusion. The totality of the circumstances obtaining in a case, must be considered. The scope of the enquiry, in a case under the Consumer Protection Act, which is a summary proceeding, cannot be lost sight of. A consumer, under the Act, can succeed, only on the basis of proved deficiency of service. The deficiency of service would arise only with reference to the terms of the contract and, no doubt, the law which surrounds it. If the deficiency is not established, having regard to the explicit terms of the contract, the consumer must fail.

The Court can take judicial notice of the fact that the roads in the capital city, particularly in the area, where the accident occurred, are sufficiently wide and the vehicle dashing against the footpath and turning turtle and catching fire, by itself, does point to, along with the fact that the alcohol which was consumed manifests contemporaneously in the breath of the driver, to conclude that alcohol did play the role, which, unfortunately, it is capable of producing. It would be a case where the driver would still be in control of his faculties even while having caused the accident. There is material (particularly, in the nature of the summary proceedings) under the Consumer Protection Act, in the form of the FIR. The police officer, who has lodged the information, has specifically stated that the car was being driven in a very fast manner. The driver, in his chief examination, has not given any explanation, whatsoever, for the happening of the accident. He does not have a case that there was any breakdown in the car or of the brakes.

The manner in which the accident itself occurred is an important circumstance which may establish that the driver was under influence of alcohol. What is in a summary proceeding noteworthy, is in the setting of the width of the road (a road near India Gate, New Delhi) and the thinnest possible traffic, and without the slightest excuse, hitting at the footpath with massive force, not being able to maintain control, hitting the electric pole, the wall of the Children Park. The impact is so much that it led to the overturning of the car and what is more, catching fire of the vehicle. This accident is inexplicable, if the driver is to be believed as PW 2, when he deposed "I was in my full senses and capable of exercising full control over the car, at the time of the accident". It is more probable that his drink, really led to it. On the facts, the view of the State Commission is a plausible view. **[Iffco Tokio General Insurance Company Limited v. Pearl Beverages Limited, (2021) 7 SCC 704]**

Narcotic Drugs and Psychotropic Substances Act

Ss. 37(1) (b) (ii), 8, 21, 27A, 29—Cr.P.C. 1974, S. 439—Bail—Cancellation of—

In line with the decision of this Court in Rattan Mallik (supra), we are of the view that a finding of the absence of possession of the contraband on the person of the respondent by the High Court in the impugned order does not absolve it of the level of scrutiny required under Section 37(1) (b)(ii) of the NDPS Act.

In the complaint that was filed on 16 October 2019 it is alleged that at about 1400 hours on 26 March 2019, information was received that between 1500-1700 hours on the same day, the three accused persons would be reaching Uttar Pradesh. The complaint states that the information was immediately reduced to writing. Therefore, the contention that Section 42 of the NDPS Act was not complied with is prima facie misplaced. The question is one that should be raised in the course of the trial.

The following circumstances are crucial to assessing whether the High Court has correctly evaluated the application for bail, having regard to the provisions of Section 37:

(i) The respondent was travelling in the vehicle all the way from Dimapur in Nagaland to Rampur in Uttar Pradesh with the co-accused;
(ii) The complaint notes that the CDR analysis of the mobile number used by the respondent indicates that the respondent was in regular touch with the other accused persons who were known to him;
(iii) The quantity of contraband found in the vehicle is of a commercial quantity; and
(iv) The contraband was concealed in the vehicle in which the respondent was travelling with the co-accused.

The impugned order of the High Court, apart from observing that no contraband was found from the personal search of the respondent has ignored the above circumstances. The High Court has merely observed that

In view of the above, the twin conditions contained under Section 37(1)(b) of the NDPS Act stand satisfied. This Court is of the view that if there is reasonable ground, the applicant is entitled to be released on bail. **[Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan, AIR 2021 SC 4476]**

Ss. 37, 8, 19 to 22, 24, 27-A, 29, 60(3), 67, 42 and 50-Grant of bail for offences under NDPS Act-Tests which High Court and Supreme Court are required to apply while granting bail"Reasonable grounds to believe" for grant of bail "Conscious possession" of contraband - How to be ascertained Principles summarised

Held, a finding of the absence of possession of the contraband on the person of the accused does not absolve it of the level of scrutiny required under S. 37(1)(b)(ii)

Furthermore, held, mere absence of possession of the contraband on the person of the accused does not ipso facto mean that the accused was not in "conscious possession" of the

contraband- Rather, the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case-The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another, the latter being the situation in the present case - The term "possession" could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on such knowledge

Ss. 54, 35, 42, 43, 50 & 60 and Ss. 8 to 10, 13 to 22, 27 and 31-A-"Conscious possession" of contraband - How to be ascertained - Principles summarised

At the present stage, it is material to note that:

(i) the vehicle which was intercepted at L was proceeding from D (State Na) towards Ra (State U);

(ii) the quantity of 3.300 kg of a narcotic substance which is a commercial quantity was found concealed in the vehicle; and

(iii) the respondent-accused N herein is not an unknown passenger but a person who, according to the prosecution, was closely in contact with the co-accused..

Section 37 of the NDPS Act, regulates the grant of bail in cases involving offences under the NDPS Act. Under Section 37(1)(b)(ii) of the NDPS Act, the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27-A of the NDPS Act, and also for offences involving a commercial quantity are:

(i) the Prosecutor must be given an opportunity to oppose the application for bail; and

(ii) there must exist "reasonable grounds to believe" that: (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.

Criminal Procedure Code, 1973 - S. 439-Grant of bail by High Court under — Principles that guide Supreme Court while assessing such order of High Court – Reiterated **(Union of India through Narcotics Control Bureau, Lucknow v. Md. Nawaz Khan, (2021) 10 SCC 100)**

Negotiable Instrument Act

S. 138 and S. 482 Cr.P.C. – Dishonour of cheque

As per record, there is assertion in complaint regarding service of notice. Factum of disputed service of notice requires adjudication on basis of evidence, it can only be done and appreciated by trial court and not by High Court. Burden of proving that cheque was not issued for any debt

or liability, is upon accused and can be gone into by Trial Court. Court cannot be persuaded to have pre-trial before actual trial begins. Magistrate only has to see whether prime facie case is made out or not. Hon'ble Court held that proceedings are not liable to be quashed and trial court was directed to expedite hearing of complaint case by fixing short date and without granting any unnecessary adjournment to either of the parties. **Ganesh Babu Gupta v. State of U.P., 2021 Cri.L.J. (NOC) 732 (All.): AIR Online 2021 All. 1794**

Rent Control and Eviction Laws

Rent Control and Eviction - Deemed Vacancy - Subsequent events -Non-residential premises (shop) - Partnership business - Dissolution of partnership firm upon death of the partners - Held, led to deemed vacancy of the premises by the tenant in present case.

Art. 136 - Review Summary dismissal of SLP no bar to remedy of review petition before High Court-Civil Procedure Code, 1908, S. 114. **(Davesh Nagalya (dead) and others v. Pradeep Kumar (dead) through legal representatives and others, (2021) 9 SCC 796)**

Service Laws

Appointment - Antecedents/Character Cancellation/ Refusal of appointment Factors to be considered: (i) Clean acquittal or acquittal by granting benefit of doubt; (ii) Grave offences involving moral turpitude; and (iii) Non-disclosure of pending criminal cases

Courts exercising judicial review cannot second guess the suitability of a candidate for any public office or post. Absent evidence of malice or mindlessness (to the materials), or illegality by the public employer, an intense scrutiny on why a candidate is excluded as unsuitable renders the courts' decision suspect to the charge of trespass into executive power of determining suitability of an individual for appointment.

Public service presupposes that the State employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair

and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer is greatest, as long as the process of decision-making is neither illegal, unfair, or lacking in bona fides. **[Commissioner of Police v. Raj Kumar, (2021) 8 SCC 347]**

Judicial Service - Compulsory retirement - Order based on recommendation of Administrative Committee which commended itself to Full Court of High Court.

From entire past record, respondent found to be an average or subpar officer and a disciplinary enquiry pending against him. Competent authority is supposed to consider the entire service record of the judicial officer and even if there is a solitary remark of lack and breach of integrity that may be sufficient for a judicial officer to be compulsorily retired.

The High Court on judicial side can interfere with the view of the Administrative Committee, only if it found that there was absolutely no record or material whatsoever as referred to in the recommendations made by the Administrative Committee, or that the Committee relied on irrelevant material, or that apposite material was overlooked and discarded. Further, the High Court's view would have been acceptable if it found patent illegality, breach of procedure causing prejudice to Respondent 1, or imposition of a gravely disproportionate measure.

The Administrative Committee, in its Report, had adverted to the entire service record, including the pending disciplinary enquiry regarding integrity of Respondent 1. A disciplinary enquiry was pending against Respondent 1 which raised questions about his integrity. Past service record of Respondent 1 was found to be sub-par and short of the exacting standard expected from a judicial officer. The disciplinary enquiry came to be dropped in lieu of compulsory retirement of Respondent 1. That was a composite recommendation made by the Administrative Committee and commended to the Full Court of the High Court. The two being inseparable, and the solitary remark about integrity with the service record being sufficient in law to proceed against the judicial officer. It is settled position in law that the competent authority is supposed to consider the entire service record of the judicial officer and even if there is a solitary remark of lack and breach of integrity, that may be sufficient for a judicial officer to be compulsorily retired.

Thus, it was not open to the High Court to substitute its own view for the satisfaction arrived at by the Full Court of the High Court regarding the necessity or otherwise of Respondent 1 continuing in the Rajasthan Higher Judicial Services. It was also not open to the High Court to rewrite the annual confidential reports by taking over the role of inspecting or confirming

authority. **[High Court of Judicature for Rajasthan v. Bhanwar Lal Lamror and others, (2021) 8 SCC 377]**

Study leave granted to appellant Medical Officer posted in Government (NCT) of Delhi Hospital to pursue postgraduate course, revoked vide order dt. 22-1-2021 in terms of policy dt. 20-10-2020 and office order dt. 22-10-2020 not to grant study leave to doctors working in government hospitals in view of COVID-19 Pandemic.

Government doctors/Central/State Health Services - Policy/Policy Decision/ Policy Matter - Exclusion of judicial review Policy decision dt. 20-10-2020 not to grant study leave to doctors working in government hospitals for certain length of time in apprehension of rise in COVID-19 cases to ensure maximum availability of doctors on duty. It was held that the same was justified prudence of and/or - justification of policy decision cannot be examined by Court in exercise of its extraordinary powers of judicial review. **[Dr. Rohit Kumar v. Secretary Office of Lieutenant Governor of Delhi and others, (2021) 8 SCC 381]**

Issue of Seniority : Determination of Higher Judicial Services Seniority inter se amongst candidates promoted through limited competitive examination (LCE)

Petitioners, members of Higher Judicial Service working as District Judges in State of M.P. appointed from 2007 onwards on being selected through LCE and their seniority fixed on basis of merit - Administrative Committee of High Court on 14-12-2017 resolving that merit of candidates in LCE would not be relevant for altering inter se seniority in feeder cadre which was approved by Full Court on 18-12-2017, consequent to which revised gradation list dt. 1-2-2019 prepared.

It was held that the incentive that was sought to be given to junior officers working as Civil Judges for promotion as District Judges solely on basis of merit would be defeated if their seniority in cadre of District Judge is not determined on basis of merit in LCE

Appointment to Higher Judicial Services in accordance with the Rules was initially by direct recruitment and promotion. On the basis of the recommendations by Justice Shetty Commission, this Court directed that 25% of posts in the service filled by promotion should be strictly on the basis of merit through LCE of Civil Judges (Senior Division). The High Courts were directed to frame appropriate rules in conformity with the judgment in *All India Judges Assn. (3).*

This channel of promotion on the basis of merit in LCE was introduced to provide an incentive to relatively junior officers to get quicker promotion.

In *Dinesh Kumar Gupta*, this Court considered the issue relating to inter se seniority of District Judges promoted through LCE. Source of recruitment to the Rajasthan Higher Judicial Services in Rule 31 of the Rajasthan Higher Judicial Service Rules, 2010 is similar to Rule 5 of the Madhya Pradesh Higher Judicial Service Rules. The decision of the Administrative Committee that the seniority in the lower cadre is to be taken into account for the purpose of inter se seniority of the District Judges promoted through LCE was held not to be justified by this Court. It was observed in *Dinesh Kumar Gupta* that LCE will be reduced to a mere qualifying examination if inter se seniority in the lower cadre has to be taken into account for determining the seniority of District Judges promoted through LCE. This Court declared that the inter se placement of candidates selected through LCE must be based on merit and not on the basis of seniority in the erstwhile cadre.

The reason for introduction of promotion through LCE is to improve the calibre of the members of Higher Judicial Services. Such of those meritorious candidates who have been promoted on the basis of LCE cannot be deprived of their seniority on the basis of merit in the examination. In any event, 50% of the posts of District Judges shall be filled by promotion on the principle of merit cum-seniority. The dispute in this case concerns seniority inter se amongst those who have been promoted through LCE.

Rule 11(1) of the 2017 Rules makes it clear that the relative seniority of members of the service who are holding substantive posts at the time of commencement of the Rules shall be as it existed before the commencement of the Rules. The seniority of the petitioners which has been determined prior to the 2017 Rules cannot be disturbed. The petitioners will not be adversely affected by Rule 11(4)(b) of the 2017 Rules which alters the criteria for determination of seniority from merit to inter se seniority in the lower cadre. The resolution of the Administrative Committee approved by the Full Court being contrary to the law laid down by this Court in Dinesh Kumar Gupta case is set aside. Consequently, the gradation list of the District Judges dated 1-2-2019 shall be revised in accordance with the law laid down by this Court in Dinesh Kumar Gupta case. **[Prem Narayan Singh and Others v. High Court of Madhya Pradesh, (2021) 7 SCC 649]**

Reinstatement/Back Wages/Arrears - Back Wages Non-entitlement to - Failure to report to transferred place of posting and delay in initiating proceedings - Inference of communication of posting order when more than 100 similarly situated officers were transferred by same common order

Once it was proved that petitioner stood relieved from State of Uttarakhand, High Court could not have returned such finding. It was not open to petitioner to defy transfer order on ground of non-communication when more than 100 medical officers were transferred by same common order Besides, petitioner was relieved in 2003, but filed petition in 2006 i.e. for three years "he was awaiting posting orders" and under that guise started private practice intentionally delaying decision in petition for almost 13 years. Such conduct suggests that he was not keen to join after he was relieved. Moreover, option of posting would be available only if there are general transfers and not when medical officers are allocated to their parent State in view of option exercised. Thus, grant of 50% back wages for willful absence of duty for 13 years unsustainable Transfer of Employee/Service Failure to join on transfer/Long absence/Termination.

Summoning of Public Officers frequently for trivial reasons strongly deprecated

It has been held that the line of separation of powers between judiciary and executive is sought to be crossed by summoning officers and in a way pressurizing them to pass order as per whims and fancies of court. Public officers of executive are also performing their duties as third limbs of governance Decisions taken by them as custodian of public funds and in interest of administration can always be set aside if they fail to meet test of judicial review but frequent summoning of officers must be avoided. Respect to court has to be commanded and not demanded and same is not enhanced by calling public officers. Presence of public officers comes at cost of other official engagement demanding their attention and sometimes entail travelling long distance too. Besides, court proceedings also take time, as there is no mechanism of fixed time hearing in courts as of now- Courts have power of pen which is more effective than presence of officer in court - Where State Counsel is not able to answer any issue raised before court for consideration, it is advisable to write such doubt in order and give time to State or its officers to respond. **[State of Uttar Pradesh and Others v. Dr. Manoj Kumar Sharma, (2021) 7 SCC 806]**

Appointment - Nature of appointment Determination of-Substantive appointment or contractual appointment Substantive appointment- What is

Furthermore, fact that candidates concerned had accepted terms and conditions contained in appointment letter is inconsequential, since it is not open for person appointed in public employment to ordinarily choose terms and conditions of his service as employer is in dominating position and can always dictate terms- Judicial notice taken of fact that incumbent may lose job opportunity if he questions terms and conditions of his employment - Hence, held, it is open to employee to challenge such terms which are not in conformity with statutory requirements and prescribed procedure and he is not estopped from questioning at stage where he finds himself aggrieved.

Service Law - Appointment - Substantive appointment - What is- Appointments made in accordance with scheme of Rules/statutorily prescribed procedure are called substantive appointments **(Somesh Thapliyal and another v. Vice Chancellor, H N B Garhwal University and another, (2021) 10 SCC 116)**

Appointment - Antecedents/Character Termination on account of loss of credibility and trustworthiness due to failure to disclose criminal antecedents Appointment obtained by fraud/misrepresentation and suppression of material fact-Termination of services, held, justified Even otherwise subsequent benefit of S. 12 of the Probation of Offenders Act, 1958 would not aid respondent

Held, the key issue in such cases is not of subsequent acquittal or involvement in dispute of trivial nature, but of credibility/trustworthiness of such employee-The question is one of trust-In such circumstances, choice/ option to continue employee must vest in employer and employee cannot claim right to appointment and/or continuance in service-Impugned order quashing termination order set aside. **(Rajasthan Rajya Vidut Prasaran Nigam Limited and another v. Anil Kanwariya, (2021) 10 SCC 136)**

Specific Relief Act

S. 10(a) (As inserted by Specific Relief (Amendment) Act, 2018, S. 20—Relief for specific performance—is no longer a discretionary relief

Now, so far as the finding recorded by the High Court and the observations made by the High court on Section 20 of the Act and the observation that even if the agreement is found to be

duly executed and the plaintiff is found to be ready and willing to perform his part of the Agreement, grant of decree of specific performance is not automatic and it is a discretionary relief is concerned, the same cannot be accepted and/or approved. In such a case, many a times it would be giving a premium to the dishonest conduct on the part of the defendant/executant of the agreement to sell. Even the discretion under Section 20 of the Act is required to be exercised judiciously, soundly and reasonably. The plaintiff cannot be punished by refusing the relief of specific performance despite the fact that the execution of the agreement to sell in his favour has been established and proved and that he is found to be always ready and willing to perform his part of the contract. Not to grant the decree of specific performance despite the execution of the agreement to sell is proved; part sale consideration is proved and the plaintiff is always ready and willing to perform his part of the contract would encourage the dishonesty. In such a situation, the balance should tilt in favour of the plaintiff rather than in favour of the defendant - executant of the agreement to sell, while exercising the discretion judiciously.

For the aforesaid, even amendment to the Specific Relief Act, 1963 by which section 10(a) has been inserted, though may not be applicable retrospectively but can be a guide on the discretionary relief. Now the legislature has also thought it to insert Section 10(a) and now the specific performance is no longer a discretionary relief. As such the question whether the said provision would be applicable retrospectively or not and/or should be made applicable to all pending proceedings including appeals is kept open. However, at the same time, as observed hereinabove, the same can be a guide.

Even otherwise it is required to be noted that as such on applicability of Section 20 of the Act, no issue was framed either by the learned Trial Court or by the learned First Appellate Court or even by the High Court, The same has been dealt with by the High Court for the first time in a Second Appeal under Section 100 of the CPC. Even other wise no cogent reasons have been given as to why the decree of specific performance shall not be passed in favour of the plaintiff. **[Sughar Singh vs. Hari Singh (Dead) Through LRs., AIR 2021 SC 5581]**

Tenancy and Land Laws

Occupancy Rights/Tenant/Tenancy/Patta/ Particular tenures Bhumiswami Kashtkar Muafidar (tenant in cultivation) - Pujari, cannot be treated as Bhumiswami, Muafidar, Inamdar or Kashtakar Mourushi

The Pujari is only a grantee to manage the property of the deity and such grant can be reassumed if the Pujari fails to do the task assigned to him i.e. to offer prayers and manage the land. He cannot be thus treated as a Bhumiswami. The priest cannot be treated to be either a Muafidar or Inamdar in terms of Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (Act 66 of 1950) or in terms of the Gwalior Act. Since the priest cannot be treated to be Bhumiswami, they have no right which could be protected under any of the provisions of the Code.

No rule has been brought to the notice that the name of the manager has to be recorded in the land records. In the absence of any prohibition either in the statute or in the rules, the executive instruction can be issued to supplement the statute and the rules framed thereunder. Such instructions do not contravene any of the provisions of the Code or the rules. Therefore, they cannot be said to be illegal or in excess of the authority vested in the State Government. **(State of Madhya Pradesh and others v. Pujari Utthan Avam Kalyan Samiti and another, (2021) 10 SCC 222)**

Transfer of Property Act

S. 58(c) Transfer of Property Act, 1882 - Conditional sale mortgage, or, absolute sale with right of repurchase : Determination of Compliance with S. 58(c) proviso, and, determination of intention of the parties as to true nature of the transaction they intended

Section 58(c) TPA was amended in the year 1929 when a proviso was inserted that "provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale".

The intention of the parties has to be seen when the document is executed. A transaction which takes the outward form of a sale but in essence the documents are of a mortgage, though it is couched in the form of a sale. It is impossible to compare one case with another. Each case must

be decided on its own facts and circumstances. The document has to read as a whole and if any word is ambiguous, then the court must find out the intention of the parties when such document was executed.

If the sale and agreement to repurchase are embodied in the separate documents then the transaction cannot be a "mortgage by conditional sale" irrespective of whether the documents are contemporaneously executed; but the converse does not hold good.

It is not in dispute that in the present case, the condition of retransfer is a part of the same document (Ext. 68). Such is the condition inserted by an amendment in the year 1929 expressed by the proviso of Section 58(c) TPA. A complete reading of the document would show that a sum of Rs 3000 was taken as a loan from the defendant for household expenses. The same was to be returned and the defendant was bound to retransfer the land. The condition that if the plaintiff is not able to pay the loan amount within one year, the document will be taken as a permanent sale deed is the contentious clause between the parties. Therefore, a reading of the document would show that the document was executed for the reason that the plaintiff has borrowed a sum of Rs 3000 for his household expenses and the defendant is bound to retransfer the land if the amount is paid within one year. The advance of loan and return thereof are part of the same document which creates a relationship of debtor and creditor. Thus, it would be covered by proviso in Section 58(c) TPA.

Ss. 63-A, 58, 58(c) and 60 of the Transfer of Property Act, 1882 - Improvements to mortgaged property - Plaintiff's entitlement to redemption of property – Whether Mortgagee entitled to recover costs of improvements allegedly made to mortgaged property, over and above the mortgage money, from mortgagor?

Section 60 of the Transfer of Property Act, 1882 & Article 61 of the Indian Limitation Act, 1963 - Redemption suit - Whether barred by limitation - Suit filed after 20 yrs of execution of mortgage document was held not time-barred as suit for redemption can be filed within 30 yrs from date fixed for redemption.

Under Section 63(a) TPA, the liability of mortgagor to pay for improvement will arise if the mortgagee had to incur the costs to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient or being made in compliance with the lawful order of any public servant or public authority. None of the eventualities arose in

the present case compelling the mortgagor to pay for the improvements, if any, carried out by the mortgagee. In the absence of any positive evidence of any improvement and the cost incurred, the defendants are not entitled to recover anything more than the mortgage amount. Since the possession was given to the mortgagee, he has enjoyed usufruct from the mortgage property which compensates not only of the user of the land but also improvements made by him. The improvements were to enjoy the usufruct of the property mortgaged.

In view thereof, order of the first appellate court accepting the appeal of the defendants and dismissing the suit for redemption is not sustainable in law, so also the order passed by the High Court. Consequently, the judgment and decree passed by the first appellate court and that of the High Court are set aside and the suit is decreed. **[Bhimrao Ramchandra Khalate (Deceased) through legal representatives v. Nana Dinkar Yadav (Tanpura) and another, (2021) 9 SCC 45]**

U.P. Consolidation of Holdings Act

Ss. 27, 48, 4, 5, 6—Forest Act, 1927, Ss. 3, 4, 5, 6, 20—Correction of entries in revenue record—Declaration of land as reserved forest

The Court in a judgment reported as Prahlad Pradhan and Ors. v. Sonu Kumhar and Ors.7 negated argument of ownership based upon entries in the revenue records. It was held that the revenue record does not confer title to the property nor do they have any presumptive value on the title. The Court held 7 (2019) 10 SCC 259 as under:

> "5. The contention raised by the appellants is that since Mangal Kumhar was the recorded tenant in the suit property as per the Survey Settlement of 1964, the suit property was his self-acquired property. The said contention is legally misconceived since entries in the revenue records do not confer title to a property, nor do they have any presumptive value on the title. They only enable the person in whose favour mutation is recorded, to pay the land revenue in respect of the land in question. As a consequence, merely because Mangal Kumhar's name was recorded in the Survey Settlement of 1964 as a recorded tenant in the suit property, it would not make him the sole and exclusive owner of the suit property."

The six yearly khatauni for the fasli year 1395 to 1400 is to the effect that the land stands transferred according to the Forest Act as the reserved forest. Such revenue record is in respect of

Khasra No. 1576. It is only in the revenue record for the period 1394 fasli to 1395 fasli, name of the lessees find mention but without any basis. The revenue record is not a document of title. Therefore, even if the name of the lessee finds mention in the revenue record but such entry without any supporting documents of creation of lease contemplated under the Forest Act is inconsequential and does not create any right, title or interest over 12 bighas of land claimed to be in possession of the lessee as a lessee of the Gaon Sabha. **[Prabhagiya Van Adhikari Awadh Van Prabhag vs. Arun Kumar Bhardwaj (Dead) Thr. Lrs., AIR 2021 SC 4739]**

Part 2- High Court

Arms Act

S. 17(3). After considering the fact and judgments relied upon, it is held that only apprehension or pendency of solitary criminal case not coupled with factum of fraud can be a ground for cancellation of arms licence. In the present case, petitioner has neither obtained arms licence fraudulently nor having any criminal history, but it has been cancelled only on the ground of apprehension, which is bad and not sustainable in the eye of law. **[Nar Singh Yadav vs. State of U.P. and others, 2021(10) ADJ 272 (Alld.H.C.)]**

Civil Procedure Code

S.9- Jurisdiction – Sale-deed questioned on the ground of impersonation – Such can be examined only by the Civil Court after evidence.

This Court, in the case of **Smt. Rasheedan v. Amar Singh and others, 1997 (88) RD 362 (Alld.)**, has held that if the deed is void on the face of it, it requires no cancellation or declaration as being void, the Revenue Court, in such a case, could proceed to determine the rights of the parties. But when a deed is not void and it becomes void only on proof of certain facts, the intervention of the Civil court is necessary for a decision declaring it void because it can be made by the Civil Court only. In the present case the validity of the sale-deed executed in favour of the petitioners has been questioned on the ground of impersonation which can be examined only by the Civil Court after evidence. In the case of impersonation, it is required to be proved by cogent evidence that the sale-deed has not been executed by person, having right, title or interest and by any other person. In the present case the registered sale-deed has been proved by the marginal witnesses in the mutation proceedings which was not challenged by anybody. **Bharat Prasad and other vs. D.D.C., Sitapur and other, 2021 (153) RD 526 (Alld. HC – Lucknow Bench) –**

S. 79—What states

From a reading of Section 79 CPC, it is clear that it covers the subject of authorities which are to be named in a suit filed by or against the Central Government or the State Government. It deals with procedure and has to be interpreted accordingly. Section 80, on the other hand, is mandatory in the sense that it puts a bar on the institution of suits against the Government or a

public officer in respect of any act purporting to be done by such public officer in his official capacity until expiration of two months next after notice in writing containing the requisite information is delivered. The notice in the case of a suit against any State Government (other than the Government of the State of Jammu and Kashmir) should be delivered to the Secretary to that Government or the Collector of the district. It should contain information regarding cause of action, the names, description and place of residence of the plaintiff and the relief claimed. **[Rao Mashroor Khan vs. Sita Ram, 2021 AIR CC 3303 (UTR)]**

S. 92 – Removal of trustee – Suit for – Leave to suit granted – Legality – Non-issuance of notice to proposed defendant before granting leave to suit under section 92, CPC – Effect of – Trust in question a public religious trust- Non issuance of notice will not render suit invalid – Since an order granting leave to suit – Does not prejudice rights of proposed defendant in suit-Applicants will get an opportunity to disprove contentions of respondents during trial that trust is not a public or charitable trust by leading evidence – All conditions which must exist to invoke section 92, CPC present in present case – Thus, no illegality or a jurisdictional error committed by Trial Court in granting leave to suit to respondents – Revision dismissed.

It is also settled in law that non-issuance of notice to the proposed defendant before granting leave to suit under section 92 CPC will not render the suit invalid since an order granting leave to suit does not prejudice the rights of the proposed defendant in the suit. The proposed defendant has the opportunity to lead evidence and establish by filing evidence in the trial that the suit is based upon false and vexatious allegations. **Babu Lal (D) vs. Ravi Narayan and others, 2021 (153) RD 694 (Alld. HC)-**

S. 148(A)- It is the right of the caveator of being heard if a caveat is filed and it is the duty of the Court to afford him opportunity of hearing and not passing any order without affording opportunity of hearing to the caveator which needs be protected it being a right recognized by the statute, even if there is no fault on the part of the applicant. If due to some negligence, mistake or otherwise of the registry/ Munsarim, caveat is not reported and without affording opportunity of hearing order

is passed, the order shall be liable to be recalled and the caveator would be entitled to be restored to the position of hearing of the application afresh, on the principle that an act of Court of law, in administration of justice should prejudice no man.

Before, concluding, this Court deems it appropriate as also a duty in the interest of proper administration of justice to issue following directions as well:

(1) In every Civil Court, Munsarim is the Chief Ministerial Officer. He is appointed to receive plaints or other papers under the Code and to see that the actual date of presentation is entered upon the plaint, memorandum of appeal, cross-objection or any other paper filed and also upon the labels on such papers.

(2) It shall be incumbent as also the duty upon the Munsarim of the Court concerned to verify the facts on the basis of case number of regular suit, date of the order passed by the subordinate Court, the name of the parties or other identifying numbers, if any with regard to the filing of a caveat;

(3) When an application /plaint or/ and is filed in Civil Court the Munsarim of that Court shall mandatorily make an endorsement on such plaint/ application, if any caveat has been filed or not.

(4) If caveat has been filed the same shall be reported without any failure;

(5) If a plaint/ application is filed in one Court but is transferred to another Court, for any reason either at the time of institution or thereafter, the Munsarim of the transferee Court shall also ensure if there is reporting of the caveat or not and in the absence of any such reporting the Munsarim of the transferee Court, shall submit his report to the transferee Court about the caveat and if required, report to that affect shall also be asked from the Munsarim of the Court from where the case has been received on transfer, which report shall be submitted by the Munsarim of the Court from where the file has been received from transfer without any delay so that in case of urgency, the disposal of the application may not be unnecessarily delayed.

(6) Any slackness, negligence or mistake on the part of the Munsarim of the Court concerned for any reason whatsoever would amount to interference in the administration of justice, rendering him liable for appropriate action being taken in addition to the disciplinary proceedings.

(7) The above directions are in addition to any other provision or directions etc, if exist, on the above subject.

(8) Learned District Judges of the District Courts in the State of Uttar Pradesh shall ensure that the caveat lodged is reported and is not missed by any slackness or negligence or mistake or otherwise on the part of the Munsarim and to ensure it necessary order shall be issued as per the above directions. **[Akhilesh Kumar Jaiswal and another vs. Karunesh Jaiswal and others, 2021(9) ADJ 345(LB)(Alld.H.C.)]**

Order 1, Rule 10 – Ejectment and recovery of arrears – Suit for – impleadment application on ground of co-ownership of disputed house to extent of half share with plaintiff – Rejection – Legality – Cause of action cannot be enlarged in rent suits so as to alter scope of a rent suit to a title suit-Suit for ejectment and arrears of rent on basis of a relationship of landlord and tenant between plaintiff and respondent – Therefore, petitioner cannot be permitted to be impleaded as party to suit – Impleadment application rightly rejected – Petition dismissed.

A similar view has been expressed in a short but sterling enunciation of the principles in **Sharafat Hussain and others Vs. XIth Addl. District Judge, Moradabad, 1992(2) ARC 307,** where it has been held by S.C. Verma, J. :

"2. In a suit for arrears of rent and ejectment filed by one Smt. Paighambari Begum, the petitioner has sought impleadment as necessary party. Both the Courts have held that in a suit for arrears of rent and ejectment, which is basically a suit between the Landlord and tenant, the plaintiff's impleadment is not necessary and in case he is entitled either as owner or as landlord he may initiate separate proceedings for establishing his title and for retention of his possession, in case he is in possession. I find no reason the interfere with the order of Judge, Small Causes Courts dated 13.01.1990 and the order dated 26.08.1991 by the learned Additional District Judge, Moradabad in rejecting the petitioner's application for impleadment under Order I, Rule 10 of the Code of Civil Procedure. The petition has no merit and is accordingly in limine.

It is, thus, apparent that the courts below, in declining the petitioner's prayer to be impleaded in a rent suit, have not committed any error of law that may merit interference by this Court. **Noor Ahmad vs. Qazi Zafar Ahymad and others, 2021 (153) RD 122 (Alld. HC)**

Order 14 – Non-framing of issue relating to limitation – If any issue arises from the pleadings and has been left out, the Trial Court is competent to frame the same – Open to the parties to move appropriate application to bring it to the notice of the Trial Court – Writ Court is not required to make any observation – Petitioner is at liberty to raise the said plea before the Trial Court.

At the very outset, insofar as the plea relating to the issue of limitation, which has not been made as an issue by the Trial Court is concerned, it is always open to the parties to move an appropriate application as provided under the law and to bring it to the notice of the trial Court. If any such issue arises from the pleadings and has been left out, the Trial Court is competent to frame the same and for that this Court is not required to make any observation, rather the petitioner is at liberty to raise the said plea before the Trial Court.

Order 22, Rules 3 and 9 and Order XLIII, Rule 1(k) – Application for substitution without praying for setting aside of abatement and condonation of delay – Rejection – Appeal – Maintainability – Once suit abated or dismissed, open to person claiming to be legal representative of deceased to apply for setting aside abatement or dismissal of suit in terms of Order XII, Rule 9(2), CPC – Since no application for setting aside of abatement or dismissal of suit – It remains as an application for substitution under Order XXII, Rule 3, CPC – By no stretch of imagination can it be held to be an application for setting aside of abatement – Substitution application rightly dismissed by Trial Court – As such, appeal against such order – Not maintainable - Appeal dismissed.

From aforesaid, it is clear that once the suit has abated or it is dismissed or in the present case the appeal, it was open to the person claiming to be legal representative of the deceased to apply for setting aside of abatement or dismissal of the suit in terms of Order XXII, Rule 9(2) of the Code. However, in the present case, there was no application either for setting aside of abatement or dismissal of the suit as required to be filed under Order XXII, Rule 9(2) of the Code. In such circumstances, it is evident that since there was no application for setting aside abatement or dismissal of the suit as contemplated in paragraph 10(f) of the aforesaid judgment, the connotation and purport of the application A-59 remain as an application for substitution under

Order XXII, Rule 3 of the Code and by no stretch of imagination can it be held to be an application for setting aside of abatement. **Smt. Ritu Jutshi and others vs. Smt. Rukmini Kaul, 2021 (153) RD 340 (Alld. HC – Lucknow Bench)**

Order 39, Rule 1 and 2. Thus, noticing the aforesaid decisions and the settled proposition in respect of grant of an injunction which has been prefaced in the preceding paragraphs, it will be clear that while dealing with an application for injunction, the Court is required to be guided by the principles of prima facie case, balance of convenience and irreparable injury.

It is also to be noted that while dealing with the aforesaid three ingredients, the Court must refrain from holding a mini trial. The Courts should make an endeavour to test the relevant pleadings in light of the principles as noted above and if it finds that there is a contestable issue which requires evidence of the parties to be decided and the balance of convenience and irreparable injury is in favour of the party seeking the injunction, then the status be preserved, as at that stage the rights of the parties are in an inchoate stage. The Court would require the evidence to determine the rights of the parties which can only be crystallized after trial and can enable the Court to form a definite opinion whether the plaintiff has a case strong enough to enable the Court to pass a decree in his favour and if not, then dismiss the suit. **[Rajendra Prasad Agrawal and another vs. Samarpan Varishtha Jan Parisar and others, 2021(9) ADJ 647(LB)(Alld.H.C.)]**

Order 39, Rules 1, 2 and 4 and section 148-A-Ex parte interim order without hearing caveator's counsel-Deserves to be recalled – Opposite parties entitled to be given a right of hearing on application for interim relief-Accordingly, ex-parte interim order rightly recalled – Appeal dismissed.

In **S.S. Barathokey v. Chairman UP Seed and Tarai Development Corporation Limited and another, 1993(11) LCD 486,** where, a caveat was filed but notice of the writ petition was not served upon the caveator's Counsel before filing the writ petition and an ex parte interim order was passed, upon the application for recall of that order on the very ground of no service of notice of the writ petition in spite of caveat, this Court, after considering the provisions of Chapter XXII Rule 1 (4) of the Allahabad High court Rules, section 148-A of CPC and various authorities on the point, held that the ex parte interim order without hearing the caveator's Counsel deserved

to be recalled and the opposite parties were entitled to be given a right of hearing on the application for interim relief.

Before, concluding, this court deems it appropriate as also a duty in the interest of proper administration of justice to issue following directions as well:

(1) IN every Civil Court, Munsarim is the Chief Ministerial Officer. He is appointed to receive plaints or other papers under the Code and to see that the actual date of presentation is entered upon the plaint, memorandum of appeal, cross-objection or any other paper filed and also upon the labels on such papers.
(2) It shall be incumbent as also the duty upon the Munsarim of the Court concerned to verify the facts on the basis of case number of regular suit, date of the order passed by the Subordinate Court, the name of the parties or other identifying numbers, if any with regard to the filing of a caveat;
(3) When an application/plaint or/and is filed in Civil Court the Munsarim of that Court shall mandatorily make an endorsement on such plaint/application, if any caveat has been filed or not.
(4) If caveat has been filed the same shall be reported without any failure;
(5) If a plaint/application is filed in one Court but is transferred to another Court, for any reason either at the time of institution or thereafter, the Munsarim of the transferee Court shall also ensure if there is reporting o the caveat or not and in the absence of any such reporting the Munsarim of the transferee Court, shall submit his report to the transferee Court about the caveat and if required, report to that affect shall also be asked from the Munsarim of the Court from where the case has been received on transfer, which report shall be submitted by the Munsarim of the Court from where the file has been received from transfer without any delay so that in cases of urgency, the disposal of the application may not be unnecessarily delayed.
(6) Any slackness, negligence or mistake on the part of the Munsarim of the Court concerned for any reason whatsoever would amount to interference in the administration of justice, rendering him liable for appropriate action being taken in addition to the disciplinary proceedings.
(7) The above directions are in addition to any other provision of directions etc., if exist, on the above subject.

Learned District Judges of the District Courts in the State of Uttar Pradesh shall ensure that the caveat lodged is reported and is not missed by any slackness or negligence or mistake or otherwise on the part of the Munsarim and to ensure it necessary order shall be issued as per the above directions. **Akhilesh Kumar Jaiswal and another v. Karunesh Jaiswal and other, 2021 (153) RD 478 (Alld. HC-Lucknow Bench)**

Order 46, Rule 1 – Review – Exercise of power of review – Error apparent on face of record – Held, an error to be fished out by a process of reasoning – Cannot be said to be an error apparent on face of record – Petition dismissed.

The perusal of judgment discloses that the Court did not frame any other substantial question of law and had decided the appeal only on the question of law so framed at the time of admission of appeal, and therefore, there does not arise any question of compliance of proviso to section 100 (5) of CPC.

The judgment relied upon by the learned Counsel for the applicants in the case of Lisamma (supra) on the point that question of the identity of property is a question of fact is not applicable in the facts of the present case. Since the Court has not framed any substantial question of law regarding the identity of the land, the Court, while deciding the question of law on which appeal was admitted, found illegality committed by the Court below in not getting the land identified while decreeing the suit.

It is settled in law that Court can exercise its power of review only when there is an error apparent on the face of the record and an error which is to be fished out by a process of reasoning cannot be said to be an error apparent on the face of the record. Hence, it implies that the reviewing Court has no power to review the judgment where the error in the judgment is to be searched out by a process of reasoning. **Ramesh Kumar Sharma vs. M/s. COOL POPUT and others, 2021 (153) RD 351 (Alld. HC)**

Constitutions of India

Art. 226 Learned Single Judge has referred following questions to the Larger Bench finding conflicting judgment on the issue:

"(i) Whether the element of public function and public duty inherent in the enterprise that an educational institution undertakes, conditions of service of teachers, whose functions are a sine qua non to the discharge of that public function or duty, can be regarded as governed by the private law of contract and with no remedy available under Article 226 of the Constitution?

(ii) Whether the decision in Rajesh Kumar Srivastava and others v. State of U.P. and others, 2020(2) ADJ 409 is in teeth of the holding of the Full Bench in Roychan Abraham v. State of U.P. and others, 2019(3) ADJ 391 (FB)."

Accordingly, we answer the questions referred by learned Single Judge in following terms:

(1) The remedy under Article 226 of the Constitution of India would be available against an authority or a person only when twin tests are satisfied. The authority or the person should not only discharge public function or public duty but the action challenged therein should fall in the domain of public law. The writ petition would not be maintainable against an authority or person even if it is discharging public function/ public duty, if the controversy pertains to the private law such as a dispute arising out of contract or under the common law.

(2) The judgment of this Court in the case of Rajesh Kumar Srivastava (supra) is not against the ration pronounced by the Larger Bench in the case of Roychan Abraham (supra) rather it has followed the judgment of the Apex Court in the case of K.K. Saksena (supra). **[Uttam Chand Rawat vs. State of U.P. and others, 2021(9) ADJ 304(FB)(Alld.H.C.)]**

Arts. 246A and 366(12-A), (Substituted) Entry 54 of List II of Seventh Schedule- U.P. Value Added Tax Act, 2008- Sections 74, 174(1)(i) of UPGST Act, 2017.

Thus, both the Parliament and the State legislatures, sacrificed their pre-existing, respective legislative competence to – enact laws to impose duties of excise and to tax sales of alcoholic liquors not-for human consumption, at the high altar of the 101st Constitution Amendment, enacted to consecrate the GST laws. The express intent of that Constitutional change appears to be one- to tax all alcohols except "alcoholic liquor for human consumption", under the GST regime, only. Thus, alcoholic liquor not for human consumption or industrial alcohol or non-potable alcohol, is subject to GST laws, only. That Constitutional intent was unequivocally recognized by the State legislature. It resonates in perfect harmony, through the instrument of incorporation of Section 174(1)(i) to the UPGST ct, 2017. For ready reference, that provision of law reads as below:

(1) Save as otherwise provided in this Act, on and from the date of Commencement of this Act.

The Uttar Pradesh Value Added Tax Act-2008, except in respect of goods included in the Entry54 of the State List of the Seventh Schedule to the Constitution."

Since the State legislature did not attempt to save the UPVAT Act- to tax alcoholic liquor not for human consumption, two direct consequences arise. First, a consequence arises of recognition of the change in the Constitutional scheme, noted above. Second, yet more directly, the State legislature did not save UPVAT Act to impose tax on any commodity except "alcoholic liquor for human consumption". Hence, in any case, after the enactment of the UPGST Act, 2017 and in absence of any amendment to Section 174 (1)(i) of that Act, there neither survives nor exists any delegated power with the State Government, to issue the impugned Notification, to impose UPVAT on ENA.

We cannot help over emphases the fact that the impugned Notification seeks to overreach the Constitutional scheme, as amended by the 101st Constitution Amendment. By that Constitution Amendment, the only surviving legislative field to impose taxes (saved exclusively with the State legislatures), finds mention in Entry 54 (as substituted). Relevant to our discussion, it is only with respect to "alcoholic liquor for human consumption". Since ENA is not that, the State legislature cannot circumvent the Constitutional scheme by introducing a tax on its sale, by describing it as 'non-GST alcohol'.

That phraseology, used to describe ENA is, in any case, a misnomer. It is impermissible. By virtue of Article 366(12-A) of the Constitution of India, 'non-GST alcohol' may only be "alcohol for human consumption". By virtue of the clear dictum of the Supreme Court in Synthetic and Chemicals Limited (supra), Modi Distillery (supra), VAM Organic Chemicals Ltd. (supra) and Ajanta Bottlers and Blenders Private Ltd. (supra), ENA is not fit for human consumption. Hence, for reasons noted above, it would remain a 'GST-Alcohol', if such a thing exists. Second, the intended use to which a commodity may be put, and the character or identity of the commodity manufactured there from, would never be relevant to impose a differential rate of tax on sale of that commodity, depending upon different uses, it may be put to. For a tax to be levied on sale of a commodity, its identity in present alone is relevant. As a fact, there exists only one type of ENA. It may be put to different uses i.e., to manufacture either potable alcohol or chemicals or other commodities or all or any of them. By looking at any quantity of ENA, its use may never be

predicted or pre-determined. To subject it to differential rates of tax under the UPVAT Act, depending solely on the intent of the purchaser (to use it a specified way), may never qualify as a tax on the sale of the goods. It may transform into another kind of tax. Third, in any case, the use to which ENA may be put may be relevant to the legislature to determine the measure or the rate of tax to be suffered by it, but not to the identity of the taxable commodity. That may be established based on its form, shape, and commercial identity, by the people who deal in it. Since ENA is not a 'non-GST' alcohol, the question of measure or rate of tax thereon (based on its use), is extraneous to the issue at hand.

What then survives for our consideration is, whether the State may ever be able to defend a taxation law or whether the State may ever be able to enact a taxation law, referable to Entry8 of List II of the Seventh Schedule, to the Constitution of India, to impose tax on sale. The up VAT Act 2017 was not a law enacted with reference to Entry 8 of List II of the Seventh Schedule, to the Constitution of India rather, it was a law referable only to Entry 54 of List II of the Seventh Schedule, to the Constitution of India, as it then existed.

Even if, in the context of the challenge raised, the answer to the question – if the State legislature had the competence to enact the UPVAT Act with reference to the said Entry 8 of List II of the Seventh Schedule, to the Constitution, must remain- emphatically in the negative. The law with respect to the scope of legislative entries has been consistently laid down to mean – taxing power is a special/ specific legislative power. It may be exercised with reference to a specific taxing entry. If legislative entries under the Seventh Schedule to the Constitution of India are treated to be mother entries, with reference to the laws that may be enacted, a taxation legislation must be born to a taxing legislative entry alone. It can have no surrogate mother i.e., a general entry, as has been attempted to be established by the learned AAG. **[M/s. Jain Distillery Private Limited vs. State of U.P. and others, 2021(10) ADJ 69 (DB) (Alld.H.C.)]**

Art. 311- U.P. Government Servant (Discipline and Appeal) Rules, 1999- Rule 7.

An order of punishment can be passed based on the conduct led to conviction. In the instant case, petitioner was convicted for the offence of attempt to rape and sentenced to seven years imprisonment with fine. The conduct of the petitioner was the basis for the order of dismissal from service. The disciplinary inquiry is not required in such cases in view of the provisions of the

Constitution of India so as the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999. **[State of U.P. and others vs. Om Prakash Soni, 2021 (9) ADJ 454(LB) (DB) (Alld.H.C.)]**

Court Fees Act

S. 7 (vi-a) – Suit for partition – Valuation of – Trial Court found that valuation of the suit as made by plaintiff was appropriately valued – Revision against – Dismissed – Defendant has denied the entitlement of share to the plaintiff – Effect of – If at a later stage of proceedings, after the parties have led their respective evidence, the superior Court in appeal or revision comes to a conclusion that the suit was not appropriately valued the said aspect could still be decided by the Court in the spirit of the ratio laid down in 2005 (99) RD 356 – Court found no apparent error in the impugned judgment – However, it is made clear that subsequently if after the parties lead their evidence, the superior Appellate or Revisional Court comes to the conclusion that the plaintiff was not even entitled for any share to the extent of ¼ share as claimed by her – In that eventuality such Court may independently determine the aspect pertaining to the payment of Court fees as well as the issue of valuation of the suit itself at the stage after the parties have led their respective evidence – Petition dismissed.

In fact, in the aforesaid judgment of Division Bench, the court has also held that in case if at a later stage of the proceedings, after the parties have led their respective evidence, the superior court in appeal or revision comes to a conclusion that the suit was not appropriately valued, the said aspect could still be decided by the court in spirit of the ratio laid down in para 7 of the judgment, that itself leaves open the issue pertaining to the deficiency of the court fees, in the light of the principles laid down in para 18 of the said judgment, which has to be read in consonance to para 19, where the issue still could be decided by the superior court at the time when the matter itself is decided finally in the appeal or revision. At this stage since the court has decided the issue no. 1 in the light of the Amin's report Paper No. 129-C 2, based on the provisions contained under Section 7(vi-A) of the Court Fees Act, with regards to the apportionment of the share claimed by the plaintiff in the partition suit. I do not find any apparent error as such in the judgments impugned, which are under challenge in the present writ petition, but however, it is made clear that subsequently if after the parties lead their evidence, the superior appellate or revisional court (as the case may be) comes to the conclusion that the plaint, was not even entitled for any share to

the extent of ¼ share as claimed by her. In that eventuality, the aforesaid court may independently, determine the aspect pertaining to the payment of court fees as well as the issue of valuation of the suit itself at the stage after the parties have led their respective evidence. **Sambhu Nath Sharma and others vs. Sudha Rani Sharma, 2021 (153) RD 98 (Uttarakhand HC)**

Criminal Procedure Code

S. 204 In view of the above, the Court finds and observes that the conduct of the judicial officers concerned in passing order on printed proforma by filling up the blanks without application of judicial mind is objectionable and deserves to be de precated. The summoning of an accused in a criminal case is a serious mater and the order must reflect that Magistrate had applied his mind to the facts as well as law applicable thereto, whereas the impugned summoning order was passed in mechanical manner without application of judicial mind and without satisfying himself as to which offence were prima facie being made out against the applicants on the basis of the allegations made by the complainant, the impugned cognizance order passed by the learned Magistrate is against the settled judicial norms. **[Pankaj Jaiswal vs. State of U.P. and anothers, 2021(10) ADJ 174 (Alld.H.C.)]**

S. 389. Once the accused have been convicted by the learned trial Court, there shall not be any presumption of innocence thereafter. Therefore, the High Court shall be very slow in granting bail to the accused pending appeal who are convicted for the serious offences punishable under sections 302/149, 201 r/w 120B IPC. **[Shakuntala Shukla vs. State of Uttar Pradesh and another, 2021(10) ADJ 288 (SC) (Supreme Court)]**

Sec. 389(1)—IPC, Sec. 302—Revocation of order suspending sentence and cancellation of bail—Second respondent convicted for offence under section 302, IPC and sentence to life imprisonment

The Hon'ble Supreme Court observed that This Court in its order passed in Ramesh Kumar Singh vs. Jhabbar Singh & Ors. 9, has held that if the accused misuses their liberty by committing other offences during the suspension of sentence under Section 389 (1) of the CrPC, they are not entitled to the privilege of being released on bail. In that case, the accused was convicted under Section 302 of the IPC for killing the father of the complainant and during the suspension

of his sentence, when he was out on bail, he had committed the murder of the brothers of the complainant. This Court set aside the bail that was granted to the accused by the High Court.

Further Hon'ble Supreme Court held that the present case was a fit case for the cancellation of bail by the High Court. **[Somesh Chaurasia vs. State of U.P., 2021 (117) ACC 671]**

Ss. 397/401 and 457—Mines and Minerals (Development and Regulation) Act, 1957—U.P. Minor Minerals (Concession) Rules, 1963, Rules 74, 75, 77 and 78—Release of vehicle—Rejection of application for release of the vehicle seized under section 21(4) of the 1957 Act

The Hon'ble High Court observed that it would, therefore, be seen that in terms of the provisions contained under the MMDR Act and the rules made thereunder, the officer exercising powers under sub-section (4) of Section 21, (the Mines Inspector, in the present case) upon making seizure of a vehicle or any other thing, on account of unlawful transportation, is required to submit a report to the District Officer/Officer authorised for the purpose of making a complaint before the Court concerned for taking cognizance of the offence.

The Mines Inspector or the Officer exercising powers of seizure under sub-section (4) of Section 21 cannot in any manner be deemed to be a "police officer' having not being conferred with any such powers which may be said to be attributable to an investigating "police officer'. The primary test laid down in the Constitution Bench decision in the case of Badaku Joti Svant (supra), which has been followed in the subsequent judicial authorities, is clearly not satisfied in the facts of the present case.

Section 457 of the Code contemplates exercise of jurisdiction by a Magistrate in a case where seizure of the property is by any police officer. The right and duty of an investigating officer to file a police report or a charge sheet on the conclusion of an investigation has been held to be the hallmark of an investigation under the Code and a clinching attribute of an investigating police officer. The aforementioned clinching attribute being lacking in the present case, the seizure made by the Mines Inspector under Section 21(4) of the MMDR Act, cannot be held to be seizure by a "police officer' so as to bring it within the ambit of Section 457 of the Code. It may be reiterated that mere conferment of certain powers relating to seizure under a particular enactment for certain specific purposes would not make the officer concerned a "police officer'.

The Hon'ble High Court held that it would therefore be seen that there being no complaint and no cognizance of the offence having been taken, no proceeding could be said to be pending nor could it be said that seizure of the property in question had been reported by any "police officer' to the competent jurisdictional Magistrate under the provisions of the Code. The necessary ingredients for invocation of the powers under Section 457 of the Code having thus not been fulfilled, the provisions of the section cannot be said to be attracted, and in view thereof the Magistrate has rightly declined to exercise the jurisdiction conferred under the section.

The judgment in the case Sunderbhai Ambalal Desai (supra), which is an authority relating to release of vehicles seized in connection with criminal proceedings under general law would not be applicable under the facts of the present case, wherein the seizure of the property has not been reported by any police officer or by any officer authorised competent to file a complaint before the jurisdictional Magistrate. **[Vidya Nand Yadav vs. State of U.P., 2021 (117) ACC 857]**

S. 438—Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sections 3(1)(s), 18 and 18-A—Writ of certiorari for quashing the First Information Report under section 3(1)(dha)

The Hon'ble High Court held that provision of Section 438 Cr.P.C. shall be available to an accused for anticipatory bail for alleged offences under the Scheduled Castes and Scheduled Tribes Act, 1989, if the accused/applicant is able to demonstrate that the complaint/F.I.R. does not make out "a prima facie" case for applicability of the provisions of the Act 1989. In such cases the bar created under sections 18 and 18-A of the Act, 1989 shall not apply. **[Gopal Mishra vs. State of U.P., 2021 (117) ACC 451]**

S. 438(1-A)—Protection of Children from Sexual Offices Act, 2012, Secs. ¾, 33(7) and 40—Opportunity of hearing to the family/guardian of the child victim at the time of hearing of the bail application

In this case Hon'ble High Court referred to Sec. 40 of POCSO Act, read with Rule 4(13), 4(15) of the Protection of Children from Sexual Offices Rules, 2020 & observed that a perusal of Rule 4(13) itself shows that it is the duty of the SJPU or local police to keep the child and his/her

parent/guardian or other person in whom the child has trust and confidence, informed about the developments including the arrest of the accused, applications filed and other Court proceedings. The “applications filed and the other Court proceedings” is a wide worded phrase which also includes within its ambit bail applications filed before any Court whatsoever. Therefore, the bail applications filed, either before the Special Court or before the High Court, are also included in the same and, thus, it is the duty of the SJPU or the local police to inform the parent/guardian of the child victim with regard to the same. Similarly, Rule 15 subrules (vii) and (viii) also makes it incumbent upon the SJPU and local police to inform the child and parent or guardian with regard to the schedule of the Court proceedings that the child is either required to attend or is entitled to attend and bail, release and detention status of the offender or suspected offender.

Therefore, from the reading of Section 40 of POCSO Act as well as Rule 4(13) and 4(15) of the Rules of 2020, it is clear that this Court is required to ensure that the SJUP or the local police informs the family or guardian of the child and also provide them legal assistance as required with regard to all proceedings, including the bail applications filed by the accused. Thus, it is necessary to implead the complainant, and in case the complainant is not a family member or guardian of the child, then the family member or guardian of the child as opposite party along with the complainant in the bail applications filed before this Court.

There is yet another reason to serve notice of the bail application in every POCSO offence case upon the parent/guardian of the child. A perusal of provisions of POCSO Act and Rules of 2020 casts a duty upon every person involved with the matter including the courts to provide circumstance and atmosphere wherein the victim child and his family feels safe and secure. Providing complete knowledge of judicial proceeding and opportunity to participate in the same would be a step in right direction in making the victim child and his family to maintain its faith in the justice delivery system of the society and thus feel safe and secure.

Further Hon’ble High Court discussed that So far the second question, with regard to the manner in which notices is to be served, ensuring that identity of the child is not disclosed is concerned, such a duty is cast upon the Special Court under Section 33(7) of the POCSO Act.

The Hon'ble High Court held that in view thereof, it would be appropriate that the complainant, and where complainant is not a family member, along with him, parent/guardian is made opposite party in the following format:

> "Complainant in Case Crime No. ……., Police Station- ……, District- ……., service of notice through Investigating Officer/S.H.O. of the Police Station" or as per the requirement in a case along with complainant, "Parent/Guardian of the victim in Case Crime No. ……., Police Station-……, District-……, service of notice through Investigating Officer/S.H.O. of the Police Station."

Notice in every case shall be served through Investigating Officer/ S.H.O. of the Police Station concerned upon such complainant and/or parent/guardian of the child. The Investigating Officer/S.H.O. of the Police Station concerned shall ensure that identity of the child does not get disclosed in any manner whatsoever during investigation, trial or during service of notice. **[Rohit vs. State of U.P., 2021 (117) ACC 849]**

S. 482—Prevention of Damages to Public Property Act, 1894—Secs. 3, 4 and 2(a)—Quashing of charge-sheet and order taking cognizance—

The Hon'ble High Court held that The provisions under the Revenue Code, the Act, 2020 and the PDPP Act would, therefore be seen to operate in different fields with there being no bar in respect of the institution of proceedings under the aforesaid enactments separately or simultaneously in respect of matters covered thereunder.

The criminal proceedings, which have been initiated in the present case pursuant to FIR lodged under the provisions of the PDPP Act, thus cannot be held to be vitiated for the reason that in respect of the allegations relating to encroachment/damage to Gaon Sabha land, only proceedings for eviction and recovery of damages can be initiated under the provisions of the Revenue Code and no criminal proceedings for causing damage or destruction of public property can be initiated under the PDPP Act. **[Srikant vs. State of U.P., 2021 (117) ACC 955]**

S. 482—IPC, 1860, Secs. 147, 148, 149, 406, 329 and 386—Quashing of criminal proceedings

The Hon'ble Supreme Court observed that Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarized affidavit dated 27.10.2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to

notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarized affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs.25 lakhs as mentioned in the joint notarized affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs.2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C. **[Kaptan Singh vs. State of U.P., 2021 (117) ACC 983]**

S. 482- (Indian) Penal Code, 1860- Sections 379, 411- Mines and Minerals (Development and Regulation) Act, 1957- Sections 4, 21, 22 – U.P. Minor Minerals Rules, 1963- Rules 3, 57, 70.

The legal position, as emanating from the aforesaid discussion, may be summarized as follows:

The prohibition applying the rule against double jeopardy would be attracted in a situation where the same act constitutes an offence under more than one enactment. However, if the two offences are distinct and different with different ingredients, under two different enactments, the rule against double jeopardy would not be applicable.

In a case, where the mining activity is carried on by any person in contravention of the provisions of Section 4 and other provisions under the MMDR Act, the officer empowered and authorized under the Act shall exercise all the powers including making a compliant before the jurisdictional Magistrate, whereupon the Magistrate may take cognizance. In a case of breach of Section 4 and other allied provisions, the police officer cannot insist upon the Magistrate for taking cognizance under the Act on the basis of the report submitted by the police alleging contravention. The prohibition under Section 22 of the Act against prosecution of a person except on a complaint made by the person authorized would be attracted only when such person is sought to be prosecuted for contravention of the provisions under Section 4 or other provisions under the MMDR Act and not for any act or omission which constitutes of an offence under the Penal Code.

In a situation where a person, without any lease or licence or any authority seeks to extract minerals and removes or transports them dishonestly, he would be liable to be punished for committing offences under Section 378 of the Penal Code.

The contravention of terms and conditions of a mining lease or carrying on any mining activity in violation of Section 4 of the MMDR Act would be an offence punishable under Section 21, whereas dishonestly removing minerals without proper authorization, lease or licence would constitute the offence of theft. The ingredients constituting the offence under the two enactments are distinct and different. Therefore, merely because proceedings for commission of an offence under the MMDR Act have been initiated on the basis of a complaint, the same would not operate as a bar from taking cognizance relating to an offence of theft by exercising powers under the Code and submission of a report before the Magistrate for taking cognizance. The jurisdictional Magistrate would thereafter be empowered to take cognizance of the offence without awaiting receipt of a complaint that may be filed by the authorized officer for taking cognizance in respect of any offence under the MMDR Act.

The powers under Section 156(3) of the Code for issuance of a direction for investigation of a case disclosing cognizable offence would be exercisable by the concerned jurisdictional Magistrate even in respect of offences under the MMDR Act and the Rules made thereunder; at this stage the bar under Section 22 of the MMDR Act and the her thereunder would get attracted only at the stage when the Magistrate takes cognizance of the offences under the MMDR Act and the Rules made thereunder and proceeds for issuance of process.

In a case where the Magistrate passes an order under Section 156(3) and directs investigation in respect of offences arising out of violation of various provisions of the MMDR Act and the Rules made thereunder, and subsequent to the investigation the police submits a report, the same can be sent to the Magistrate concerned as well as to the officer authorized under Section 22 of the MMDR Act, as held in the case of Jayant (supra). It would thereupon be open to the said officer to file a complaint before the Magistrate alongwith the report submitted by the police and the Magistrate may take cognizance after following due procedure and issue process in respect of the violations of the provisions under the MMDR Act and the Rules made thereunder and it is at this stage that the Magistrate can be said to have taken cognizance.

The investigation of offences being within ghe domain of the police, the power of a police officer to investigate into a cognizable offence would ordinarily not be impringed by any fetter and Courts would interfere only where it is found that the investigatory powers have been exercised in breach of the statutory provisions putting the personal liberty and/or the property of the citizen in jeopardy. The procedural law is designed to further the ends of justice and should not be allowed to be frustrated on mere technicalities and any defect or illegality in exercise of investigatory powers would have no direct bearing on the competence or the procedure relating to taking of cognizance or the trial.

It would therefore be seen that the bar under Section 22 of the Act shall not be attracted at the State of lodging of an FIR or registration of the criminal case. The bar under the section shall get attracted only at the stage when the Magistrate takes cognizance of the offence and orders issuance of process/ summons for the offence under the MMDR Act and the Rules made thereunder. On receipt of the police report, insofar as it relates to commission of offence under the Penal Code, the Magistrate having jurisdiction can take cognizance of the offence and proceed further. However, in respect of offences under the MMDR Act upon submission of the police report the same would be required to be sent to the concerned Magistrate as well as to the concerned authorized officer as mentioned in Section 22 of the MMDR Act whereupon the concerned authorized officer may file a complaint before the Magistrate alongwith the report submitted by the investigating officer and thereafter it would be open for the Magistrte to take cognizance after following due procedure, issue process/ summons in respect to the violations of the various provisions of the MMDR Act and the Rules made thereunder and at the stage it can be said that cognizance has been taken by the Magistrate in respect of an offence under the MMDR Act. **[Ram Bahal vs. State of U.P. and another, 2021(9) ADJ 566 (Alld. H.C.)]**

S. 482 Cr.P.C — Sec. 138 Negotiable Instruments Act, 1881,

In this case, question before the Hon'ble High Court was whether an order passed by the High Court in the criminal revision petition confirming the conviction can be nullified by the High Court in a petition filed under section 482, Cr.P.C. noticing subsequent compromise of the case by the contesting parties.

The Hon'ble High Court held that the parties, in reference to offence under section 138, N.I. Act read with section 147 of the said Act are at liberty to compound the matter at any stage. The complainant i.e. the person or persons affected can pray to the Court that the accused, on compounding of the offence may be released by invoking jurisdiction of this Court under Section 482, Cr.P.C. read with Article 226 of the Constitution of India. **[Rishi Mohan Srivastava vs. State of U.P., 2021 (117) ACC 48 (All—LB)]**

S. 482—Quashing of criminal proceedings—Petition for—Interim order directing "no coercive measures shall be adopted" against original accused in respect of challenged FIR passed by High Court—Legality

The issues before the Hon'ble Supreme Court was whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

The Hon'ble Supreme court conclusions are as under:

(i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

(ii) Courts would not thwart any investigation into the cognizable offences;

(iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

(iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

(v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

(vi) Criminal proceedings ought not to be scuttled at the initial stage;

(vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

(viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

(ix) The functions of the judiciary and the police are complementary, not overlapping;

(x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

(xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

(xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

(xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

(xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

(xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

(xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

(xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied. **[M/s. Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, 2021 (117) ACC 280]**

Ss. 482 and 319—Indian Penal Code, 1860—Section 489-B—Quashing of order summoning the applicant as an accused—Contention of the applicant that applicant has not been named in the police report

The Hon'ble High Court held that Section 319 (1) of the Code envisages that where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

The word evidence used under Section 319 (1) of the Code has been held to be understood to refer to the evidence recorded during trial, and also any material that has been received by the

court after cognizance is taken and before the trial commences, to be utilized for corroboration and to support the evidence recorded by the court.

The evidence recorded by the court during trial is thus to be accorded primacy and for the purpose of exercise of power under Section 319 of the Code would have to be given weight over the material which was collected during the course of investigation. The contention which has been sought to be raised placing reliance upon the material collected by the investigating officer during the course of investigation, for the purpose of exercise of powers under Section 319 of the Code, thus cannot be accepted.

The power under Section 319 of the Code to summon even those persons who are not named in the charge-sheet to appear and face trial, being unquestionable and the object of the provision being not to allow a person who deserves to be tried to go scot¬free by being not arraigned in the trial inspite of possibility of his complicity which can be gathered from the evidence during the course of trial, the order passed under Section 319 of the Code summoning the applicant does not contain any material error so as to warrant inference. **[Adesh Tyagi vs. State of U.P., 2021 (117) ACC 484]**

Ss. 482, 451, 452 and 457—Uttar Pradesh Prevention of Cow Slaughter Act, 1955, Secs. 3, 5-A and 8—Prevention of Cruelty to Animals Act, 1960, Sec. 11—Release of the vehicle involved in transporting the animals, seized under section 5-A of the Act of 1955—

The Hon'ble High Court discussed the provision of U.P. Prevention of Cow Slaughter Act, 1955 and observed that Sub-section (11) of Section 5-A provides that where the provisions of Act or the related rules in context of search, acquisition, disposal and seizure are silent, the relevant provisions of the Code shall be effective thereto. The provisions inserted under Section 5-A in terms of the aforesaid Amending Act, i.e. U.P. Act No. 20 of 2020 in respect of confiscation and release of vehicle would therefore, go to show that the scheme of the Act provides a complete procedure with regard to proceedings relating to confiscation and release. The necessary provisions with regard to confiscation, seizure and release of vehicle used for transportation in violation of the provisions of PCSA and the Rules made therein, having being provided for, and the Act and the Rules not being silent in regard thereto as per the stipulation under sub-section (11) of Section

5-A, the provisions of the Code would not be invocable in matters relating to confiscation, seizure and release under the PCSA.

The PCSA is a "local law" within the meaning of Section 5 of the Code and in view thereof, the general provisions contained under Sections 451 of the Code with regard to custody and disposal of the property pending trial or the power for making an order for disposal of property at the conclusion of trial under Section 452 or the procedure under Section 457 would therefore, be subject to the powers exercisable under Section 5-A of the PCSA which makes a special provision with regard to confiscation and seizure of the vehicle used for transport in contravention of the provisions of the Act.

A similar question as to whether the Magistrate would have jurisdiction to exercise powers under Sections 451, 452 and 457 of the Code to direct release of any property which was subject matter of confiscation proceedings under Section 72 of the U.P. Excise Act, 19109 before the Collector, was considered in a recent judgement of this Court in the case of Vikki Vs State of U.P. and Another10 and taking into consideration that the Excise Act is a local law within the meaning of Section 5 of the Code, it was held that the provisions contained under Section 72 of the Excise Act would have the effect of denuding the Magistrate of his power to pass any order under Section 457 of the Code for release of any article seized in connection with an offence purporting to have been committed under the Act.

Hon’ble Court held that applying the aforesaid principle to the facts of the present case, the vehicle in question having been confiscated and seized in exercise of powers under Section 5-A of the PCSA, which is in the nature of a special Act and a local law under Section 5 of the Code, the same would clearly have the effect of denuding the Magistrate of his power to pass any order under Sections 451, 452 and 457 of the Code for release of the vehicle seized for alleged violation of the provisions of the Act. **[Yas Mohammad vs. State of U.P., 2021 (117) ACC 528]**

Evidence Act

S. 3 and Ss. 302, 304 part I, 323 of IPC,

Hon'ble Allahabad High Court looking to the facts of the case and the evidence of record evaluated as to whether the accused has committed murder or culpable homicide not amount to murder. The evidence and record goes to show that accused did not come with arm. There were altercation between the deceased and the accused the medical evidence including post mortem report showed that injury would cause death and doctor also opined that he was not sure whether death occurred due to injury or not. Accused, cousin of complainant allegedly mercilessly beating uncle of complainant to death with wooden shaft of sheet (Takhat), when he demanded land without money from his uncle and he was unwilling to give same.

It was held that due to above case would fall within section 304 part I I.P.C. **Sunil Kumar Pandey alias Sonu v. State of Uttar Pradesh, 2021 Cri.L.J. 4582: AIR Online All. 1076**

S. 74 – Public document – Response by Public Information Officer under RTI Act is a public document.

Evidence Act, 1872 – Sections 64, 74 and 77 – Civil Procedure Code, 1908 – Section 2(17) – Public Information officer under RTI Act is a public officer – Response of a Public Information Officer issued in course of his duty under RTI Act – Falls within ambit of document forming an act of public officer – Thus is a public document- Which could be provided either by adducing original copy of same – Or filing a certified copy of same.

U.P. Zamindari Abolition and Land Reforms Act, 1950 – Sections 122-C and 331 – Civil Procedure Code, 1908 – Section 9 – Allotment of housing site without previous approval by SDO void *ab initio* – Civil Court has sufficient power to ignore it.

It is also notable that the response by the Public Information Officer under the provisions of RTI Act is a public document. Reliance in this regard is placed upon section 74 of the Evidence Act. Section 74 of the Evidence Act is reproduced herein below:

"74. Public documents – The following documents are public documents:

(1) Documents forming the acts, or records of the acts –
    (i) of the sovereign authority,

(ii) of official bodies and Tribunals, and

(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;

(2) Public records kept in any State of private documents."

It is undeniable that a Public Information Officer is a "public officer" as per Clause 17 of section 2 of CPC. The response letters, moreover, are issued under a statutory duty. The response of a Public Information Officer issued in the course of his duty under, the RTI Act on a bare perusal falls within the ambit of a document forming an act of a public officer and thus is a public document, which could be proved either by adducing the original copy of the same as per section 64 of the Evidence Act, or by filing a certified copy of the same as per section 77 of the Evidence Act.

An overview of the aforesaid acts clearly reveal that Firstly, the defendant No. 1/appellant has failed to adduce allotment certificate and hence could not prove the factum of grant of Lease/Allotment in his favour. Secondly, even if for the sake of arguments, the receipt for premium is taken to be the Allotment Certificate itself, in absence of previous approval of the Assistant Collector the same is void-ab initio and is liable to be ignored for which no separate proceedings are required to be initiated. Finally, the document dated 11.5.1974 was not a lease/Allotment Certificate. It never required cancellation or declaration as void document from Revenue Court. **Amar Singh v. Ranpal Singh and others, 2021 (153) RD 441 (Alld.HC) -**

Ss. 101 & 102— Section 101 of the Evidence Act, 1872 (here-in-after referred as Act of 1872) provides that 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. Section 102 provides that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Section 103 provides that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. **[Sheo Bahadur vs. Deputy Director of Consolidation, 2021 AIR CC 2983 (All)]**

S. 113-B—Indian Penal Code, 1860, Sections 304-B and 306—High Court dismissed the appeals preferred by the appellants and upheld the order of conviction and sentence

under—Appeals against- Words "soon before"—First contentious part that exists in the interpretation of section 304-B, IPC relates to the phrase "soon before" used in section

'Dowry death' of a woman is provides that 'dowry death' is where death of a woman is caused by burning or bodily injuries or occurs otherwise than under normal circumstances, within seven years of marriage, and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband, in connection with demand for dowry. Subclause (2) provides for punishment for those who cause dowry death.

Accordingly, in Major Singh v. State of Punjab, (2015) 5 SCC 201, a three Judge Bench of this Court held as follows:

"10. To sustain the conviction under Section 304B IPC, the following essential ingredients are to be established:

(i) the death of a woman should be caused by burns or bodily injury or otherwise than under a 'normal circumstance';

(ii) such a death should have occurred within seven years of her marriage;

(iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(iv) such cruelty or harassment should be for or in connection with demand of dowry; and

(v) such cruelty or harassment is shown to have been meted out to the woman soon before her death."

Section 304B, IPC relates to the phrase "soon before" used in the Section. Being a criminal statute, generally it is to be interpreted strictly. However, where strict interpretation leads to absurdity or goes against the spirit of legislation, the courts may in appropriate cases place reliance upon the genuine import of the words, taken in their usual sense to resolve such ambiguities. At this juncture, it is therefore necessary to undertake a study of the legislative history of this Section, in order to determine the intention of the legislature behind the inclusion of Section 304B, IPC.

Section 304B, IPC is one among many legislative initiatives undertaken by Parliament to remedy a longstanding social evil. The pestiferous nature of dowry harassment, wherein married women are being subjected to cruelty because of covetous demands by husband and his relatives has not gone unnoticed. The Parliament enacted the Dowry Prohibition Act, 1961 as a first step to eradicate this social evil. Further, as the measures were found to be insufficient, the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) was passed wherein Chapter XXA was introduced in the IPC, containing Section 498A.

The Hon'ble Supreme Court interpreted the word "soon before" in the light of intent of legislature and held that considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, "soon before" they did not mean "immediately before". Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exacts the phrase "soon before" entails.

Courts should use their discretion to determine if the period between the cruelty or harassment and the death of the victim would come within the term "soon before". What is pivotal to the above determination, is the establishment of a "proximate and live link" between the cruelty and the consequential death of the victim.

When the prosecution shows that 'soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry', a presumption of causation arises against the accused under Section 113B of the Evidence Act. Thereafter, the accused has to rebut this statutory presumption. Section 113B, Evidence Act reads as under:

"113B. Presumption as to dowry death—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation. For the purpose of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)"

Therefore, once all the essential ingredients are established by the prosecution, the presumption under Section 113B, Evidence Act mandatorily operates against the accused. This presumption of causality that arises can be rebutted by the accused.

The Hon'ble Supreme court be summarized the law under Section 304B, IPC read with Section 113B, Evidence Act as:

i. Section 304B, IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

ii. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304B, IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113B, Evidence Act operates against the accused. iii. The phrase "soon before" as appearing in Section 304B, IPC cannot be construed to mean 'immediately before'. The prosecution must establish existence of "proximate and live link" between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives. iv. Section 304B, IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental. The reason for such non categorization is due to the fact that death occurring "otherwise than under normal circumstances" can, in cases, be homicidal or suicidal or accidental. v. Due to the precarious nature of Section 304B, IPC read with 113-B, Evidence Act, Judges, prosecution and defence should be careful during conduction of trial.

vi. It is a matter of grave concern that, often, Trial Courts record the statement under Section 313, CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused under Section 313, CrPC cannot be treated as a mere procedural formality, as it based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice "audi alteram partem" as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.

vii. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense since the inception of the Trial with due caution, keeping in consideration the peculiarities of Section 304B, IPC read with Section 113B, Evidence Act.

viii. Section 232, CrPC provides that, "If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that

there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal". Such discretion must be utilized by the Trial Courts as an obligation of best efforts.

ix. Once the Trial Court decides that the accused is not eligible to be acquitted as per the provisions of Section 232, CrPC, it must move on and fix hearings specifically for 'defence evidence', calling upon the accused to present his defense as per the procedure provided under Section 233, CrPC, which is also an invaluable right provided to the accused.

x. In the same breath, Trial Courts need to balance other important considerations such as the right to a speedy trial. In this regard, we may caution that the above provisions should not be allowed to be misused as delay tactics. xi. Apart from the above, the presiding Judge should follow the guidelines laid down by this Court while sentencing and imposing appropriate punishment.

xii. Undoubtedly, as discussed above, the menace of dowry death is increasing day by day. However, it is also observed that sometimes family members of the husband are roped in, even though they have no active role in commission of the offence and are residing at distant places. In these cases, the Court need to be cautious in its approach. **[Satbir Singh vs. State of Haryana, 2021 (117) ACC 355]**

Ss. 114, 113A and Ss. 306, 498A IPC, -Abetment of suicide and cruelty

Hon'ble Apex Court while discussing evidence of related witness held that, most often the offence of subjecting the married woman to cruelty is committed within the boundaries of the house which in itself diminishes the chances of availability of any independent witness and even if an independent witness is available whether he or she would be willing to be a witness in the case is also a big question because normally no independent or unconnected person would prefer to become a witness for a number of reason. There is nothing unnatural for a victim of domestic cruelty to share her trauma with her parents, brothers and sister and other such close relatives. The evidentiary value of the close relatives/interested witness is not liable to be rejected on the ground of being a relative of the deceased. Law does not disqualify the relatives to be produced as a witness though they may be interested witness. However, when the court has to appreciate the evidence of nay interested witness it has to be very cautious in weighing their evidence or in other words, the evidence of an interested witness requites a scrutiny with utmost care and caution. The court is required to address itself whether there are any infirmities in the evidence of such a witness; whether the evidence is reliable, trust-worthy and inspires the confidence of the court. Another important aspect to be considered while analyzing the evidence of interested witness is whether the genesis of the crime unfolded by such evidence is probable or not. If the evidence of any

interested witness/relatives on a careful scrutiny by the Court is found to be consistent and trust-worthy, free from infirmities or any embellishment that inspires the confidence of the court, there is no reason not to place reliance on the same.

While appreciating the evidence of abetment of suicide and cruelty Hon'ble Apex Court held that deceased allegedly committed suicide consuming poison due to torture of husband and mother-in-law for unfulfilled demand of dowry. Credible and trustworthy testimony of parents corroborated by each other and other witnesses regarding demand of dowry and cruelty which is faced by deceased. The testimony remained unshaken in cross examination. Defence took the plea that deceased were suffering from some mental disease and was undergoing treatment and her mental insatiability might have resulted in suicide, this plea was not supported by evidence. Hon'ble Court held that the testimony of related witness is consistent without any material contradiction and inspire confidence. The suicidal death by consuming pesticide was affirmed by medical report. Hence, the accused were liable to be convicted. **Gurmansinh alias Lalo alias Raju Bhikhabhai Chauhan v. State of Gujarat, 2021 Cri.L.J. 4507: AIR Online 2021 664**

Hindu Gains of Learning Act

Nature of – Personal Law-Deals with self – acquired property through gains of learning by a member of a joint Hindu family even with some aid of joint family funds – All personal law with regard to devolution of property becomes immaterial in view of the U.P. Zamindari Abolition and Land Reforms Act, 1950 as the Act of 1950 creates for the first time "bhumidhari rights" – Discussed.

Jurisdiction **–** Suit for declaration of bhumidhari rights over agricultural land which was not recorded in the name of plaintiff – Recorded in the name of his brother – Personal laws like Hindu law are irrelevant for the purpose of determination of bhumidhari rights – Civil Judge rightly dismissed the suit as not maintainable being barred under the provisions of U.P.Z.A. and L.R. Act, 1950 – Such finding is just and proper.

With respect to agricultural land, the Act of 1950 is a special Act which would be applicable notwithstanding any other law for the time being in operation. The Act of 1950 for the first time created rights, temporary or permanent, over agricultural land, it had been promulgated

for an entirely different purpose as has been mentioned in the "Statement of Objects and Reasons" of the said Act. The Act of 1930 need not have been repealed by the Act of 1950 as in pith and substance, the Act of 1930 dealt with self acquired property through gains of learning by a member of a joint Hindu family even with some aid of joint family funds. The Act of 1930 is personal law. All personal law with regard to devolution of property becomes immaterial in view of the Act of 1950 as the Act of 1950 creates for the first time Bhoomidhari rights. The petitioner was asking for a declaration of his Bhoomidhari rights over agricultural land which was not recorded in his name but was recorded in the name of his brother. In **Mahendr Singh versus others, 1967 RD 191**, it has been held by this court that personal laws like Hindu law are irrelevant for the purpose of determination of Bhoomidhari rights. Special rights were created by the Act of 1950 for the first time and these new rights are wholly governed by the provisions of the Act. By Section 152 of the Act of 1950, the rights of a Bhoomidhar are transferable subject only to the conditions mentioned thereunder. Application of personal laws regarding devolution of joint family property would curtail the right given by Section 152 of the Act. Sections 171 to 173 of the Act of 1950 laid down the special mode of succession which was wholly inconsistent with personal laws. **Yogendra Pratap Singh vs. Jitendra Pratap Singh, 2021 (153) RD 35 (Alld. HC – Lucknow Bench) –**

Hindu Marriage Act

S. 13—Divorce—Grant—Ground of irretrievable break down of marriage—

Placing reliance upon the judgments of the Apex Court in 2013 (4) AWC 3292 Supreme Court, Ashok Kumar Jain Vs. Sumati Jain, 2015 (112) ALR 382, Satendra Kumar Gupta Vs. Smt. Kanchan Gupta & others, 2010 (81) ALR 771 - Neelam Kumar Vs. Dayarani, K. Sriniwas Vs. D.A. Deepa, AIR 2013 Supreme Court 2176, Poonam Gupta Vs. Ghanshyam Gupta, AIR 2003 (Allahabad) 51, Durga Prasann Tripathi Vs. Arundhati Tripathi, Sharma/Saroj Sharma (2007) 2 SCC 263, the learned Family Court had reached at the conclusion that there was an 'irretrievable breakdown of marriage' between the parties and the marriage was beyond repair as such there was no other way except to dissolve their marriage and award decree of divorce.

When we go through Section 13 of the Hindu Marriage Act, 1955, we find that there is no such ground as 'irretrievable breakdown of marriage' of divorce and, thus, the Family Court could not have granted the divorce except on the grounds mentioned in Section 13 of the Hindu Marriage Act, 1955. **[Reeta vs. Ankit Kumar, AIR 2021 All 225]**

Indian Penal Code

Ss. 147, 148, 307 and 302 read with section 149—Arms Act, Sec. 25—Conviction—Sustainability—

In this case learned counsel for the appellants contended that according to the prosecution five accused persons armed with pistols opened fire, chased the deceased and his companions and Shahadat died due to gun shot injuries but it is not specific as to which or any of five committed assault and fired. This contention of the appellants was negated by Hon'ble High Court.

The Hon'ble High Court referred to the Constitution Bench of the Hon'ble Supreme Court in the Case of Masalti, AIR 1965 SC 202 has held thus:

> "What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly ,and he entertained along with the other members of the assembly the common object as defined by Section 141 IPC.
>
> .....The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141."

So this defence is not available to the accused that it is not established as to which or any of the five accused assaulted or fired. Under Section 149 I.P.C. all accused are equally liable. Further in this case the actual participation of all the accused is also established. **[Mobin @ Nanha vs. State of U.P., 2021 (117) ACC 814 (All)]**

Ingredients of Unlawful assembly (S. 148,147, 149 of IPC)

Hon'ble Allahabad High Court explaining the ingredients of unlawful assembly while discussing the facts of the case held that the accused person allegedly formed unlawful assembly and in fulfillment of common object of said assembly committed rioting and also attempted commit

murder. According to medical reports all injuries was simple and caused by blunt object upon injured persons. The duration of all injuries was stated to be about 2 or 3 days old approximately. Testimony of prosecution witnesses was consistent regarding that accused person were present at time and place of occurrence as they were seen in light of torches and fire, accordingly they were identifiable. Thus presence of accused at time and place of occurrence was established beyond reasonable doubt and ingredients of section 148,149 were fully satisfied.

However, in view of no incised wound caused by sharp edged weapon found on the body of injured only conviction of accused under section 148 and 149 was held proper and conviction under section 307 was set a side. **Ram Narain and others v. State of U.P., 2021 Cri.L.J. 4967: AIR Online 2021 All 1134**

Ss. 308, 324, 326-A, 332 and 353—Conviction—Sustainability

In this case, learned counsel for the appellant further submitted that learned trial court has wrongly convicted the appellant under Section 326 A IPC. Learned Counsel submitted that in this case, there is no grievous injury so appellant could not have been convicted under Section 326A I.P.C. Learned counsel placed reliance on the judgment and order passed by Hon'ble Apex Court in Maqbool v. State of U.P. and another, AIR 2018 SC 5101.

The Hon’ble High Court held that from the judgment cited by learned counsel for the appellant, it is clear that it is not the percentage or gravity of injury which makes the difference, be it simple or grievous, if the injury falls under the specified types under Section 326A on account of use of acid, the offence 326A I.P.C. is attracted. Section 326B I.P.C. can be attracted in a case the requirements specified are met on an attempted acid attack.

From the perusal of the aforesaid provision of Section 326A I.P.C., it is clear that if a person causes burns by throwing acid, the offence is covered under Section 326A I.P.C. So far as the facts of the present case are concerned, PW2 injured Jitendra Shandilya has specifically stated in his examination-in-chief at page no. 26 of the paper book that appellant poured acid over the body of injured Jitendra Shandilya and beaten him by bricks and iron rod. In the incident, he sutained injuries over his head, due to acid right eye of this witness was injured. PW5 Dr. Sarjeet Singh Guglani has stated in his examination in chief at page no. 36 of the paper book that there

was acid burn over the face, stomach and legs of the injured. The right eye cornea was also burnt. As per the supplementary report, the injury of the injured was grievous in nature. Thus, from the evidence of PW2 Jitendra Shandilya, PW5 Dr. Sarjeet Singh Guglani offence under Section 326A I.P.C. is clearly established. **[Sunil Prajapati vs. State of U.P., 2021 (117) ACC 843]**

Ss. 354, 452 and 506 (2)—Protection of Children from Sexual Offences Act, 2012, Sec. 4—Conviction—Sustainability—

The Hon'ble High Court reiterated the law laid down by the Hon'ble Supreme Court and observed that Hon'ble Apex Court in Wahid Khan vs. State of Madhya Pradesh, 2010 (2) SCC (9) has held that evidence of prosecutrix stands on equal footing with that of injured witness and if her evidence inspires confidence, corroboration is not necessary. In State of Haryana vs. Basti Ram, AIR 2013 SC 1307, Hon'ble Apex Court held that if uncorroborated statement of prosecutrix is credible, conviction can be based on it. In this case, Hon'ble Apex Court after discussing the entire long issue concluded that law that emerges on the issue is to the effect that the statement of the prosecutrix if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.

In this case also, doctor conducting medical examination of the victim could not give definite opinion about rape, but the testimony of the victim inspires full confidence and her evidence before learned trial court is unimpeachable. Hence, accused-appellant cannot get any benefit of the fact that there was no definite opinion of rape in medical report as testimony of prosecutrix is fully reliable and worth believing. Therefore, reliance can be placed on her testimony without any doubt. **[Gore @ Sushil vs. State of U.P., 2021 (117) ACC 780]**

Ss. 364, 302 and 379—Conviction—Sustainability—

The Hon'ble High Court held that A bare reading of the definition of section 364, I.P.C. depicts that the in gredients of the said offence are (1) ab duction/kidnapping by the accused must be proved; (2) it must also be proved that he was kidnapped in order to; (a) that such person may be murdered; or (b) that such person might be disposed of as to be put in danger of being murdered. The intention for which a person is kidnapped must be gathered from the circumstances attending prior to, at the time of and subsequent to the commission of the offence.

In the case in hand, the deceased Satish being friend of the appellant had gone with the appellant on his motorcycle, as usual, on being called by the latter in the morning. Except being

called by the appellant, there is nothing on record to show that the appellant is in any way involved in the commission of alleged offence. The action of the accused appellant in taking the victim on the motorcycle with a view to meet Gram Sevak cannot attract the necessary ingredients of either the offence of kidnapping or abduction so as to attract section 364, I.P.C. as held by Hon'ble Supreme Court in Chunda Murmu v. State of West Bengal. In this context, it is relevant to quote para 18 as under:

> "18. Insofar as the offence under -section 364, IPC is concerned, we have considered the materials on record on the basis of which the afore said offence has been held to be proved. According to us, the action of the accused in bringing back his wife to the matrimonial home from the house of PW 6 Bishu Murmu cannot attract the necessary ingredients of either the offence of kidnap ping or abduction so as to attract section 364, IPC.

From the above case law as well as the ingredients of section 364, I.P.C., it is evident that to establish an offence punishable under section 364, L.P.C., it must be proved that the person charged with the offence had the intention at the time of the abduction that the person abducted would be murdered or would be so disposed of as to be put to danger of being murdered. In this case, the prosecution had to prove that the appellant accused at the time when he took away the victim Satish had this particular intention. On this element of the offence, no finding has been recorded by the Trial Court. **[Subrati vs. State of U.P., 2021 (117) ACC 901]**

Legal Services Authorities Act

S. 20—Cognizance of cases by Lok Adalats—Modification of chak—Order passed by Deputy Director of Consolidation in Lok Adalat on merits—No compromise or settlement arrived at between parties in Lok Adalat

It is evident from the statutory provisions that in Lok Adalat, the proceedings can be decided only on compromise or settlement between the parties, if arrived, and if no award can be made by the Lok Adalat because no compromise or settlement could be arrived at between the parties, the matter shall be continued before the court or Tribunal from where it was transferred to the Lok Adalat, which court shall proceed to deal with the suit or proceeding from the stage where it was before that court before its transfer to the Lok Adalat.

As the impugned order deserves to be quashed on the aforesaid ground, the court has not entered into the controversy as to whether there was service of notice on the petitioner and as to whether the petitioner was heard in Lok Adalat or only his brother was heard, inasmuch as this

Court is of the considered view that even if the order dated 20.05.1998 was passed after hearing the petitioner or his counsel on 17.05.1998, the impugned order could not be passed on merits, in the absence of their being any settlement or compromise between the parties. **[Sant Ram vs. D.D.C. Faizabad, AIR 2021 All 217]**

Motor Vehicles Act

Ss. 147(1) and 149(2)(a)(i)(c) read with section 103(1-A)- non availability of permit cannot be a ground to exonerate insurance company from liability.

"It shall be lawful for a State transport undertaking to operate on any route as stage carriage under any permit issued therefor to such undertaking under sub-section (1), any vehicle placed at the disposal and under the control of such undertaking by the owner of such vehicle under any arrangement entered into between such owner and the undertaking for the use of said vehicle by the undertaking."

That no permit is required to ply bus under agreement between owner of the bus. **[Prakash Chandra vs. Kashinath and others, 2021 ACJ 2308]**

S. 147(1) – Motor Insurance- Tractor- Passenger risk –Liability of Insurance Company – Consideration for.

In the stant case learned counsel for the insurance company vehemently argued that the tractor could not carry any passenger, therefore, the insurance company cannot be made liable to pay compensation. The said argument is not tenable as the insurance policy itself has a clause that one passenger is permissible to be carried on the tractor. This passenger is in addition to driver as driver cannot be called passenger. Still further the Municipal Council has produced evidence of payment of the additional premium to insure four passengers. **[Asha Devi and others vs. Assistant Director, State Insurance and Provident Fund Department and others, 2021 ACJ 2679]**

Whether accident occurred due to sole negligence of van driver-Held yes.

In absence of any rebuttal evidence by examining the driver of Eicher van, the High Court has rightly held that the accident occurred only due to negligence of the driver of Eicher van.

Proof of rashness and negligence on the part of the driver of the vehicle is, therefore, *sine qua non* for maintaining an application under section 166 of the Act. **[National Insurance Co. Ltd. vs. Chamundeswari and others, 2021 ACJ 2558]**

Negligence-Res ipsa loquitur –applicability of.

The challenge in the present appeals is to an order passed by the High Court of Judicature for Rajasthan at Jaipur Bench, wherein the appeal filed by the insurance company was allowed and the claim petition filed under section 166 of the Motor Vehciles Act, 1988 was dismissed. The reason for dismissing the claim application was that the wife of the deceased had not deposed regarding the manner of accident as the was not the eye-witness. It was thus held that the accident is not proved to be on account of negligent driving of tractor by its driver.

The deceased-Ummed Singh was an employee of the Municipal Council. As per the appellant, the accident occurred due to negligent driving of the tractor. However, the driver of the tractor, namely, Hariprakash was not produced as a witness. He was the witness who could depose in respect of the manner of accident and to prove that he was not negligent in driving the tractor. The doctrine of res ipsa loquitur will come into play as the respondents have failed to discharge onus on them to prove that the accident was not on account of any negligent driving of the tractor. This court in Shyam Sunder v. State of Rajasthan, 1974 ACJ 296 (SC), held that the maxim res ipsa loquitur is resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the defendant.

Consequently, the High Court was not justified in setting aside the finding of the Tribunal holding that the accident was on account of rash and negligent driving of the tractor driven by the dirver.

In view of the said facts, the arguments raised by the learned counsel for the insurance company that the insurance company was not liable to pay compensation cannot be sustained in law.

[Asha Devi and others vs. Assistant Director, State Insurance and Provident Fund Department and others, 2021 ACJ 2679]

Negligence- (contributory Negligence) what constitute Held, "Mere site plan or position of vehicles after the accident cannot be the basis to infer contributory negligence of the victim."

The finding recorded by the tribunal on the issue of contributory negligence is concerned, the same was not in issue; inasmuch as the P.W.2 Kallu Singh was examined who clearly indicated that the DCM truck bearing number UP 14 K/5048 was being driven rashly and negligently and it is the aforesaid truck which came from the opposite direction and hit the scooter. It was also stated that the scooterist was riding the scooter at a reasonable speed and was on his own side of the road. The aforesaid witness was put to cross-examination. However, there was nothing on record to indicate that there was any major discrepancy in his statement. Even in his cross-examination, he has clearly reiterated that it was the DCM driver who was driving the vehicle rashly and negligently and hit the scooter by coming on the wrong side of the road.

In view of the aforesaid statement which clearly established the manner in which the accident occurred, there can be no reason for raising any plea of contributory negligence. It will be the equally relevant to point out that the owner while filing its written statement did not raise the aforesaid plea though a question regarding the negligence of the scooter driver was raised by Ram Lallan Yadav the driver of the DCM truck.

Significantly none of the persons examined themselves or entered into the witness-box to substantiate their plea. Apparently, the plea of contributory negligence as raised in the written statement was merely a bald plea which was not even proved by any cogent evidence. The submission regarding the learned counsel for the appellant that the site-plan which was submitted and on perusal of the same itself would indicate that it was a case of contributory negligence and to buttress her submission the learned counsel for the appellant has relied upon the decision of the Supreme Court in the case of Bijoy Kumar Dugar (supra) and Smt. Meena and others (supra). However, it is to be noticed that the Apex Court in the case of Jiju Kuruvila and others Vs. Kunjujamma Mohan & others, 2013 ACJ 2141 held that the issue regarding contributory negligence cannot be inferred merely on the position of vehicle as shown in the site-plan. In absence of any direct or corroborative evidence, no inference can be drawn of the contributory negligence on the part of the victim merely on the basis of such site plan.

This aspect of the matter has also been considered by a Division Bench of this Court in the case of Prabhandhak, U.P. Rajya Sadak Parivahan Nigam vs. Rabia Begum and others, 2015 ACJ 1492 (Allahabad). The relevant parat 28 of the aforesaid decision reads as under:-

"28. To sum up:-

(1) Burden of proof with regard to contributory negligence shall be on the party who pleads for it. The contributory negligence should be proved like other issues. No inference may be drawn solely from Naksha Nazari or mere pleading on record."

In view of the principles laid down in the aforesaid decisions, the submission of the learned counsel for the appellant does not find merit with their Court and is accordingly rejected. **[National Insurance Co. Ltd. vs. Sonu Devi and others, 2021 ACJ 2086 (Allahabad Lucknow Bench]**

Quantum –Fatal accident- enhance of award - Tribunal awarded Rs. 17,26,576- Appellate court took income at Rs. 31,844 p.m., added 15 per cent of income towards future prospects, deducted 1/4th for personal expenses, adopted multiplier of 11 and allowed Rs. 36,25,380 plus Rs. 70,000 as non-pecuniary damages- Award of Rs. 17,26,576 enhanced to Rs. 36,95,380.

This appeal has been filed by the claimants being aggrieved by award dated 28.02.2011 passed by the learned Motor Accident Claims Tribunal/Additional District Judge. On four grounds namely, age of the deceased was more than 54 years and less than 55 years as has been discussed

by the learned claims tribunal yet arbitrarily multiplier of 6 has been applied in violation of the law laid down by Hon'ble Supreme Court in case of Sarla Verma vs. Delhi Transport Corporation and another, 2009 ACJ 1298(SC).

It is also submitted that claimants are entitled to future prospects at 15% and payment of non-pecuniary damages to the extent of Rs. 70,000 in the light of the law laid down by Hon'ble Apex Court in case of National Insurance Company Limited vs. Pranay Sethi, 2017 ACJ 2700 (SC).

Appellants also claim that interest has been awarded @ 6% which should be enhanced to 7% in terms of the U.P. Motor Vehicle (Amendment) Rules, 2011.

After hearing learned counsel for the parties and going through the record, it is evident that tribunal has wrongly applied multiplier of 6 in place of 11 and has not given any justification for doing so except that family pension is available to the wife of the deceased and eldest son of the deceased has been granted compassionate appointment. This treatment of facts in the hands of the learned tribunal is against the law laid down by Hon'ble Supreme Court in case of Vimal Kanwar vs. Kishore Dan, 2013 ACJ 1441(S.C.), therefore, multiplier of 11 will be applicable and not that of 6, as has been applied by learned tribunal.

As far as future prospects are concerned, they too are admissible in the light of the law laid down in case of Pranay Sethi, 2017 ACJ 2700(SC). Future prospects at the rate of 15% is admissible.

When multiplier of 11 as has been laid down in case of Smt. Sarla Verma, 2009 ACJ 1298(SC), is applied then total pecuniary compensation will come out to Rs. 36,25,380. Over and above which the claimants are entitled to a sum of Rs. 70,000 under the head of non-pecuniary damages taking total compensation to Rs. 36,95,380 in place of Rs. 17,26,576 awarded by the learned claims tribunal. Therefore, there will be an enhancement of Rs. 19,68,804 to which claimants will be entitled in addition to what has been awarded by the learned Claims Tribunal. **[Shahnaz Parveen and others vs. Shree Rama Roadways and others, 2021 ACJ 2168 (Allahabad High Court)]**

Quantum- Fatal accident-determination of.

In a motor vehicle accident, which took place on 24.11.2012, the husband of the appellant No. 1 died, leaving behind his widow (appellant No. 1), three minor children (appellant Nos.2,3, and 4) and parents (appellant Nos. 5 and 6). The appellants filed a claim petition claiming compensation of Rs. 50,00,000. The Motor Accidents Claims Tribunal, vide its award dated 9.1.2014, awarded compensation of Rs. 21,07,000 along with 9 per cent interest, which was challenged by the insurance company/ respondent No. 1 in appeal. The High Court reduced the compensation from Rs. 21,07,000 to 13,08,800 to be payable to the appellants/ claimants along

with interest at 9 per cent per annum from the date of petition before the Tribunal till realization of the entire amount. While reducing the compensation, the High Court has considered lesser income of the deceased than what was assessed by the Tribunal. Challenging the said reduction of compensation, the appellants/ claimants have filed this appeal.

Considering the facts and circumstances of this case in our view, there was no justification for the High Court in reducing the income of the deceased to Rs. 5,500 per month. The deceased was admittedly a driver of a school bus and he was also owning a lorry which had a goods carriage permit. In the aforesaid circumstances, merely considering the salary of the deceased as a driver and not the additional income which he would be earning, cannot be justified.

Considering the totality of the circumstances and after hearing the learned counsel for the parties, we find it just and proper to enhance the compensation to Rs. 20,00,000 along with interest at 7.5 per cent per annum (instead of 9 per cent) from the date of the filing of the petition before the Motor Accident Claims Tribunal till the date of realization of the entire amount. **[Geeta and others vs. Manager, Bajaj Allianz General Ins. Co. Ltd. and other, 2021 ACJ 2681]**

Quantum-Fatal accident- principles of assessment-Income-Determination of-Whether the Tribunal was justified in not considering the ITR for financial year 2004-2005 on the ground that it was filed after the death of deceased- Held: no; income re-fixed as per ITR for financial year 2004-2005

The appellants filed a claim application seeking compensation of Rs. 25,62,000. Motilal Jethani was aged 40 years at the time of death and had a monthly income of Rs. 7,000 from baradana and dairy business, according to the appellants. Income tax returns (ITR) for the financial years 2002-2003, 2003-2004 and 2004-2005 were produced before Motor Accident Claims Tribunal (MACT) which were marked as Exhs. 14,13 and 12, respectively. Exh. 12 was not taken into consideration by the MACT on the ground that it was filed after the death of Motilal Jethani on 14.9.2005. the income of deceased Motilal Jethani was determined as Rs. 54,150 on the basis of the ITR for the financial year 2003-2004.

After careful consideration of the submissions made on behalf of the parties, we are of the opinion that the MACT committed an error in not taking into account the ITR filed on behalf of the deceased for the financial year 2004-2005. Taking into account the ITR filed on behalf of the deceased for the financial year 2004-2005, we hold that the appellants are entitled for an amount of Rs. 8,40,735 towards compensation on the basis of yearly income of the deceased applying the multiplier of 15. Insofar as loss of future prospects is concerned, we are in agreement with the learned counsel for respondent No. 3that the calculation should be based on 25 per cent of the established income and not 30 per cent. The appellants arte entitled to Rs. 2,52,213 towards ‘loss of future prospects’. In respect of compensation to the family members for ‘loss of love and affection, deprivation of protection, social security, etc,’, we are of the opinion that the appellants are entitled to Rs. 90,000 (Rs. 15,000 each to six members of the family). The widow of the

deceased is entitled to Rs. 40,000 towards compensation for 'loss oflove and affection, pain and suffering, loss of consortium, deprivation of protection, social security, etc'. Further, the appellants are also entitled to Rs.25,000 for funeral and ritual expenses. In all, the appellants are entitled for payment of compensation amounting to Rs. 12,47,948. **[Rukmani Jethani and others vs. Gopal Singh and others, 2021 ACJ 2683]**

Quantum –Fatal accident- Principles of assessment- Multiplier- Choice of- Deceased a bachelor aged 33 –Claimants: parents- Tribunal adopted multiplier of 16 which was reduced to 7 by the High Court taking average of the age of parents of the deceased- Whether multiplier relevant to the age of deceased is to be adopted- Held: yes.

The case of the appellants was based on the death of one J. Jeyachandran in an accident which book place on 28.7.2012. After finding liability as claimed by appellants. MACT arrived at a sum of Rs. 30,81,577. The reasoning of the MACT was that the appellant was employed in a job in Saudi Arabia where he was earning 3,500 riyals. MACT further took the multiplier at 16. It is this reasoning which did not appeal to the High Court. By the impugned order, the High Court, while allowing the appeal filed by the insurer, reasoned as follows.

The High Court found that it may not be safe to arrive at the income of the deceased on the basis of the monthly salary of 3,500 riyals projected by the appellants. Instead, the High Court substituted the income of the deceased with the sum of Rs. 15,000 per month. Secondly, the High Court also took the view that the age of the parents of the deceased, viz., appellant Nos. 1 and 2, being 65 and 61, the average age of the appellant Nos. 1 and 2 was taken, which was fixed as 63 years. On the said basis, the multiplier was reduced from 16 to 7. This essentially constituted the reasoning on the basis of which the amount awarded by MACT was reduced to the amount of Rs.8,20,000.

As far as the question relating to multiplier goes, there is hardly any dispute that it is the multiplier, which is relevant to the age of the deceased, which shall apply. **[Chandra and others vs. Branch Manager, oriental Insurance Co. Ltd. and another, 2021 ACJ 2550]**

Quantum –Fatal accident- Principles of assessment- Income- Determination of.

Mainly it is contended that though the deceased was earning Rs.15,000/ per month, being a heavy vehicle driver, the Tribunal has awarded compensation on account of loss of dependency by taking the income of the deceased at Rs.5746/ per month. It is submitted that wife of the deceased, i.e. respondent no.4 has clearly stated in her deposition that deceased was earning Rs.15000/ per month. It is submitted that in spite of such evidence on record the Tribunal has committed error in taking the income of the deceased at Rs.5746/ as per the minimum wage notified to the skilled labour. Further it is submitted that Tribunal has committed error in recording a finding that the appellants are not dependents as they were living separately. Lastly it is submitted that appellants are also entitled to compensation under the head of 'loss of consortium.

The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased.

In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/ per month. In the case of Minu Rout vs. Satya Pradyumna Mohapatra , 2013 ACJ 2544 (SC), this court while dealing with the claim relating to an accident which occurred on 08.11.2004 has taken the salary of the driver of light motor vehicle at Rs.6000/ per month. In this case the accident occurred on 27.02.2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs.8000/ per month for the purpose of loss of dependency. Deceased was aged about 32 years on the date of the accident and as he was on fixed salary, 40% enhancement is to be made towards loss of future prospects. At the same time deduction of 1/3 rd is to be made from the income of the deceased towards his personal expenses. Accordingly the income of the deceased can be arrived at Rs.7467/ per month. By applying the multiplier of '16' the claimants are entitled for compensation of Rs.14,33,664/. As an amount of Rs.10,99,700/ is already paid towards the loss of dependency the appellantparents are entitled for differential compensation of Rs.3,33,964/. **[Chandra and other vs. Mukesh Kumar Yadav and others, 2021 ACJ 2554]**

Life insurance- Accident benefit clause-Repudiation of claim- Assured took life insurance policy on 14.4.2011 and next premium was due on 14.10.2011 which was not paid by him; assured met with an accident on 6.3.2012; premium was paid on 9.3.2012 and policy was revived; assured died on 21.3.2012-Widow of assured filed claim but L.I.C. repudiated the claim under accident benefit clause on the ground that policy was not in force on the date of accident due to non-payment of premium- Widow filed complaint claiming accident benefit and District Forum allowed the complaint- State Commission set aside order of District Forum which was reversed by National Commission- Apex Court held that terms of policy have to be strictly construed and it is not permissible to re-write the contract while interpreting the terms of policy; as per policy accident benefit was payable only if policy was in force on the date of accident, however, revival of policy was sought for after three days of accident without disclosing the fact of accident; suppression of material fact of accident shows mala fide intention and accident benefit claim was liable to be rejected on that ground

alone; policy was not in force on the date of accident therefore accident benefit claim is not payable.

The case assured took life insurance policy on 14.4.2011 and next premium was due on 14.10.2011 which was not paid by him; assured met with an accident on 6.3.2012; premium was paid on 9.3.2012 and policy was revived; assured died on 21.3.2012-Widow of assured filed claim but L.I.C. repudiated the claim under accident benefit clause on the ground that policy was not in force on the date of accident due to non-payment of premium- Widow filed complaint claiming accident benefit and District Forum allowed the complaint- State Commission set aside order of District Forum which was reversed by National Commission- Apex Court held that terms of policy have to be strictly construed and it is not permissible to re-write the contract while interpreting the terms of policy; as per policy accident benefit was payable only if policy was in force on the date of accident, however, revival of policy was sought for after three days of accident without disclosing the fact of accident; suppression of material fact of accident shows mala fide intention and accident benefit claim was liable to be rejected on that ground alone; policy was not in force on the date of accident therefore accident benefit claim is not payable. **[L.I.C. of India and another vs. Sunita, 2021 ACJ 2731]**

S. 173- Appeal- Whether claimants can seek enhancement of compensation without filing any appeal or cross-objection in an appeal challenging the occurrence of accident- Held: no;

Adverting to the plea of enhancement of compensation raised by learned counsel for the respondents, admittedly the claimant-respondents have not filed any appeal or cross objection for enhancement of compensation because it appears that the claimant-respondents were satisfied with the compensation awarded by the learned Tribunal as per law prevalent at the relevant time, while they had filed a caveat. This appeal has been filed challenging only the findings of the Tribunal recorded in regard to the accident on the ground that the accident had not occurred by the bus in question and the amount of compensation has not been challenged. Therefore, this court is of the view that the appellant cannot be put to a loss by dismissing the appeal and enhancing the compensation which would amount to put a premium on non action of the claimants-respondents when they were satisfied with the award passed by the Tribunal.

The Hon’ble Apex Court in the case of Ranjana Prakash vs. The Divisional Manager, New India Assurance Co. Ltd., 2011 ACJ 2418 (SC), has held that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections. The Apex Court has also held that the Provisions of Order 41 Rule 33 of the Code of Civil Procedure cannot be invoked to get a larger or higher relief and the High Court cannot increase the compensation in an appeal by the owner/insurer. However the Hon'ble Apex Court has held that the respondents-claimants can defend the compensation awarded by the Claims Tribunal on other grounds.

So far as the judgment relied by the learned counsel for the claimant-respondents in the case of Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others (Supra) is concerned, in the said case the Hon'ble Apex court has enhanced the compensation exercising the jurisdiction under Article 142 of the Constitution of India which cannot be done by this court. The Hon'ble Apex Court in the case of C.M.Singh Versus H.P.Krishi Vishva Vidyalaya & others; (1999) 9 SCC 40, has held that power to do complete justice is conferred on it and the High Court does not have such powers. **[U.P. State Road Trans. Corpn. vs. Mohd. Kasim Farukin and others, 2021 ACJ 2151 (Allahabad High Court, L.B].**

S. 173- U.P. Motor Vehicles Rules, 1998. Section 114 C.P.C. read with order 47 C.P.C.

In view of the aforesaid judgments, this Court is of the considered view that although there may not be power of review in the Motor Accident Claims Tribunal under the Act, 1988 and the Rules, 1988, like the power of review as is vested in a Court under Section 114 CPC r/w order 47 CPC or for that reason under any other specific provision, but, in the case of dispute with respect to statement of fact in the judgment and award of the Tribunal, as is in the present case, if any issue was pressed or not and such statement in judgment is contradicted, then in view of Ramdas Shrinivas Nayak (supra) and Bhavnagar University (supra), 'the only way to have the record corrected is to approach the same Tribunal, and if no such step is taken, the matter must necessarily end there. If the party approaches the Tribunal raising the grievance, contradicting the statement in the judgment, the Tribunal shall have the power to review, to that limited extent, on the principle of 'actus curiae neminem gravabit' which means that no act of the Court, in the course of the proceedings does an injury to the suitors in the Court. **[A.G.M. Uttarakhand State Road Transport Corp. Kotdwar vs. Ram Sumer Singh and others, 2021(9) ADJ 665(LB)(Alld.H.C.)]**

Prevention of Food Adulteration Act

Ss. 7/16, Criminal Procedure Code, 1973, Sec. 397/401—Order passed by the Munsif Magistrate directing framing of charges against the revisionist—Legality and propriety

The Hon'ble High Court held that non-compliance of section 17(1)(b) of the Act, 1954 is pure legal issue going to the root of the case based on undisputed and proven facts and can be raised at any stage of legal proceedings. It is further held that pure question of law or legal issue

based on undisputed or proven facts can be raised at any stage even before the Court of last resort. In light of section 17(1)(b) of the Act 1954, "Company" is necessary party and no Complaint under section 7/16 of the Act, 1954 can be maintained or order can be passed against the revisionist without impleading the "Company" as accused. Therefore, Complaint dated 22.8.1984 filed under section 7/16 of the Act, 1954 as well as impugned order dated 16.5.1988 is not sustainable.

In the present case, it is required on the part of the Magistrate to allow the discharge application , but he has rejected the same without considering the provisions of law as well as judicial pronouncement by the Court resulting into inordinate delay of criminal proceeding. Therefore, in the larger interest of justice, it is required that discharge application be allowed and revisionist be discharged. **[S.P. Mathur, Nominee D.C.M. Chemical Works Delhi vs. R.P. Sharma Food Inspector P.H.C., Noorpur, Bijnore, 2021 (117) ACC 68]**

Practice and Procedure

Professional ethics in legal profession—In the legal field, professional ethics are a fundamental requirement, because it is an important tool that established rule of law and keeps the legal profession and the legal institutions on a high pedestal

The Hon'ble High Court directed that the issue of filing a forged Vakalatnama of any person in a Court proceeding is not a small one but it is serious issue, because it may adversely affect the valuable legal right and interest of the persons/litigants concerned, ergo keeping in view, the larger interest of the litigants/victims, complainants or aggrieved persons specially in criminal matters and members of the bar, who believe in professional ethics, this Court feels that now it is high time to adopt some remedial measures, so the litigants or aggrieved persons are not deprived of their legal rights. This Court proposes that alongwith Vakalatnama, self attested copy of any identity proof (preferably Aadhar Card) mentioning mobile number of the person concerned should also be filed or any other method may be adopted in the interest of litigants and the institution. **[Javed Ansari vs. State of U.P., 2021 (117) ACC 403]**

Probation of Offenders Act

While discussing the benefit of probation and its entitlements to accused Hon'ble Allahabad High Court, Lucknow Bench Lucknow held that the accused persons were convicted for offence under section 308 IPC and were sentenced only for maximum period of four years rigorous imprisonment. It was held that the said occurrence occurred 27 years ago at the time of occurrence one of the accused was aged about 23 years and the other one was aged about 18 years at present they are aged about 50 and 45 years respectively.

It was also held that the accused persons have no criminal history and they have settled their disputes. No material was placed by prosecution regarding the previous conviction of accused persons. Accused persons were held entitled for benefit of probation. **Kallu v. State of U.P., 2021 Cri.L.J. (NOC) 791 (All.) : AIR Online 2021 All. 1226**

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act

Ss. 3(2) (va), 3(1) (Da), 3(1) (Dha)—IPC, 1860, Ss. 452/149, 323/149 and 506/149—Summoning under—Appeal against

The Hon'ble High Court reiterated the law laid down by Hon'ble Supreme Court in Swaran Singh and others vs. State Through Standing Counsel and another, the Hon. Apex Court has held that if alleged offence has been committed inside a building then it cannot be said that offence was committed within public view.

The Hon'ble High Court held that as in view of the authority of Hon. Apex Court in Swaran Singh and others vs. State Through Standing Counsel and another, 2008 (62) ACC 912 (SC), alleged offences under section 3(1)® and 3(1)(s) of SC/ST Act have been committed inside the house of complainant. So, I am of the considered opinion that it cannot be said that offences were **committed within public view. [Munnu vs. State of U.P., 2021 (117) ACC 775]**

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act

S. 17(1A) of SARFAESI Act is very specific and unambiguous. Therefore, an application under Section 17(1) of the Act is maintainable before the Debts Recovery Tribunal within the local limits of whose jurisdiction the cause of action wholly; or in part arises, even if the secured asset is not located within the territorial limits of such Debts Recovery Tribunal. This is not to say that an application under Section 17(1) cannot be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction the secured assets is located, but, this is to say that if the jurisdiction falls within the two or more Debts Recovery Tribunal, in view of clauses (a), (b) and (c) of Section 17(1A), the application under Section 17(1) can be filed before any of those Debts Recovery Tribunal by any person, including the borrower aggrieved by any of measures referred to in Section 13(4) of the SARFAESI Act,

This Court is of the considered view that the amendment in Section 17 SARFAEST Act, by insertion of Sub-section (1-A), w.e.f. 1.9.2016, has taken away the very basis of the judgment in Amish Jain (supra).

In view of the aforesaid, on point No. 1, I am of the view that the location of the secured asset is not the only criterion to determine the jurisdiction of the Debts Recovery Tribunal(s) under Section 17(1A). If a part of cause of action arises within the limits of jurisdiction of a Debts Recovery Tribunal, an application under Section 17(1) shall lie there also, even if, the secured asset is not located within the limits of its jurisdiction. It is, in such a case, for the applicant, to frame the case appropriately to adopt the jurisdiction of either of the Debts Recovery Tribunals. **[Ram Pal Soni and another vs. State of U.P. and others, 2021(9) ADJ 426(LB)(Alld.H.C.)]**

Service Laws

Gratuity- Benefit of death gratuity.

To have an answer to the issue we would have to examine as to- (a) what had been the purpose of conferment of such benefit on exercise of the option; and (b) whether the Government Orders that conferred the benefit had fixed a time period by which that option was to be exercised.

If so, whether the incumbent i.e. first respondent's husband had crossed the time limit by which he could have exercised that option. In so far as the purpose of conferring such benefit is concerned the same is obvious, which is to provide social security to those who forego two years of additional service. There could be a latent purpose as well, which is to encourage people to seek early retirement may be to streamline the organization. Be that as it may, it is beneficial provision to accord social security to the employee and his or her dependents therefore, an interpretation that promotes and serves the purpose for which it is crafted must be preferred. Under the circumstances, whatever the purpose might be, the same is sub served where the nature exercises the option on behalf of the incumbent by letting him not survive even up to the last day by which he could have exercised the option. Therefore, denying the heirs/dependents of such an incumbent the benefit of social security that, otherwise, would have been available to them had the incumbent exercised his option would defeat the very purpose for which the policy was made. Thus, to ensure that the policy serves its purpose fully, in our view, where a last date for exercise of the option is yet to arrive and before that date the incumbent dies, without exercising his option, his dependents should not be deprived of the benefit which they would have been otherwise entitled to had the incumbent exercised his option. **[District Basic Education and another vs. Shivkali and others, 2021(1A0) DJ 23(DB)(Alld.H.C.)]**

Retirement –Voluntary retirement.

Wealsofind merit in submission of learned consel for the appellant that thelawwith regard to voluntary retirement is that one who accepts the Golden Handshake wuld only be entitled to the sum promised under the Voluntary Retirement Scheme and no other amount. This is for the reason that such Golden Handshake includes *ex gratia* and other payments which such retiree would otherwise not get had he continued in service.

Merely because there is revision of pay or dearness allowance subsequent to voluntary retirement, albeit, retrospectively one who has voluntary retired and has accepted a Golden Handshake in the form of amount payable under such scheme including ex gratia amount which he would not have got had he continued in service, would not be entitled to anything extra than what has already been received by him under this voluntary retirement scheme as per the said

decisions. **[U.P. State Sugar Corporation Ltd. and another vs. Ravi Shankar Mishra and others, 2021(10) ADJ 51(LB) (DB)(Alld.H.C.)]**

Disciplinary Proceedings –Punishment.

The questions to be considered are that:

(i) As to whether the inquiry officer may give his findings beyond the charges so leveled against the petitioner by means of charge-sheet?

(ii) As to whether the disciplinary authority may award any punishment contrary to the findings of inquiry report without giving any notice to the petitioner on the disagreement of the findings?

Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that the inquiry officer may not travel beyond the charges, therefore, such findings of inquiry officer which are beyond the charges No. 5 and 6 are patently unwarranted, uncalled for and nonest in the eyes of law. Law is settled that if the charge (s), as indicated in the charge-sheet, has/have been declared as 'not proved' then nothing can be said to be 'proved' or 'partially proved' on the basis of additional findings regarding any allegation which is not the subject matter of the enquiry in question and such findings, if any, shall be treated as perverse finding.

Now question comes as to whether the disciplinary authority may award any punishment on the basis of inquiry report wherein none of the charges are proved against the petitioner, without being disagreed thereon, the legal position is very clear to the effect that the disciplinary authority may not award any puni9shment banking upon such findings of inquiry officer, without being disagreed on such finding and without issuing any show-cause notice or seeking explanation from the petitioner on the point of disagreement. Since the inquiry officer has said that charges No. 5 and 6 are partly proved so disciplinary authority may not legally say that both the charges are proved as said by him in the punishment order. If the disciplinary authority was of the view that both the charges should be greated proved, a show-cause notice of disagreement must have been issued seeking explanation from the petitioner. In absence of aforesaid legal requirement the impugned punishment order shall not survive as it would be nullity in the eyes of law. Therefore,

the impugned punishment order dated 26/29.9.2015 is also nonest in the eyes of law. **[Bipul Raman vs. State of U.P. and others, 2021(10) ADJ 130 (LB)(Alld.H.C.)]**

Specific Relief Act

S. 20 (Before Amendment Act 18 of 2018)—Suit for specific performance—Grant of relief in- Discretion of Court

There could still be a number of other factors, on the basis of which, the decision to grant or refuse specific performance, could turn one way or the other. This could be the conduct of the party asking for specific performance or the one resisting it. Specific performance, being an equitable relief, could also be refused on the ground that the plaintiff had not come to Court with clean hands and had suppressed material facts. Likewise, the defendant too could suffer specific performance, because breach of contract being fully proved against him, his conduct prior to commencement of action and during the course of trial disentitle him to the discretion of the Court, granting the alternate relief of refund, instead of specific performance. There could be cases, which are there in ample measure, where phenomenal rise in the price of immovable proerty have weighed with the Courts in substituting the relief of specific performance by a decree for payment in lump sum of a much higher compensation to the successful plain tiff or requiring the plaintiff to enforce specific performance on payment of a higher sale consideration, rationalized to the contemporary price index. Again, this kind of an adjustment of compensation to the plaintiff or enhanced price to the vendee is not to be ordered, keeping aside relevant factors. These relevant factors could be, whether the delay is attributable to the plaintiff or the defendant; or still more, to none of them, but the judicial process. Sadly, the Lower Appellate Court. while exercising the discretion to refuse specific performance and instead granting the alternate relief of refund with interest, has not done the slightest of this meticulous consideration. At least, not a word has been said in the judgment, that may lead to the interference about a valid exercise of this discretion. It would be imperative here, to extract the short finding recorded by the Lower Appellate Court on the issue in hand. It reads (in Hindi vernacular).

The case in hand and what appears from the finding recorded by the Lower Appellate Court, shows utter breach in observance of the statutory obligation cast upon the Court under Section 20 of the Act of 1963, as it stood prior to its amendment.

In view of what has been said herein above, substantial No. 1 is answered in the affirmative, in terms that despite the plaintiff succeeding to prove his case of a breach of contract, specific performance may be refused, but the discretion has not to be exercised arbitrarily; it has to be exercised in accordance with Section 20 of the Act of 1963 and other relevant factors reputed under the law. Substantial question of law No.2 is answered in the negative, holding that the Court cannot refuse the relief of specific performance of contract without assigning good and cogent reasons there for Substantial question No. 3 is also answered in the negative in terms that the alternate relief of refund of earnest, along with interest in a suit for specific performance, cannot be opted by the Court without assigning good and cogent reasons.

In the circumstances, there is no alternative but to allow the appeal in part and set aside the impugned judgment and decree passed by the Lower Appellate Court to the extent that it refuses specific performance. **[Ramlata Singh vs. Arun Kumar Dubey, AIR 2021 All 231]**

Stamp Act

Ss. 33 & 47-A—Imposition of penalty

The entire basis of determination of market value for the purpose of stamp duty is ex parte inspection report may be relevant for initiating the proceedings under Section 47-A of Stamp Act. However, for deciding the case no reliance can be placed upon the said report. After initiation of the case inspection is to be made by the Collector or authority hearing the case after due notice to the parties to the instrument as provided under Rule 7(3) (c) of the Rules of 1997. Moreover in the inspection report distance of the property from other residential or commercial properties and road must be shown and wherever possible sketch map must; also be annexed along with the report so that correct valuation may be ascertained with reasonable certainty. **[Lalta Prasad vs. Additional (Admin.), Devi Patan Mandal, Gonda, 2021 AIR CC 3013 (All)]**

Transfer of Property Act

S. 52—The Supreme Court on more than one occasion held that when a pendente lite purchaser seeks to implead himself as a party-defendant to the suit, such application should be considered liberally.

Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case."

The preponderance of opinion of this Court is that a pendente lite purchaser's application for impleadment should normally be allowed or "considered liberally. **[Manoj Kumar Parashar vs. State of U.P., 2021 AIR CC 2954 (All)]**

U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, U.P. Rajya Sahayta Prapta Uchchtar Madhyamik Vidyalaya Ke Adhyapakin ke Mrityu Tatha Seva Nivirthi Anutosh Niyamawali

The sole question which stands posited is whether a failure on the part of an employee to have exercised an option prior to his untimely demise would result in his heirs being deprived of the right to claim gratuity.

Viewed in light of the above, it is manifest that the decision in Usha Rani appears to have rightly taken the position that gratuity cannot be denied in a situation where a teacher dies prior to reaching the age of retirement and the death having occurred a year before the age of retirement was being reached. The various Government Orders which have been referred to by the respondents for from casting a shadow of doubt on the correctness of the judgment in Usha Rani buttress and support the conclusions recorded therein. **[Sushila Yadav vs. State of U.P. and others, 2021(10) ADJ 235 (Alld.H.C.)]**

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

Ss. 2 and 3(1)—First information report under provisions of the Act lodged on the basis of involvement of the petitioners/accused—Maintainability

The Hon'ble High Court held that The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the rarest of rare cases. While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint. Criminal proceedings ought not to be scuttled at the initial stage. Quashing of complaint/FIR should be an exception rather than an ordinary rule. Ordinarily, the Courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere. The First Information Report is not an encyclopaedia which must disclose all facts and details regarding the offence reported. Therefore, when the investigation by the police is in progress, the Court should not go into merits of the allegations made in the FIR. Police must be permitted to complete the investigation.

After having heard the learned counsels for the parties and perusing the records, it is apparent that barring Criminal Misc. Writ Petition No. 4149 of 2021, all the above writ petitions were argued on the common point for which the question as framed, is answered that as per the settled principles of law, the lodging of a first information report on the basis of a single case, is valid and permissible. In a petition under Article 226 of the Constitution of India, this Court cannot adjudicate the correctness of the allegations in the impugned first information reports or the cases on the basis of which the impugned first information reports have been lodged. The writ petitions are thus dismissed. **[Ritesh Kumar vs. State of U.P., 2021 (117) ACC 876]**

U.P. Home Guards Act

Ss. 7, 8. In view of the legal principles of determining the nature of the post as laid down in case of State of Assam v. Kanak Chandra Dutta (Supra), and explained in State of Karnataka and others

v. Ameerbi and others read with the scheme of the Act and the nature of state control as discussed in the foregoing paragraphs and following the judgment of this Court in the case of Dasrath Singh Parihar (Supra), I have no hesitation in holding that any personnel enrolled under Section 7 of the Home Guards Act will not be a holder of Civil Post and will not enjoy any protection available under Article 311 of The Constitution of India but as soon as he is called to perform any duty under Section 8 of the Act he will become holder of a Civil Post and will enjoy the protection of Article 311 of the Constitution of India. **[Dheer Singh vs. State of U.P. and others, 2021(9) ADJ 218(Alld.H.C.)]**

U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules

Rule 2(c) –Compassionate Appointment. The undisputed position which thus emerges from the aforesaid discussion is that consequent to the expression "unmarried" as appearing in Rule 2(c) being struck down by this Court as constitutionally invalid, "daughters" per se, irrespective of whether they were married or divorced, would be entitled to be recognized as being entitled to claim the benefit of the 1974 Rules. This, of course, subject to the well accepted caveat that they would, like sons, have to establish a position of financial dependency at the time of the untimely demise of the Government servant. **[Seema Devi vs. State of U.P. and others, 2021(9) ADJ 489(Alld.H.C.)]**

It is settled principle of law that the object of the scheme is not to provide employment to the unemployed among the dependent relatives of the employee, who died in harness, but to enable one of the dependents to get some employment so as to eke out a livelihood for the members of the family of the deceased. The intention of the scheme can only be to provide immediate relief to the family of the deceased employee for their sustenance. A married daughter is excluded from that category and the exclusion is not without reason that married daughter does out of the family and is dependent on her husband of her necessities. The father could render financial assistance to his married daughter, if he is in position to give assistance, but that is not reason to hold that married daughter still continues to dependent on her father specially when law enjoins a duty on the husband to maintain his wife and enables her to claim alimony in case he refuses to pay. Therefore, the dependency on the father ceases the moment the daughter is given in carriage and

that is the justification for excluding married daughter from the category of dependents and to include only unmarried daughters. This aspect has been considered by the High Court of Kerala in minutest details in case of V. Sunithakumari v. K.S.E.B. and others, 1992 SCC On Line Ker. 145. **[State of U.P. and another vs. Madhavi Mishra and others, 2021(9) ADJ 529 (DB) (Alld.H.C.)]**

Rules 4 and 5- The submission of the learned counsel for the petitioner that petitioner on having not fulfilled the essential qualification mandated for a Class II post, should now be offered a lower post under Rules 1974, is misconceived. The purpose of the Rules 1974, for compassionate appointment is to tied over the financial hardship befallen upon the family on the sudden demise of the bread earner. Once the family member of the deceased employee has obtained compassionate appointment, his right to be considered, on a subsequent occasion upon termination, for appointment under the same Rules would not entitle such a person to fresh appointment. On exhaustion of the right upon appointment under Rules 1974, it is not open to the petitioner to turn around and say that he be granted a lower post. Petitioner with all eyes open had accepted the appointment on a Class III post and was fully aware that he would have to pass the type test. On having failed to acquire the minimum prescribed type speed, it is not open for the petitioner to turn around and seek a fresh appointment on a lower post. The claim for compassionate appointment on having being exhausted on appointment cannot be reagitated on termination or for that matter on acquiring a higher qualification. The contention of the petitioner if accepted would be violative of Article 14/16 of the Constitution of India. Such an appointment at this stage, in the given facts, would tantamount to backdoor appointment by passing the recruitment rules. **[Vimal Kumar vs. State of U.P. and others, 2021(10) ADJ 108 (Alld.H.C.)]**

U.P. Revenue Code

Ss. 104 read with 105 – Finding recorded that transfer of land was made by members of scheduled caste – No denial that land had not been purchased from the persons of scheduled caste – Finding has not been assailed – Order passed in proceedings under sections 104 red with 105 of Code, 2006 cannot be interfered – Land in dispute has rightly been vested with the State Government.

U.P. Zamindari Abolition and Land Reforms Act, 1950 – Section 143 – Effect of declaration under – Once the transfer was void subsequent proceeding under section 143 of the Act would not save the transfer made in favour of the trust by members of scheduled caste – Declaration under section 143 of the 1950 Act would not save such transfer being hit by provisions of section 157-A of the 1950 Act.

The finding recorded by respondent No. 3 as to the transfer made by members of scheduled caste has not been denied by the petitioner – trust in the writ petition to the extent that they have not purchased the land from the persons mentioned in the said judgment. Bare averment that provisions of section 157-A of Act, 1950 is not violated will not suffice, as order clearly mentions the name of members of scheduled caste and the area of land, which was transferred y them. Once such finding has come and the same having not been assailed in the writ petition, the order passed in proceedings s under section 104/105 of Code cannot be interfered and the land has rightly been vested with the State Government.

The declaration under section 143 of Act, 1950 will not save the case of the petitioner–trust from being hit by provisions of section 157-A and the violation of conditions of permission granted on 7.11.2005 .. Had it been a simple transfer of land, not hit by provisions of section 157-A, then the Trust could have raised the objections that revenue authorities could not have preceded once declaration was made and was saved by sub-section (2) of section 143 of Act, 1950. **Maulana Mohammad Ali Jauhar Trust, Lucknow vs. State of U.P. and other, 2021 (153) RD 162 (Alld. HC) –**

Title suit – Second appeal-suit for declaration of title on basis of oral Hiba – Reversal of judgment and decree of trial court in favour of plaintiff/appellant by first appellate court – Legality – Plaintiff witnesses merely sought to prove hibanama – No evidence produced to prove oral hiba said to have preceded hibanma – Since neither oral hiba nor hibanama stood proved – Therefore, first appellate court committed no error in setting aside of judgment and decree passed by trial court-Appeal dismissed.

Registration Act, 1906 – Section 17 – Hibanama – Registration of hibanama –Only because writing is contemporaneous with making of gift deed-It does not warrant a registration under Registration Act.

Hiba- second appeal –Suit for declaration of title on basis of oral hiba – Essential features required for a gift to constitute a valid hiba under Mohemmdan law.

Hiba – Second appeal-Suit for declaration of title on basis of oral hiba – Transfer of possession of premises in question is an essential ingredient in hiba – Since, donor was still continuing possession over suit property-No statement in hibanama with regard to transfer of possession in favour of done-Thus, transfer of possession in lieu of hiba not proved – Suit rightly dismissed by first appellate court by reversing judgment and decree of trial court-Appeal dismissed.

Specific Relief Act, 1963 – Section 34 – Second appeal – Suit for declaration of title on basis of hiba – Since no prayer sought by plaintiff regarding cancellation of registered sale-deed favouring defendant/respondent in respect of suit property-Therefore, sui rightly held barred in terms of proviso to section 34 of S.R. Act-Appeal dismissed.

It is undisputed that even as per pleadings of the plaintiff-appellant, the alleged written hibanama was preceded by oral hiba said to have been made by Smt. Abida Bano in favour of the plain tiff. Conditions regarding proving of a hibanama have been laid down by Hon'ble the Supreme Court in the case of Rasheeda Khatoon v. Ashiq Ali' in which it has been held that a gift under the Mohammdan law can either be oral or by means of written instrument but for a gift to constitute a valid gift under the Mohammdan law, three essential features are required namely (i) declaration of the gift by donor (ii) acceptance of the gift by donor expressly or impliedly and (iii) delivery of possession either actually or constructively to the done. It has further been held that only because the writing is contemporaneous of the making of gift deed it does not warrant a registration under section 17 of the Registration Act. the relevant paragraphs of the judgment are as follows:

“16. From the aforesaid discussion of the propositions of law it is discernible that gift under the Mohammadan Law can be an oral gift and need not be registered; that a written instrument does not, under all circumstances require registration; that to be a valid under the Muhammadan Law three essential features namely, (i) declaration of the gift by the doner, (ii) acceptance of the gift by the done expressly or impliedly, and (iii) delivery of possession either actually or constructively to the done, are to be satisfied; that solely because the writing is contemporaneous

of the making of the gift deed, it does not warrant registration under section 17 of the Registration Act.

17 At this juncture, it is pertinent to refer to a three-Judge Bench decision in Valia Peedikkandi Katheesa Umma and others v. Pathakkalan Naravanath Kunhamu (deceased) and after him his legal representatives and others, AIR 1964 SC 275, where the question arose whether a gift by a husband to his minor wife and accepted on her behalf by her mother valid. Dealing with the concept of gift under Muhammadan Law the Court observed that:

"…. Muhammadan Law of gifts attaches great importance to possession or seisin of the property gifted (Kabz-ul-Kami) especially of immovable property. The Hedaya says that seisin in the case of gifts is expressly. **Mohd. Farooq Siddiqui vs. Smt. Saeeda Bano, 2021 (153) RD 220 (Alld.HC- Lucknow Bench)**

U.P. Zamindari Abolition and Land Reforms Act

Endorsement Over Khatauni – Effect of – Mere endorsement relating to some case over khatauni – Cannot confer any right or title in favour of recorded person – Such entry always subject to scrutiny by competent Court.

Both the consolidation courts, SOC and DDC, in positive exercise of jurisdiction, have given opportunity of hearing to the contesting respondents after considering the bonafides of Smt. Savitri Devi, who is claiming her right and title over the property in question on the basis of registered Will deed executed by her maternal grandfather. Mere an endorsement relating to some case over the khatauni cannot confer any right and title in favour of the recorded person and said entry is always subject to scrutiny by the competent Court. Therefore, on the ground of latches valuable right of any person, who is vitally interested in the property in question, cannot be negated. **Ambika Prasad and others vs. Additional District Magistrate, Basti and others, 2021 (153) RD 44 (Alld. HC) -**

S. 3(14) – Civil Procedure Coe, 1908 – Section 9 – Bhumidhar land – Its use for non-agricultural purpose-Jurisdiction of Civil Court – Suit relating to land held by Bhumidhar instituted in Court other than Revenue Court – Maintainability- Held, where a suit relating to land held by

bhumidhar instituted in a Court other than Revenue Court – And the question arises whether land is or is not being used for agricultural purposes – Then matter is to be referred to Assistant Collector – If such suit is filed before a Civil Court or Small Cause Courts and there is no doubt that land in dispute having constructed portion being used for residential, commercial or industrial purposes - In such circumstance, Civil Court or Small Cause Courts or any other Court, except Revenue Court, will have jurisdiction to decide maters.

This Court in the case of Ram Prakash Agarwal (supra) has held that where the land was not found to be used for agricultural purposes the provisions of section 156/165 of U.P.Z.A. & L.R. Act were held not applicable. This court in the case of Azaz Carpets and others (supra) has held that where the defendant admitted that the land was being used for industrial purposes the provisions of section 156/165 will not apply. It has held in paragraph No. 17 that if a land is not being used for agricultural purposes then it is not necessary that in every situation, declaration under section 143 of U.P.Z.A. & L.R. Act should be obtained. In paragraph No. 18 this Court held that where a suit relating to land held by bhumidhar is instituted in a Court other than the Revenue Court and a question arises whether the land is or is not being used for agricultural purposes then the matter is to be referred to Assistant Collelcltor. If such a suit is filed before a Civil Court or Judge, Small Cause Courts and there is no doubt that the land in dispute is being used for non-agricultural purpose and it is admitted that the land is having constructed portion being used for residential commercial or industrial purposes then the certificate under section 143 of the U.P.Z.A. & L.R. Act is not duly required and Civil Court or Small Cause Court or any other Court, except revenue Court, will have jurisdiction to decide the matter. **Ramesh Chandra Singh vs. Latif Ahmad Khan, 2021 (153) RD 679 (Alld. HC) –**

Words and Phrases

Lis Pendens—In the Corpus Juris Secundum (Vol. LIV-p. 570), we find the following definition:

"Lis pendens literally means a pending suit; and the doctrine of lis pendens has been defined as the jurisdiction, power, or control which a court acquires over property involved in suit, pending the continuance of the action, and until final judgment therein."

Expositions of the doctrine indicate that the need for it arises from the very nature of the jurisdiction of Courts and their control over the subject of litigation so that parties litigating before

it may not remove any part of the subject matter outside the power of the court to deal with it and thus make the proceedings infructuous. **[Manoj Kumar Parashar vs. State of U.P., 2021 AIR CC 2954 (All)]**

Legitimate Expectation- Considerations of

In view of the aforesaid, some of the following principles of law on legitimate expectation may be summarized as under:

(1)Legitimate expectation is an expectation of a benefit, relief or remedy that may ordinarily flow from a promise or established practice. The term 'established practice' refers to regular, consistent predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. The expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope, however earnest and sincere a wish, a desire or a hope may be.

(2)A person can be said to have a 'legitimate expectation' of a particular treatment, if any representation or promise is made y an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course.

(3) It is not a legal right and as such a legitimate expectation, even if made, does not entitle the expectant to relief straightaway from the administrative authorities.

(4) It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established.

(5) Legitimate expectation if made may only entitle an expectant: (a) to an opportunity to show-cause before the expectation is dashed; or (b) to an explanation as to the cause for denial.

(6) However, the requirement of fairness in administrative action by giving an opportunity of hearing to the expectant is not in all cases but is where such person is deprived of a past benefit.

(7) If some policy is announced conferring benefit on a large number of people but is subsequently withdrawn or changed due to overriding public interest, an opportunity to each individual to explain the circumstances of his case need not be given.

(8) Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the legitimate expectation, even if made out.

(9) So long as the Government does not act in an arbitrary or in an unreasonable manner interference by judicial review on the ground of legitimate expectation is not called for. The Court will not interfere on grounds of procedural fairness and natural justice, if the deciding authority has bee allotted a full range of choice and the decision is taken fairly and objectively.

(10) A person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus he has locus stand to make such a claim. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest.

(11) Whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact in each case. **[Shishir Patel vs. Union of India and others, 2021(9) ADJ 389(LB)(Alld.H.C.)]**

Loss of Estate- Meaning of - would include expenditure on medicines, treatment, diet, attendant, doctor's fee, etc., including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased. **[Oriental Insurance Co. Ltd. vs. Kahlon, 2021 ACJ 2576]**

Legal Representative – Meaning of

Legal representative means a person who in law represents the estate of the deceased and includes any person in whom legal right to receive compensatory benefits vests; legal representative may also include any person who intermeddles with the estate of the deceased; such person does not necessarily have to be a legal heir; for the purpose of Motor Vehicles Act the term 'legal representative' should be given wider interpretation and it should not be confined to mean spouse, parents and children of the deceased. **[N. Jayasree and others vs. Cholamandalam MS General Ins. Co. Ltd., 2021 ACJ 2685]**

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