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CONSTITUTIONAL, CIVIL, CRIMINAL AND REVENUE LAWS

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

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Volume : XXVI **Issue No. 3**

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ARBITRATION AND CONCILIATION ACT, 1996

Sections 11(6), 21 and 43 of the Arbitration and Conciliation Act, 1996 : Limitation period for filing application for appointment of arbitrator under S. 11 is governed by residuary Article 137 of the Limitation Act. Application for appointment of arbitrator under S. 11(6) to be filed within 3 yrs from date on which "right to apply" under S. 11(6) accrues.

Commencement of said limitation period from the date of refusal to appoint the arbitrator by the other side or upon the failure to make the appointment within the period stipulated in the notice invoking arbitration, whichever is earlier-That is to say, the period of limitation will begin to run from the date when there is failure to appoint the arbitrator.

Since there is no provision in the 1996 Act specifying the period of limitation for filing an application under S. 11, recourse must be had to the Limitation Act. Also, since none of the Articles in the Schedule to the Limitation Act provide a time period for filing such application, it would be covered by the residual provision under Art. 137

Further, considering the vacuum in the law and the unduly long period, opined that it is necessary for Parliament to effect an amendment to S. 11, prescribing a specific period of limitation within which a party may move the court for making an application for appointment of the arbitrator under S. 11 Limitation Act, 1963.

The 1996 Act has been framed for expeditious resolution of disputes, and various provisions have been incorporated in the Act to ensure that the arbitral proceedings are conducted in a time-bound manner. Various timelines have been provided in the 1996 Act. The 1996 Act was amended by the Arbitration and Conciliation (Amendment) Act, 2015 to incorporate further provisions for expeditious disposal of arbitral proceedings. Contemporaneous with the 2015 Amendment to the Arbitration Act, 1996, the Commercial Courts Act, 2015 was enacted to provide for speedy disposal of high value commercial disputes, which provided for setting up Commercial Divisions or Commercial Appellate Division in High Courts, and Commercial Courts at the district level.

Section 11 does not prescribe any time period for filing an application under sub-section (6) for appointment of an arbitrator. Since there is no provision in the 1996 Act specifying the period of limitation for filing an application under Section 11, one would have to take recourse to the Limitation Act, 1963, as per Section 43 of the Arbitration Act, which provides that the Limitation Act shall apply to arbitrations, as it applies to proceedings in court. The provisions of the Limitation Act, 1963 apply to all proceedings and under the AC Act, both in court and in arbitration, except to the extent expressly excluded by the provisions of the AC Act.

Under Article 137 of the Limitation Act, 1963, application for appointment of an arbitrator under Section 11 (6) or Section 11(9) of the Arbitration Act before the High Court or the Supreme Court would apply from the date when a notice invoking an arbitration agreement is received by other side and other side refuses to the name suggested by the opponent or refusing to suggest any other name in accordance with the provisions of Section 11 or the agreed procedure prescribed in the arbitration agreement within the time contemplated therein or specifically refuses to appoint any arbitrator in the event of such other party being an appointing authority.

The limitation for filing an application under Section 11 would arise upon the failure to make the appointment of the arbitrator within a period of 30 days from issuance of the notice invoking arbitration. In other words, an application under Section 11 can be filed only after a notice of arbitration in respect of the particular claim(s)/dispute(s) to be referred to arbitration as contemplated by Section 21 of the 1996 Act is made, and there is failure to make the appointment. The period of limitation will begin to run from the date when there is failure to appoint the arbitrator.

Since an application under Section 11 is to be filed in a court of law, and since no specific Article of the Limitation Act, 1963 applies; the residual Article would become applicable. The effect being that the period of limitation to file an application under Section 11 is 3 years from the date of refusal to appoint the arbitrator, or on expiry of 30 days, whichever is earlier.

The period of limitation for filing a petition seeking appointment of an arbitrator(s) cannot be confused or conflated with the period of limitation applicable to the substantive claims made in the underlying commercial contract. The period of limitation for such claims is prescribed under various Articles of the Limitation Act, 1963. The limitation for deciding the

underlying substantive disputes is necessarily distinct from that of filing an application for appointment of an arbitrator. **[Bharat Sanchar Nigam Limited and another v. Nortel Networks India Private Limited, (2021) 5 SCC 738]**

Pt. II & S. 44 and Pt. I-Foreign-seated international commercial arbitration between two Indians/Indian entities i.e. with seat of arbitration outside India - Held, permissible -Pt. II of the Act, as opposed to Pt. I- Applicability of, to such arbitration.

Further held, agreement providing for such arbitration does not amount to an agreement in restraint of legal proceedings i.e. is not violative of S. 28 of the Contract Act, 1872-Nor does such agreement violate S. 23 of the Contract Act, 1872

Award passed in such arbitration proceedings - Consideration of, as foreign award so as to be enforceable in India in terms of Pt. II of the A&C Act, 1996- Foreign award-Requirements of, explained

Party autonomy in choosing a place of arbitration - Availability and scope of Freedom of parties thus: to choose (1) substantive law for determination of the disputes, (2) law of the arbitration agreement, and (3) law of conduct of arbitration Limits on party autonomy on all these aspects arising from: public policy of India, substantive law of India subject to conflict of law rules of foreign-seat country, and non-derogable provisions of law of the foreign-seat country

When "international commercial arbitration" is spoken of in the context of taking place outside India, it is place-centric as is provided by S. 44 of the A&C Act, 1996 and only means that it is an arbitration which takes place between two parties in a territory outside India, the New York Convention applying to such territory, thus making it an "international" commercial arbitration

It was held that what is necessary for an award to be designated as a foreign award under S. 44 are four ingredients: (i) the dispute must be considered to be a commercial dispute under the law in force in India, (ii) such award must be made in pursuance of an agreement in writing for arbitration, (iii) the dispute must arise between "persons" (without regard to their nationality, residence, or domicile), and (iv) the arbitration must be conducted in a country which is a signatory to the New York Convention

It was further held that freedom of contract needs to be balanced with clear and undeniable harm to the public, even if the facts of a particular case do not fall within the crystallized principles enumerated in well-established "heads" of public policy-Further, Exception 1 to S. 28 of the Contract Act specifically saves the arbitration of disputes between two persons without reference to the nationality of persons who may resort to arbitration

Foreign-seated international commercial arbitration between two Indians/ Indian entities i.e. with seat of arbitration outside India : Party autonomy in choosing place of arbitration - Availability and scope of Freedom of parties to choose (1) substantive law for determination of the disputes, (2) law of the arbitration agreement, and (3) law of conduct of arbitration.

Limits on party autonomy in regard thereto arising from public policy of India, substantive law of India subject to conflict of law rules of foreign-seat country, and non-derogable provisions of law of the foreign-seat country.

It was held that S. 10(1) of the Commercial Courts Act, 2015 applies to international commercial arbitrations both Indian-seated and Foreign-seated, and applications or appeals arising therefrom, under both Pts. I and II of the A&C Act, 1996. When applications or appeals arise out of such arbitrations under Pt. I, where the place of arbitration is in India, undoubtedly, the definition of "international commercial arbitration" in S. 2(1)(f) will govern. However, when applied to Pt. II, "international commercial arbitration" has reference to a place of arbitration which is international in the sense of the arbitration taking place outside India. Thus construed, there is no clash at all between S. 10 of the Commercial Courts Act and the Explanation to S. 47 of the A&C Act, 1996, as an arbitration resulting in a foreign award, as defined under S. 44 of the A&C Act, 1996, will be enforceable only in a High Court under S. 10(1) of the Commercial Courts Act, and not in a District Court under S. 10(2) or S. 10(3). Even otherwise, held, the A&C Act, 1996 is a special Act vis-à-vis the Commercial Courts Act which is general, and which applies to the procedure governing appeals and applications in cases other than arbitrations as well Commercial Courts Act, 2015.

Arbitration and Conciliation Act, 1996 - S. 2(2) & proviso thereto, S. 2(1)(f) and S. 9- Interim measures under S. 9 of the A&C Act, 1996 - Grantability of, when assets, etc. are situate in India, even though the arbitration takes place outside India i.e. is foreign-seated

Expression "international commercial arbitration" in S. 2(2) proviso.

It has been held that S. 2(2) proviso makes it clear that where, in an arbitration which takes place outside India, assets of one of the parties are situated in India and interim orders are required qua such assets, including preservation thereof, the courts in India may pass such orders. Further, the expression "international commercial arbitration" in S. 2(2) proviso is specifically spoken of in the context of a place of arbitration being outside India, the consequence of which is an arbitral award to be made in such place, but which is enforced and recognised under the provisions of Pt. II of the A&C Act, 1996. Further, the context of the expression "international commercial arbitration" in S. 2(2) proviso is different from the context of the definition of "international commercial arbitration" contained in S. 2(1)(f).

Thus, held, the view that S. 9 application made by the respondent in the context of a foreign-seated international commercial arbitration was not maintainable by reason of the expression "international commercial arbitration" appearing in the proviso to S. 2(2) having the meaning to be ascribed by S. 2(1)(f) of the A&C Act, 1996, is incorrect Thus, such application made by the respondent under S. 9 was held maintainable.

Arbitration and Conciliation Act, 1996- Pt. II and S. 44 is seat-oriented and not person-oriented : Definition clause preceded by the words "unless the context otherwise requires."

It was held that in such a case, normally the definition given in the section should be applied and given effect to. However, this normal rule may be departed from if there be something in the context to show that the definition should not be applied. However, this departure from the definition given in the section itself based on the context cannot be to such an extent as to undo the basis of the section itself, as sought to be contended in the present case.

Thus, held, it is not possible to accede to the argument that the expression "unless the context otherwise requires" can be held to undo the very basis of S. 44 of the A&C Act, 1996 by converting it from a seat oriented provision in countries that are signatories to the New York Convention to a person-oriented provision in which one of the parties to the arbitration agreement has to be a foreign national or habitually resident outside India.

Arbitration and Conciliation Act, 1996- Pts. II and I-Seat of arbitration-Determination of-Closest connection test - When applicable - Held, the said test would only apply if it is unclear that a seat has been designated either by the parties or by the tribunal

Constitution of India - Article 141 - Ratio decidendi- It is clear that there can be more than one ratio decidendi to a judgment

Contract Act, 1872- Ss. 23 and 28- Consideration or object of an agreement whether opposed to "public policy" -"Public policy" - Scope and manner of interpretation - Modification in tune with strides in science and law-Yet, need to not depart from doctrine of public policy as crystallized in precedents or to create new heads of public policy, except in cases of clear and undeniable harm to the public.

The elusive expression "public policy" appearing in S. 23 of the Contract Act is a relative concept capable of modification in tune with the strides made by mankind in science and law. The doctrine of public policy is governed by precedents, its principles have been crystallized under the different heads and though it is permissible to expound and apply them to different situations it can be applied only to clear and undeniable cases of harm to the public. Although, theoretically it is permissible to evolve a new head of public policy in exceptional circumstances, such a course would be inadvisable in the interest of stability of society-Freedom of contract needs to be balanced with clear and undeniable harm to the public, even if the facts of a particular case do not fall within the crystallized principles enumerated in well established "heads" of public policy.

Interpretation of Statutes-Subsidiary Rules - Generalia specialibus non derogant - Even a later general law which contains a non obstante clause does not override a special law as both must be held to operate. (PASL Wind Solutions Private Limited v. GE Power Conversion India Private Limited, (2021) 7 SCC 1)

S. 37 - Delay in filing appeals under S. 37 of the A&C Act, 1996-Extent to which can be condoned in cases governed by: (A) Commercial Courts Act where specified value is not less than three lakh rupees, or (B) Art. 116 or Art. 117 of the Limitation Act where the specified value is less than three lakh rupees Expression "sufficient cause", as employed in S. 5 of the Limitation Act - Manner in which to be construed for arbitration cases - Restrictions upon extent of condonable period of delay for arbitration cases.

It was held that the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression "sufficient cause" is not elastic enough to cover long delays beyond the period provided by the appeal

provision itself-Thus, appeals filed under S. 37 governed by Arts. 116 and 117 of the Limitation Act or S. 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule -In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches. **(Government of Maharashtra (Water resources Department) Represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited, (2021) 6 SCC 460)**

Sections 8, 11(6), 11(6-A), 11(7) and 37 : Scheme of 1996 Act providing for appeal against an order of refusal under S. 8 for reference of dispute to arbitrator, while denying the remedy of appeal against similar order under S. 11. Need for legislative review of, to redress this anomaly, so that orders made under Ss. 8 and 11 are brought on a par qua appealability as well.

Sections 8 and 11 were amended pursuant to a detailed Law Commission Report being the 246th Law Commission Report on Arbitration. The net result of the amendments and judicial interpretation thereof, is that while considering any application under Section 8 or Section 11 of the 1996 Act, the Court is to confine itself to the prima facie examination of the existence of an arbitration agreement and leave all other preliminary issues to be decided by the arbitrator.

Prima facie examination of the existence of an arbitration agreement, which is what the Court must restrict itself while considering reference of the matter to arbitration under Section 8 or appointment of an arbitrator under Section 11 of the 1996 Act, is not full review but a primary first review to weed out manifestly and ex facie non-existent and invalid arbitration agreements and non-arbitrable disputes. The prima facie review at the reference stage is to cut the deadwood and trim off the side branches in straightforward cases where dismissal is barefaced and pellucid and when on the facts and law the litigation must stop at the first stage. Only when the Court is certain that no valid arbitration agreement exists or the disputes/subject-matter are not arbitrable, the application under Section 8 or Section 11 would be rejected. At this stage, the Court should not get lost in thickets and decide debatable questions of facts. Referral proceedings are preliminary and summary and not a mini trial.

When it appears that prima facie review of the existence of an arbitration agreement by the Court 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 Arbitrarily 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.

The Court by default would refer the matter to arbitration when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings.

The Court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie (summary findings) case of non-existence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding. **[Pravin Electricals Private Limited v. Galaxy Infra and Engineering Private Limited, (2021) 5 SCC 671]**

Sections 11(6) & 21 of Arbitration and Conciliation Act, 1996 : Appointment of arbitrator under S. 11(6) Limitation period for filing application for Commencement of, from date on which agreement procedure for appointment of arbitrator can be said to have "failed" in terms of Ss. 11(6)(a), (b) or (c)

Sections 8, 11 and 16 of Arbitration and Conciliation Act, 1996 : Ex facie time-barred claims should not be referred for arbitration by Court- Where there is not even a vestige of doubt that the claim is ex facie time-barred, or that the dispute is non-arbitrable, the Court may decline to make the reference.

The existence of a dispute is essential for appointment of an arbitrator. A dispute arises when a claim is asserted by one party and denied by the other. The term "dispute" entails a positive element and mere inaction to pay does not lead to the inference that dispute exists. In a commercial dispute, while mere failure to pay may not give rise to a cause of action, once the

applicant has asserted their claim and the respondent fails to respond to such claim, such failure will be treated as a denial of the applicant's claim giving rise to a dispute, and therefore the cause of action for reference to arbitration. It does not lie to the applicant to plead that it waited for an unreasonably long period to refer the dispute to arbitration merely on account of the respondent's failure to settle their claim and because they were writing representations and reminders to the respondent in the meanwhile. A party cannot postpone the accrual of cause of action by writing reminders or sending reminders.

The limitation for filing an application under Section 11 would arise upon the failure to make the appointment of the arbitrator within a period of 30 days from issuance of the notice invoking arbitration. In other words, an application under Section 11 can be filed only after a notice of arbitration in respect of the particular claim(s)/dispute(s) to be referred to arbitration as contemplated by Section 21 of the 1996 Act is made, and there is failure to make the appointment.

The period of limitation for filing a petition seeking appointment of an arbitrator(s) cannot be confused or conflated with the period of limitation applicable to the substantive claims made in the underlying commercial contract. The period of limitation for such substantive claims is prescribed under various Articles of the Limitation Act, 1963. The limitation for deciding the underlying substantive disputes is necessarily distinct from that of filing an application for appointment of an arbitrator.

In view of the legislative mandate contained in the amended Section 11(6-A), the Court is now required only to examine the existence of the arbitration agreement. All other preliminary or threshold issues are left to be decided bo by the arbitrator under Section 16, which enshrines the kompetenz-komptenz principle.

Limitation is not a jurisdictional issue but is an admissibility issue. 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. **[Secunderabad Cantonment Board v. B. Ramachandraiah and Sons, (2021 5 SCC 705)]**

Section 8 & 11 of Arbitration and Conciliation Act, 1996 : Arbitration clause/agreement contained in substantive contract/instrument on which stamp duty has to be compulsorily paid. Adjudication of the rights and obligations under the underlying substantive contract cannot proceed before the deficit stamp duty is paid in accordance with law. Authority which must impound the unstamped instrument at different stages, so that the deficit stamp duty may be paid in accordance with law and adjudication of the rights and obligations under the underlying substantive contract, by the arbitrator may commence thereafter. Matter referred to larger Bench of five Judges.

Right of revision/appeal available under the relevant Stamp Act against assessment of stamp duty to remain unaffected.

Section 9 of the Arbitration and Conciliation Act, 1996 : Arbitration clause/ agreement contained in underlying substantive contract/instrument on which stamp duty has to be compulsorily paid, when such substantive contract/ instrument is unstamped. Interim relief under S. 9 - Whether may be granted by Court - Held, in such case Court may grant ad interim relief to safeguard the subject-matter of the arbitration, based on settled principles in this regard However, the substantive contract would then be impounded, and party concerned be directed to take necessary steps for payment of requisite stamp duty in accordance with the provisions of relevant Stamp Act, within a time-bound period.

Sections 7, 8, 11 and 16 of the Arbitration and Conciliation Act, 1996 : Doctrine of separability of the arbitration clause/agreement and Doctrine of kompetenz-kompetenz explained in detail.

Section 35 of the Stamp Act, 1899 : Inadmissibility in evidence of instruments not duly stamped - Words "for any purpose" in S. 35 of the Stamp Act, 1899 and in S. 34 of the Maharashtra Stamp Act, held, should be given their natural meaning and effect. Thus, "for any purpose" includes a collateral purpose and an unstamped document which is compulsorily required to be stamped cannot be used to corroborate the oral evidence regarding the transaction(s) which are the subject-matter of such document as distinct from the terms of such document**. (N N Global Mercantile Private Limited v. Indo unique Flame Limited and others, (2021) 4 SCC 379)**

Sections 37(1)(c), 34(1) and 34(3) of the Arbitration and Conciliation Act, 1996 : Appeal against an order refusing to condone delay in filing of application under S. 34 was held is maintainable under S. 37(1)(c), as such order amounts to order refusing to set aside award.

Sections 5 & 37 of the Arbitration and Conciliation Act, 1996 : Minimization of judicial intervention in terms of S. 5 was held not to mean that Court should interpret provisions of the Arbitration Act, 1996 even more narrowly than warranted by language of the provisions of the Arbitration Act, 1996. Thus, in present case, the question being the scope of appeals under S. 37 was held not in the province or duty of the Court in the light of S. 5, to further limit the already limited right of appeal under S. 37 by excluding appeals which are in fact provided for, under the language of S. 37.

Section 37(1)(c) of Arbitration and Conciliation Act, 1996 : Held, is in pari materia with S. 39(1)(vi) of the 1940 Act : Arbitration Act, 1940 - S.39(1)(vi) Constitution of India - Art. 141 - Rulings on pari materia provisions - Applicability of - Interpretation of Statutes-External Aids - Other statutes - Pari materia/Analogous provisions

An observation in a judgment torn out of its context cannot be said to conclude an issue. Judgments are not to be construed like Euclid's theorems but all observations made therein must relate to the context in which they were made.

Arbitration and Conciliation Act, 1996 : Maximum period of 120 days is Mandatory in nature and S. 5 of the Limitation Act, 1963 does not apply and any delay beyond 120 days cannot be condoned.

A reading of Section 34(1) of the Arbitration Act, 1996 would make it clear that an application made to set aside an award has to be in accordance with both sub-sections (2) and (3). This would mean that such application would not only have to be within the limitation period prescribed by sub-section (3), but would then have to set out grounds under sub-sections (2) and/or (2-A) for setting aside such award. What follows from this is that the application itself must be within time, and if not within a period of three months, must be accompanied with an application for condonation of delay, provided it is within a further period of 30 days, the Supreme Court having made it clear that Section 5 of the Limitation Act, 1963 does not apply and that any delay beyond 120 days cannot be condoned.

The expression "setting aside or refusing to set aside an arbitral award" in Section 37(1)(c) of the Arbitration Act, 1996 does not stand by itself. The expression has to be read with the

expression that follows: "under Section 34". Section 34 is not limited to grounds being made out under Section 34(2). Obviously, therefore, a literal reading of Section 37(1)(c) would show that a refusal to set aside an arbitral award as delay has not been condoned under sub-section (3) of Section 34 would certainly fall within Section 37(1)(c). The aforesaid reasoning is strengthened by the fact that under Section 37(2)(a), an appeal lies when a plea referred to in sub-section (2) or (3) of Section 16 is accepted. This would show that the legislature, when it wished to refer to part of a section, as opposed to the entire section, did so. Contrasted with the language of Section 37(1)(c), where the expression "under Section 34" refers to the entire section and not to Section 34(2) only, the fact that an arbitral award can be refused to be set aside for refusal to condone delay under Section 34(3) gets further strengthened.

After the non obstante clause contained therein, Section 5 of the Arbitration Act, 1996 states that no judicial authority shall intervene "except where so provided in this Part". What is "provided in this Part" in the context of the present case, is Section 37. Undoubtedly, a limited right of appeal is given under Section 37 of the Arbitration Act, 1996. But it is not the province or duty of the Court to further limit such right by excluding appeals which are in fact provided for, given the language of Section 37.

Thus, it was held that an appeal under Section 37(1)(c) of the Arbitration Act, 1996 would be maintainable against an order refusing to condone delay in filing an application under Section 34 of the Arbitration Act, 1996 to set aside an award. **(Chintels India Limited v. Bhayana Builders Private Limited, (2021) 4 SCC 602)**

Sections 5, 8 and 16 of Arbitration and Conciliation Act, 1996 : Fraud - Allegations of fraud which are not merely inter se the parties, but affect the public at large.

Adopting two-fold test laid down in *Rashid Raza, (2019) 8 SCC 710,* it was held that allegations of fraud will be non-arbitrable only if either of the following two tests laid down are satisfied, and not otherwise, namely: (1) does this plea of fraud permeate the entire contract and above all, the agreement of arbitration, rendering it void, or, (2) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain

<u>Sections 10, 14, 17 and 19 of Contract and Specific Relief Contract Act, 1872 :</u> Fraudulent inducement of contract which is a defect going to the formation of the contract

(act or omission at the stage of entering into the contract) and Performance of valid contract vitiated by fraud or cheating is one being governed by tort of deceit.

Compensation/ Damages in case of Voidable Contracts : Principles for assessing compensation/damages payable where: (1) Plaintiff has been induced to enter into a contract by a fraudulent misrepresentation and/or the tort of deceit, and (2) Where the performance of the contract is vitiated by fraud or cheating, the latter being governed by the tort of deceit - Date of entering into transaction - Relevance of, for assessing damages.

In cases of fraudulent misrepresentation and the tort of deceit, the measure of damages is the same: it is the loss truly suffered by the party affected who must be put back in the same place as if he had never entered into the transaction, which must be determined in the facts and circumstances of each case-Price paid less the valuation at the transaction date is simply one method of measuring such a loss which may be found suitable in a particular case; but the same is not a substitute for the basic rule.

Section 48 & 9 of the Arbitration and Conciliation Act, 1996 : Foreign seated arbitration When S. 9 is found applicable even in case of foreign-seated arbitration/award (in present S. 9 expressly made applicable in arbitration agreement). When and extent to which relief can be granted, where a foreign award is in favour of the party seeking such relief.

Evidence Act, 1872 : Ss. 41 to 43 - Simultaneous civil and criminal proceedings are permissible. Extent to which Ss. 41 to 43 applicable in particular civil or criminal proceedings.

Relevance of the Reports of Commissions and Committees: No inference can be drawn one way or another merely from the fact that a certain provision recommended in a Law Commission Report is not enacted into law by Parliament. There could be any number of reasons, including leaving it to the courts to develop the law on the issue in question, as per the usual course. In any case, development of the law by Supreme Court cannot be thwarted on by such non-enactment of recommended provision, nor would such non-enactment affect the precedential status of any judgment. Precedential status of a judgment has to be determined as per the settled principles in this regard.

Section 11 of the Arbitration and Conciliation Act, 1996 : Judgment rendered in exercise of jurisdiction does not result in a binding precedent. However, reasoning in such judgment may have strong persuasive value and commend itself to a judicial Bench proper of the Supreme Court, which if affirmed, would enjoy the precedential status of the affirming Bench.

Judicial reasoning with strong persuasive value. **(Avitel Post Studioz Limited and others v. HSBC PI Holdings (Mauritius) Limited, (2021) 4 SCC 713)**

Sections 8, 11 and 16 of the Arbitration and Conciliation Act, 1996 : Cancellation of written instrument/agreement under S. 31 of the SRA Adjudication of the same, held, is arbitrable and relief of cancellation of written instrument is grantable by Arbitral Tribunal, as proceedings under S. 31 of the SRA are in personam in nature.

Section 31 of the Specific Relief Act, 1963 : Cancellation of written instrument/ agreement under ingredients to be satisfied for invocation of S. 31, and relief that may be granted. It was held that proceedings under S. 31 are in personam in nature, regardless of whether the instrument cancellation of which is sought, is registered or not.

Sections 8, 11 & 16 of the Arbitration and Conciliation Act, 1996 : Arbitrator has power and jurisdiction to grant specific performance of contract relating to immovable property.

Sections 41 to 43 of the Evidence Act, 1872 : Proceedings which are in personam or in rem and Order in personam or in rem as well as Rights and actions in personam and in rem.

Evidence Act, 1872 S. 74 and Ss. 65(e) & (f) and S. 61(2) : Public document - Registered instrument and its record in the register - Certified copy of registered private instrument - Which of the above documents are public documents and which ones not ?

It has been held that public records kept in any State of private documents are public documents, but private documents of which public records are kept are not in themselves public documents. Though the entry in the register book is a public document, but the original is a private document. Hence, registered private document or conveyance is not itself a public document. Moreover, a certified copy of a registered instrument is also not a public record of a private document under S. 74(2) for the reason that the original has to be returned to the party under S. 61(2).

Arbitration and Conciliation Act, 1996- S. 8 r/w Ss. 5 and 16 : Following Avitel, (2021) 4 SCC 713 it was held if the subject-matter of an agreement between the parties falls within S. 17 of the Contract Act, or involves fraud in the performance of the contract, which would amount to deceit, being a civil wrong, the subject-matter of such agreement would certainly be arbitrable - Further, merely because a particular transaction may have criminal

overtones as well, does not mean that its subject-matter becomes non-arbitrable so long as the dispute(s) in question are principally inter partes and do not fall in the public domain.

Arbitration and Conciliation Act, 1996 S. 8 (as amended) : It is clear that the judicial authority before which an action is brought shall, if the other conditions of S. 8 are met, refer the parties to arbitration unless it finds that prima facie, no valid arbitration agreement exists

In present case, there is no averment that agreement date 20-5-2006 and deed of confirmation date 13-7-2006 (which contain the arbitration clause) were not entered into at all, as a result of which the arbitration clause would be non-existent. Thus, the finding that is returned is correct i.e. a valid arbitration agreement certainly exists as the agreements that are sought to be cancelled are not stated not to have ever been entered into. **(Deccan Paper Mills Company Limited v. Regency Mahavir Properties and Others, (2021) 4 SCC 786)**

CIVIL PROCEDURE CODE, 1908

O.39, R. 2A, O.43, R.1(r), S. 104 and Arbitration and Conciliation Act, Secs. 9(1), 17(1), 37 —Arbitral Award

The power exercised by a court under Order XXXIX, Rule 2-A is punitive in nature and akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. It is quite another thing to say that Order XXXIX, Rule 2-A requires not “mere disobedience” but “wilful disobedience”. We are prima facie of the view that the latter judgment in adding the word “wilful” into Order XXXIX, Rule 2-A is not quite correct and may require to be reviewed by a larger Bench. Suffice it to say that there is a vast difference between enforcement of orders passed under Order XXXIX, Rules 1 and 2 and orders made in contempt of court. Orders which are in contempt of court are made primarily to punish the offender by imposing a fine or a jail sentence or both. On the other hand, Order XXXIX, Rule 2-A is primarily intended to enforce orders passed under Order XXXIX, Rules 1 and 2, and for that purpose, civil courts are given vast powers which include the power to attach property, apart from passing orders of imprisonment, which are punitive in nature. Orders passed under Section 17(2) of the Arbitration Act, using the power contained in Order XXXIX, Rule 2-A are, therefore, properly referable only to the Arbitration Act. **[Amazon.com NV Investment Holdings LLC vs. Future Retail Limited, AIR 2021 SC 3723]**

Order 41, Rule 27 to 29 of Civil Procedure Code, 1908 : Unless and until procedure under Or. 41 Rr. 27 to 29 is followed, parties to appeal cannot be permitted to lead additional evidence and/or appellate court is not justified to direct court from whose decree appeal is preferred or any other subordinate court, to take such evidence and to send it when taken to appellate court.

Order 21, Rule 90 of the Civil Procedure Code, 1908 : Auction-sale Application for setting aside - Maintainability - No allegation by judgment debtors that there was any material irregularity or fraud in publishing or conducting sale - Only allegation raised by judgment-debtors was that the d decree was obtained by fraud - Held, the same is not what is required under Or. 21 R. 90 - Application for setting aside auction, held, not maintainable.

Order 21, Rule 92, 89, 90, 91 and 94 of Civil Procedure Code, 1908 : Once sale is confirmed and sale certificate is issued in favour of purchaser, same shall become final. Whether interference with such sale permissible?

Order 21 Rule 90 of Civil Procedure Code, 1908 : Auction-purchaser whether bona fide purchaser - Auction-purchaser related to judgment creditor and partner of firm (later dissolved before suit in question was filed/ auction-sale was held, assets of firm devolving on the plaintiff alone) in whose favour mortgage as executed by judgment-debtor

As per the settled principle of law, when fraud is alleged the same is required to be pleaded and established by leading evidence. Mere allegation that there was a fraud is not sufficient. Therefore, subsequent order passed by the High Court calling for the report from the Principal City Civil Judge on the question whether the decree was obtained by fraud or not, can be said to be giving an opportunity to the judgment-debtors to fill in the lacuna. Therefore, the course adopted by the High Court calling for the report from the Principal City Civil Judge cannot be approved.

Even otherwise, it is required to be noted that as per the provisions of Order 41 CPC, the appellate court may permit additional evidence to be produced whether oral or documentary, if the conditions mentioned in Order 41 Rule 27 are satisfied after the additional evidence is permitted to be produced in exercise of powers under Order 41 Rule 27. Thereafter, the procedure under Order 41 Rules 28 and 29 CPC is required to be followed. Therefore, unless and until the procedure under Order 41 Rules 27, 28 and 29 CPC is followed, the parties to the appeal cannot be permitted to lead additional evidence and/or the appellate court is not justified to direct the court from whose decree the appeal is preferred or any other subordinate court, to take such evidence and to send it when taken to the appellate court. From the material produced on record, it appears that the said procedure has not been followed by the High Court while calling for the report from the Principal City Civil Judge.

In the present case at the time when the Principal City Civil Judge permitted the parties to lead the evidence and submitted the report/finding that the decree was obtained by fraud, there was already an order passed by the executing court overruling the objections made by the judgment-debtors that the decree was obtained by fraud. Therefore, unless and until the order dated 3-3-1998 was set aside, neither was the High Court justified in calling for the report from the Principal City Civil Judge nor even was the Principal City Civil Judge justified in permitting the judgment-debtors to lead the evidence on the allegation that the decree was obtained by fraud, misrepresentation, when the judgment-debtors failed to lead any evidence earlier before the executing court when such objections were raised.

It is true that, as per Section 96(3) CPC, the appeal against the decree passed with the consent of the parties shall be barred. However, it is also true that as per Order 23 Rule 3-A CPC no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. However, when Order 43 Rule 1(m) CPC came to be omitted by Act 104 of 1976, simultaneously, Order 43 Rule 1-A CPC came to be inserted by the very Act 104 of 1976, which provides that in an appeal against the decree passed in a suit for recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should or should not have been recorded. Hence, the High Court rightly concluded that the appeal against the consent decree dated 1-6-1995 in the present case was maintainable.

Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it. Therefore, as per Order 21 Rule 90 CPC, an application to set aside the sale on the ground of irregularity or fraud may be made by the decree-holder on the ground of material irregularity or fraud in publishing or conducting it. However, in the present case it is not the case of the judgment-debtors that there was any material irregularity or fraud in publishing or conducting the sale. Their objection is that the decree was obtained by fraud. Therefore also, the application submitted by the original judgment-debtors under Order 21 Rule 90 CPC i.e. IA No. 4 of 1999 was required to be dismissed and was rightly dismissed by the executing court.

As per Order 21 Rule 92 CPC, where an application is made under Order 21 Rule 89, Order 21 Rule 90 and Order 21 Rule 91 CPC and the same is disallowed, the court shall make an order confirming the sale and thereafter the sale shall become absolute. As per Order 21 Rule 94 CPC, where a sale of immovable property has become absolute, the court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date on which the sale became absolute. Therefore, when after the order dated 3-3-1998 overruling the objections raised by the judgment-debtors and thereafter the order was passed in IA No. 4 of 1999 and thereafter when the sale was confirmed and the sale certificate was issued, the High Court ought not to have thereafter set aside the order dated 3-3-1998 overruling the objections raised by the judgment-debtors, which order was not challenged by the judgment-debtors before the High Court till the year 2000. Under the circumstances, the impugned judgment and order passed by the High Court in CRP No. 3297 of 2000 quashing and setting aside the order dated 3-3-1998 cannot be sustained and the same deserves to be quashed and set aside. **(H.S. Goutham v. Rama Murthy and another, (2021) 5 SCC 241)**

C.P.C. – Order XLI Rule 22, Constitution of India- Article 136, 142

It is apparent from the amended provisions of Order XLI Rule 22 CPC and the above authorities that there are two changes that were brought by the 1976 amendment. First, the scope of filing of a cross-objection was enhanced substantively to include objections against ‘findings’ of the lower court; second, different forms of raising cross-objections were recognised. The amendment sought to introduce different forms of cross-objection for assailing the findings and decrees since the amendment separates the phrase “but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour” from “may also take any cross-objection to the decree” with a semi colon. Therefore, the two parts of the sentence must be read disjunctively. Only when a part of the decree has been assailed by the respondent, should a memorandum of cross-objection be filed. Otherwise, it is sufficient to raise a challenge to an adverse finding of the court of first instance before the appellate court without a cross objection.

On a perusal of the above authorities, it is evident that the principle stipulated in Order XLI Rule 22 of CPC can be applied to petitions under Article 136 of the Constitution because of

this Court's wide powers to do justice under Article 142 of the Constitution. Since the principle in Order XLI Rule 22 of the CPC furthers the cause of justice by providing the party other than the 'aggrieved party' to raise any adverse findings against them, this Court can draw colour from Order XLI Rule 22 CPC and permit objections to findings. **[Shri Saurav Jain and another vs. M/s. A.B.P. Design and another, 2021(7) ADJ 573(SC)]**

Duty of Trial Courts : Before Settlement of Issues and in Execution Proceedings

The issues for determination before the Supreme Court:

(i) What are the duties of the trial court before settlement of the issues where there are controversies and multiple issues emanating due to rights claimed by third parties and course that can be adopted by the trial court in such circumstances?

(ii) What directions can be passed to courts dealing with suits and execution proceedings to be followed by them mandatorily?

There are legal complexities, large pendency of execution proceedings and large number of instances of abuse of process of execution. To avoid controversies and multiple issues of a very vexed question emanating from the rights claimed by third parties, the court must play an active role in deciding all such related issues to the subject-matter during adjudication of the suit itself and ensure that a clear, unambiguous, and executable decree is passed in any suit.

Some of the measures in that regard would include that before settlement of issues, the court must, in cases, involving delivery of or any rights relating to the property, exercise power under Order 11 Rule 14 CPC by ordering production of documents upon oath, relating to declaration regarding existence of rights of any third party, interest in the suit property either created by them or in their knowledge. It will assist the court in deciding impleadment of third parties at an early stage of the suit so that any future controversy regarding non-joinder of necessary party may be avoided. It shall ultimately facilitate an early disposal of a suit involving any immovable property.

It also becomes necessary for the trial court to determine what is the status of the property and when the possession is not disputed, who and in what part of the suit property is in possession other than the defendant. Thus, the court may also take recourse to the following actions:

i. Issue commission under Order 26 Rule 9 CPC, a determination through commission, upon the institution of a suit shall provide requisite assistance to the court to assess and evaluate to take necessary steps such as joining all affected

parties as necessary parties to the suit. Before settlement of issues, the court may appoint a Commissioner for the purpose of carrying out local investigation recording exact description and demarcation of the property including the nature and occupation of the property. In addition to this, the court may also appoint a Receiver under Order 40 Rule 1 CPC to secure the status of the property during the pendency of the suit or while passing a decree.

ii. Issue public notice specifying the suit property and inviting claims, if any, that any person who is in possession of the suit property or claims possession of the suit property or has any right, title or interest in the said property specifically stating that if the objections are not raised at this stage, no party shall be allowed to raise any objection in respect of any claim he/she may have subsequently.

iii. Affix such notice on the said property.

iv. Issue such notice specifying suit number, etc. and the court in which it is pending including details of the suit property and have the same published on the official website of the court.

Based on the report of the Commissioner or an application made in that regard, the court may proceed to add necessary or proper parties under Order 1 Rule 10 CPC. The court may permit objectors or claimants upon joining as a party in exercise of power under Order 1 Rule 10 CPC, make a joinder order under Order 2 Rule 3 CPC, permitting such parties to file a written statement along with documents and lists of witnesses and proceed with the suit.

If the above suggested recourse is taken and subsequently if an objection is received in respect of "suit property" under Order 21 Rule 97 or Rule 99 CPC at the stage of execution of the decree, the executing court shall deal with it after taking into account the fact that no such objection or claim was received during the pendency of the suit, especially in view of the public notice issued during trial. Such claims under Order 21 Rule 97 or Rule 99 CPC must be dealt with strictly and be considered/entertained rarely.

In suits relating to money claim, the court, may on the application of the plaintiff or on its own motion using the inherent powers under Section 151 CPC, under the circumstances, direct the defendant to provide security before further progress of the suit. Having regard to the above background, wherein there is urgent need to reduce delays in the execution proceedings, all courts dealing with suits and execution proceedings are directed to follow mandatorily the directions mentioned below:

1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 CPC in relation to third-party interest and further exercise the power under Order 11 Rule 14 CPC asking parties to disclose and produce

documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.

2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint a Commissioner to assess the accurate description and status of the property.
3. After examination of parties under Order 10 or production of documents under Order 11 CPC or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.
4. Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.
5. The court must, before passing the decree, pertaining to delivery of possession of a property, ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.
6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.
7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.
8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.
9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.
10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A CPC.
11. Under Section 60 CPC the term "... in name of the judgment-debtor or by another person in trust for him or on his behalf' should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.
13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.
14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts.

The High Courts are further directed to reconsider and update all the Rules relating to execution of decrees, made under exercise of its powers under Article 227 of the Constitution and Section 122 CPC, within one year of the date of this order. The High Courts must ensure that the Rules are in consonance with CPC and the above directions, with an endeavour to expedite the process of execution with the use of information technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable. **[Rahul S. Shah v. Jinendra Kumar Gandhi and others, (2021) 6 SCC 418]**

Secs. 100, 151, O. 20, R. 18, O. 26, R. 9, O. 41, R. 27—Second appeal—Powers of High Court—Suit for partition and separate possession—Trial Court passed preliminary and final decree in favour of plaintiffs—

Commissioner appointed by Court for partitioning suit properties, report of Commissioner accepted by trial Court and rejected objections raised by defendants against Commissioner's report. First Appellate Court on re-examining matter opined that convenience of parties to cultivate land is of prime importance while partitioning. First Appellate Court held that defendants neither disputed similarity of fertility of land nor put suggestion regarding non-potentiality of land to Court Commissioner. Considering said aspects, First Appellate Court upheld decree granted in favour of plaintiffs. High Court reversed conclusion of First Appellate Court relating to non-agricultural potentiality of land without giving any reasons especially when First Appellate Court refused to accept said contention by rejecting application of defendants filed under O. 41 R. 27. First Appellate Court is final Court on facts. Order of High Court setting

aside judgment of First Appellate Court and finding fault in final decree by taking a different view on factual findings recorded by First Appellate Court, erroneous and set aside. Order granting preliminary and final decree in favour of plaintiffs, upheld**. [Mallanagouda and others vs. Nninganagouda and others, AIR 2021 SC 2594]**

O. 23, R. 3—Consent decree—Suit for possession—

It may be useful to briefly summarise the law governing consent decrees that shall inform our conclusions on the present matter. It is well settled that consent decrees are intended to create estoppels by judgment against the parties, thereby putting an end to further litigation between the parties. Resultantly, this Court has held that it would be slow to unilaterally interfere in, modify, substitute or modulate the terms of a consent decree, unless it is done with the revised consent of all the parties thereto.

However, this formulation is far from absolute and does not apply as a blanket rule in all cases. This Court, in Byram Pestonji Gariwala v. Union Bank of India & ors., (1992) 1 SCC 31, has held that a consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation, or mistake. Further, this Court in the exercise of its inherent powers may also unilaterally rectify a consent decree suffering from clerical or arithmetical errors, so as to make it conform with the terms of the compromise. **[Compack Enterprises India (P) Ltd. vs. Beant Singh, AIR 2021 SC 2821]**

Order 7, R. 14(3)—Production of documents—Election petition—Prayer for production of ballot papers—

High Court ought to have clarified briefly, as to how stated documents are relevant and in what context to relegate parties before High Court for reconsideration of request would be proper. Matter remanded. **[Rajkumar Imo Singh vs. Dr. Khwairakpam Loken Singh, AIR 2021 SC 3089]**

CONSOLIDATION OF HOLDINGS ACT, 1962

Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 - Section 6 - Transfer of Property Act, 1882-Section 122-Court of Additional District Collector, Pali, declared that the mutation of the land done in favour of the son of the appellant was invalid as there was no acceptance of the gift- It was declared therein that the appellant was holding 11 standard acres of extra land over the above the ceiling limit- The Collector,

therefore, directed the appellant to hand over vacant possession of the aforesaid 11 standard acres of extra land to the Tahsildar, Pali- The appellant preferred an appeal before the Board of Revenue-Board of Revenue, modified the earlier order, and upon recalculation held that the appellant is holding 4.5 standard acres of land in excess of the ceiling limit-Aggrieved, the appellant preferred a writ petition under Article 227 of the Constitution before the High Court- The learned Single Judge of the High Court allowed the writ petition preferred bythe appellant –The Court held that the case was beyond the purview of section 6 of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973- Because the land was transferred by way of gift-It was further held that the aforesaid transfer of land, by the appellant in favour of his son by virtue of a registered gift deed, being bona fide, was valid in the eyes of law- The learned Single Judge, therefore held that there is no surplus land which is available with the appellant which can be resumed- In appeal before the Division Bench, which allowed the appeal holding that the gift deed was invalid as the son of the appellant was unaware about the same- Instant appeal against – Since the deed is registered, bears the signature of the donor and has been at tested by two witnesses, the requirements under section 123 of the Transfer of Property Act, 1882 have been satisfied- Appeal is allowed.

Section 21 Provides that for a gift of immovable property to be valid, the transfer must be effectuated by means of a registered instrument bearing the signature of the donor and attested by at least two witnesses.

22. A three-Judge Bench of this Court in the case of Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker, (1997) 2 SCC 255 had held that:

> "6. Acceptance by or on behalf of the donee must be made during the lifetime of the donor and while he is still capable of giving.
>
> *7. It would thus be clear that the execution of a registered gift deed, acceptance of the gift and delivery of the property, together make the gift complete. Thereafter, the donor is divested of his title and the donee becomes the absolute owner of the property.*

23. The Division Bench of the High Court in the impugned judgment upheld the findings of the Board of Revenue wherein it held that there was no valid acceptance by the donee. The Additional District Collector held that there was no semblance of acceptance in the gift deed. On appeal, the Board of Revenue held that, "it is irrelevant that after the gift the land remained in possession of the donee or that he got it mutated in his name.". The Division Bench of the High Court, relying on the aforesaid observation, stated that there was no valid acceptance as it seems

like the donee was unaware about the gift deed itself. **[Daulata Singh (D.) through L.Rs. vs. State of Rajasthan and others, 2021 (152) RD 484 (S.C.)]**

CONSTITUTION OF INDIA

Article 226 of the Constitution of India : Exercise of power under-Reasoned and independent analysis : It was held that technology enables Judges to bring speed, efficiency and accuracy to judicial work. But prolific use of "cut-copy-paste" function should not become substitute for substantive reasoning which, in ultimate analysis is defining feature of judicial process.

It was emphasized that reasons constitute soul of judicial decision and how Judges communicate in their judgment is defining characteristic of judicial process since quality of justice brings legitimacy to judiciary. The fact that High Court in instant case had extracted portions of judgment of Tribunal noting that Tribunal had not committed any jurisdictional error warranting interference, without independent application of mind strongly deprecated. Considering that instant case was not an isolated aberration but a recurring phenomenon, and consequently to National Judicial Academy was requested to address the issue. Furthermore, though statistics of disposal were important, higher value was intrinsic in content of judgment and as such the High Court in exercise of jurisdiction under Art. 226 was required to have independently considered whether first respondent was correctly denied selection to IAS having regard to disciplinary penalty imposed upon him. The High Court having failed to do so, the matter was remitted to the High Court for consideration afresh considering that first respondent had retired in meantime, the High Court was directed to dispose of petition within stipulated time since outcome of petition would have bearing on his pensionary benefits. **(Union Public Service Commission v. Bibhu Prasad Sarangi and Others, (2021) 4 SCC 516)**

Articles 191, 190 and 80(4) of the Constitution of India : Membership of State Legislative Assembly/Council - Disqualifications with respect to, as prescribed under Article 191

of the Constitution. Right of an MLA, on becoming disqualified, to cast his vote in an election by MLAs, held, ceases upon such disqualification being incurred.

Election-Representation of the People Act, 1951-Ss. 8(3) and 152 Disqualification for membership of State Legislative Assembly, on conviction by criminal court - Commencement of Phrase "the date of conviction" appearing in S. 8(3) of the RP Act, 1951 with respect to commencement of disqualification. Vote cast by MLA on date of election prior to passing of judgment of conviction against him on same date.

Election Eligibility/ Qualification/ Disqualification/ Recall/ Removal/ Resignation from Office - Disqualification : Conviction for an offence - Penalty other than the one prescribed by the statute for a particular act or omission. It was held that the said principle had no application in the present case insofar as consequences other than penalty flowing automatically out of the act or omission under the relevant law was concerned.

Word "date" (i) Reckoning period of imprisonment suffered by a person, and (ii) computing period of limitation for filing an appeal/revision under criminal law Interpretation to be given to the word "date" in the said two cases Difference therein- Indicated Election Representation of the People Act, 1951 S. 8(3) Limitation Act, 1963, S. 12(2) r/w Articles 114, 115 and 131. **(Pradeep Kumar Sonthalia v. Dhiraj Prasad Sahu alias Dhiraj Sahu and another, (2021) 6 SCC 523)**

Article 22 -Preventive Detention Law and the meaning of ‘public order’

Hon’ble Apex Court while discussing the expression of ‘Law and Order’, ‘Public Order’ and ‘Security of the State’ discussed **Ram Manohar Lohia v. State of Bihar (1966)1 SCR 709: AIR 1966 SC 740,** in this matter the question before Hon’ble Apex Court arose under a preventive detention order made under Rule 30 of the India Defence Rules, which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. Hon’ble Supreme Court set out the distinction between a mere law and order disturbance and a public order disturbance as follows:

The expression public safety and interest between them indicate the range of action for maintaining security, peace and tranquility of India where as the expression defence of India and civil defence connote defence of India and its people against aggression outside and action of a person within a country.

It appears that just as a ‘public order’ is set to comprehends disorders of less gravity then those affecting ‘security of State’, likewise ‘law and order’ also comprehends disorders of less gravity then those affecting ‘public order’.

One has to imagine three concentric circles. Law and order represents the largest circle within which the next circle representing public order and the smallest circle represent security of State. It is easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of State. There can be no doubt that for public order to be disturb, there must in turn be pubic disorder. Mere contravention of law such as indulging and cheating and criminal breach of trust certainly affects law and order but before it can be set to affect public order, it must affect the community or the public at large. [**Banka Sneha Sheela v. State of Telangana, 2021 Cri.L.J. 3794 : AIR Online 2021 SC 406**]

Art. 254 - Repugnancy between statutes

The concept of repugnancy and its functioning under Article 254. The concept of repugnancy is meant to prevent the operation of two conflicting laws on the same field so as to result into uncertainty and inconsistency. Naturally, when a situation like that emerges, the subjects of law cannot be expected to approach a Court immediately and seek a resolution as to which of the two laws would operate on them. Thus, the Constitution provides for univocal and unambiguous solution in the form of Article 254 which makes it clear that in such circumstances, the law made by the Parliament ought to prevail and the subjects would be governed by it. However, it does not stop here. It goes beyond this basic declaration and gives an opportunity to the legislature to which the repugnant law belonged (State legislature) to revive it by obtaining the Presidential assent, thereby providing impetus to the competency of the State legislature to meet with the fallouts of repugnancy. It is crucial to note that Article 254 does not contemplate that the State law and law made by the Parliament must be the same in toto. For, to say that would render the whole objective of revival through Presidential assent as pointless exercise as it will serve no purpose for any State to enact a law exactly the same as the law made by the Parliament. In fact, any such dittoed and clichéd law made by the State legislature would be redundant. It (State) would rather follow the law made by the Parliament.

Indubitably, Article 254 contemplates coexistence of Union and State laws, even if repugnant, but only after the repugnancy is assented to by the President. Differently put, Article 254 is a manifestation of decentralized lawmaking and recognition of the competency of the State legislature to modulate dispensation as may be expedient to that State, upon seeking Presidential assent for such deviation. **[G. Mohan Rao vs. State of Tamil Nadu, AIR 2021 SC 3126]**

Arts. 32, 142 and Civil Services (Preliminary) Examination—Conduct of

It is the settled principle of law that policy decisions are open for judicial review by this Court for a very limited purpose and this Court can interfere into the realm of public policy so framed if it is either absolutely capricious, totally arbitrary or not informed of reasons.

Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the Courts to legislate. The Courts do interpret the laws and in such an interpretation, certain creative process is involved. The Courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The Court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right. Merely because as a matter of policy, if the 1st respondent has granted relaxation in the past for the reason that there was a change in the examination pattern/syllabus and in the given situation, had considered to be an impediment for the participant in the Civil Service Examination, no assistance can be claimed by the petitioners in seeking mandamus to the 1st respondent to come out with a policy granting relaxation to the participants who had availed a final and last attempt or have crossed the upper age by appearing in the Examination 2020 as a matter of right. **[Rachna vs. Union of India, AIR 2021 SC 3183]**

Art. 50—Separation of powers—Independence of Judiciary

An independent and impartial judiciary is the cornerstone of democracy. Judicial independence of the district judiciary is cardinal to the integrity of the entire system. The courts comprised in the district judiciary are the first point of interface with citizens. If the faith of the citizen in the administration of justice has to be preserved, it is to the district judiciary that attention must be focused as well as the 'higher' judiciary. Trial judges work amidst appalling conditions – a lack of infrastructure, inadequate protection, examples of judges being made targets when they stand up for what is right and sadly, a subservience to the administration of the High Court for transfers and postings which renders them vulnerable. The colonial mindset which pervades the treatment meted out to the district judiciary must change. It is only then that civil liberties for every stakeholder– be it the accused, the victims or civil society – will be meaningfully preserved in our trial courts which are the first line of defense for those who have been wronged.

The functioning of the judiciary as an independent institution is rooted in the concept of separation of powers. Individual judges must be able to adjudicate disputes in accordance with the law, unhindered by any other factors. Thus, "for that reason independence of judiciary is the independence of each and every judge". The independence of individual judges also encompasses that they are independent of their judicial superiors and colleagues.

Our Constitution specifically envisages the independence of the district judiciary. This is implicit in Article 50 of the Constitution which provides that the State must take steps to separate the judiciary from the executive in the public services of the State. The district judiciary operates under the administrative supervision of the High Court which must secure and enhance its independence from external influence and control. This compartmentalization of the judiciary and executive should not be breached by interfering with the personal decision-making of the judges and the conduct of court proceedings under them. There is no gainsaying that the judiciary should be immune from political pressures and considerations. A judiciary that is susceptible to such pressures allows politicians to operate with impunity and incentivizes criminality to flourish in the political apparatus of the State. **[Somesh Chaurasia vs. State of M.P., AIR 2021 SC 3563]**

CONTEMPT OF COURTS ACT

Sec. 2(b)—Civil contempt – Wilful and deliberate breach

It is true that an undertaking given by a party should be seen in the context in which it was made and (i) the benefits that accrued to the undertaking party; and (ii) the detriment/injury suffered by the counter party. It is also true that normally the question whether a party is guilty of contempt is to be seen in the specific context of the disobedience and the wilful nature of the same and not on the basis of the conduct subsequent thereto. While it is open to the court to see whether the subsequent conduct of the alleged contemnor would tantamount to an aggravation of the contempt already committed, the very determination of an act of contempt cannot simply be based upon the subsequent conduct.

But the subsequent conduct of the party may throw light upon one important aspect namely whether it was just the inability of the party to honour the commitment or it was part of a larger design to hoodwink the court. **[Suman Chadha vs. Central Bank of India, AIR 2021 SC 3709]**

CRIMINAL PROCEDURE CODE, 1973

Sec. 197 and IPC, Secs. 420, 467, 468, 471, 120B—

Section 197 of the CrPC seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognizance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. However, such sanction is necessary if the offence alleged against the public servant is committed by him “while acting or purporting to act in the discharge of his official duty” and in order 2 (1979) 4 SCC 177 3 (1993) 3 SCC 339 4 (2012) 3 SCC 64 6 to find out whether the alleged offence is committed “while acting or purporting to act in the discharge of his official duty”, the yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. **[Indra Devi vs. State of Rajasthan, AIR 2021 SC 3549]**

Section 200 to 204 of Criminal Procedure Code, 1973 : Frivolous or vexatious complaints : Duty and powers of Magistrate/trial court in preventing abuse of court process. Exercise of power under S. 165 of the Evidence Act to order production of material and put forth questions of any form at any time, demonstrating central role played by the Magistrate in the quest for justice and truth in criminal proceedings, to judiciously stem frivolous litigation.

Trial courts have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases - This would not only save judicial time that comes at the cost of public money, but would also protect the right to liberty that every person is entitled to under Art. 21 of the Constitution In this context, the trial Judges have as much, if not more, responsibility in safeguarding fundamental rights, as the Supreme Court.

Sections 200 to 204 & 482 of Criminal Procedure Code, 1973 : It was held that such second complaint is not only impermissible but would be violative of Art. 21 of the Constitution - Moreover in present case, conduct of complainant in filing a delayed second complaint in respect of the very same incident, suppressing material facts, and utilizing fresh proceedings to materially improve on his earlier version, in totality, amounted to gross abuse of the process of court. Summoning order on second complaint, quashed.

Article 21 of Constitution of India : Right of speedy trial includes not only the actual trial before the court, but also the preceding stages of inquiry and police investigation as well

Article 19 & 21 of the Constitution of India : Investigation into criminal offences and fundamental rights of individuals & Duty of Court : It is incumbent upon Court to preserve delicate balance between the power to investigate offences, and the fundamental right of the individual to be free from frivolous and repetitive criminal prosecutions forced upon him by the might of the State or by vexatious complaints.

Section 154 of the Criminal Procedure Code, 1973 : Second FIR in respect of an offence or different offences committed in the course of the same transaction. It was held that it is not only impermissible but would be violative of Art. 21 of the Constitution

Articles 136, 142 & 226 of Constitution of India : It is the constitutional duty of Court to quash criminal proceedings that are instituted by misleading the court and abusing its processes of law, only with a view to harass hapless litigants.

Article 21 of the Constitution guarantees that the right to life and liberty shall not be taken away except by due process of law. Permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings. As such, he would be forced to keep surrendering his liberty and precious time before the police and the courts, as and when required in each case. Such an absurd and mischievous interpretation of the provisions of the CrPC will not stand the test of constitutional scrutiny, and therefore cannot be adopted.

A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that Section 173(8) CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. However, it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC.

Thus, it is incumbent upon the Court to preserve the delicate balance between the power to investigate offences under the CrPC, and the fundamental right of the individual to be free from frivolous and repetitive criminal prosecutions forced upon him by the might of the State. If Respondent 2 was aggrieved by lack of speedy investigation in the earlier case filed by him, the appropriate remedy would have been to apply to the Magistrate under Section 155(2) CrPC for directions to the police in this regard. Filing a private complaint without any prelude, after a gap of six years from the date of giving information to the police, smacks of mala fides on the part of Respondent 2.

Immediately after the criminal justice system is set in motion, its course is almost entirely dependent on the judicial application of mind by the Magistrate. When a police complaint is filed on the commission of a cognizable offence under Section 154 CrPC, the Magistrate decides if the charge against the accused person is made out before the trial begins. Separate procedure is prescribed if the complaint under Section 200 CrPC is filed. The aforesaid provisions make it abundantly clear that the Magistrate carries the stream of criminal proceeding forward after it is

set in motion by the informant/complainant. Consequently, and automatically, the Magistrate also carries the responsibility for ensuring this stream does not carry forward in cases where it should not. The aforesaid powers bestowed on the Magistrate have grave repercussions on individual citizens' life and liberty. Thus, these powers also confer great responsibility on the shoulders of the Magistrate and must be exercised with great caution, and after suitable judicial application of mind.

Summoning of an accused in a criminal case is a serious and grave matter, and the Magistrate must only allow criminal law to take its course after satisfying himself that there is a real case to be made. 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.

No doubt, one of the objects behind the provisions of Section 202 CrPC is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant. Thus, it is clear that, on receipt of a private complaint, the Magistrate must first, scrutinise it to examine if the allegations made in the private complaint, inter alia, smack of an

instance of frivolous litigation; and second, examine and elicit the material that supports the case of the complainant.

It is said that every trial is a voyage of discovery in which the truth is the quest. In India, typically, the Judge is not actively involved in "fact-finding" owing to the adversarial nature of our justice system. However, Section 165 of the Evidence Act, 1872 by providing the Judge with the power to order production of material and put forth questions of any form at any time, marks the influence of inquisitorial processes in our legal system. This wide-ranging power further demonstrates the central role played by the Magistrate in the quest for justice and truth in criminal proceedings, and must be judiciously employed to stem the flow of frivolous litigation.

All of this leads to one inescapable conclusion. That the trial Judge has a duty under the Constitution and the CrPC, to identify and dispose of frivolous litigation at an early stage by exercising, substantially and to the fullest extent, the powers conferred on him.

Frivolous litigation should not become the order of the day in India. From misusing the public interest litigation jurisdiction of the Indian courts to abusing the criminal procedure for harassing their adversaries, the justice delivery system should not be used as a tool to fulfil personal vendetta. One needs to keep in mind that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. A falsely accused person not only suffers monetary damages but is exposed to disrepute and stigma from society. While running from pillar to post to find a lawyer to represent his case and arranging finances to defend himself before the court of law, he loses a part of himself.

Trial courts have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases. This would not only save judicial time that comes at the cost of public money, but would also protect the right to liberty that every person is entitled to under Article 21 of the Constitution. In this context, the trial Judges have as much, if not more, responsibility in safeguarding the fundamental rights of the citizens of India

as the highest court of this land. **(Krishna Lal Chawla and others v. State of Uttar Pradesh and another, (2021) 5 SCC 435)**

Sec. 313

It stands well settled that circumstances not put to an accused under Section 313, Cr.P.C. cannot be used against him, and must be excluded from consideration. In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt. This Court, time and again, has emphasized the importance of putting all relevant questions to an accused under Section 313 Cr.P.C. In Naval **Kishore Singh v. State of Bihar, (2004) 7 SCC 502**, it was held to an essential part of a fair trial observing as follows : "5……The questioning of the accused under Section 313 CrPC was done in the most unsatisfactory manner. Under Section 313 CrPC the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence…" **[Maheshwar Tigga vs. State of Jharkahand, 2021(116) ACC 266]**

Section 319 of the Criminal Procedure Code, 1973: When can additional accused be added and on what evidence?

Applying law laid down by Supreme Court to case on hand, held, trial court was justified in summoning private respondents herein to face trial as accused on basis of deposition of appellant. If on the basis of examination-in-chief of witness, court is satisfied that there is prima facie case against proposed accused, court may in exercise of powers under S. 319 CrPC array such person as accused and summon him to face trial

Considering the law laid down by the Supreme Court in *Hardeep Singh case*, it emerges that: (i) the court can exercise the power under Section 319 CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the court need not wait till the cross-examination of such a witness and the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC, provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial.

In *Rajesh, (2019) 6 SCC 368,* after considering the observations made by the Supreme Court in *Hardeep Singh case*, the Supreme 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 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 and even those persons named in the 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. **(Sartaj Singh v. State of Haryana and another, (2021) 5 SCC 337)**

Secs. 438, 156(3)—Rejection of anticipatory bail—Offence of cheating

It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the Accused, the High Court or the Sessions Court would be justified in cancelling the bail. **[M/s. S.B.W. Manor Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 3580]**

Section 438 Cr.P.C. Article 21, 142 of Constitution of India

The brief facts of the case were that High Court after considering facts and circumstances of the case rejected the application of anticipatory bail. It is after rejecting application that High Court choose fit to grant some relief to applicants while directing them to surrender before trial court to file regular bail application within 90 days by protecting them from any coercive action during that period.

It was held by the Apex Court, the impugned order passé by the High Court, in the present appeals, do not meet any of the standards as laid out above. We say so for the following reasons: firstly, after the dismissal of the anticipatory bail application, on the basis of the nature and gravity of the offence, the High Court has granted the impugned relief to the respondents without assigning any reasons. Secondly, in granting the relief for a period of 90 days, the Court has seemingly not considered the concerns of the investigating agency, complainant or the proviso under Section 438(1), Cr.P.C., which necessitates that the Court pass such an exceptional discretionary protection order for the shortest duration that is reasonably required. A period of 90 days, or three months, cannot in any way be considered to be reasonable one in the present facts and circumstances.

The impugned order therefore do not withstand legal scrutiny. The resultant effect of the High Court's order is that neither are the respondents found entitled to pre-arrest bail, nor can they be arrested for a long duration. During the said duration they can roam freely without being apprehensive of coercive action. We are thus of the view that the High Court committed a grave error in passing such protection to the respondents accused. Such a direction by the High Court exceeds its judicial discretion and amounts to judicial largesse, which the courts do not possess.
For the aforestated reasons Hon'ble Court allowed the appeals and the impugned order of Hon'ble High Court dated 8-2-2021, to the extent of granting protection for 90 days to the respondents-accused was set aside. [**Nathu Singh v. State of Uttar Pradesh & Ompal Singh v. State of Uttar Pradesh, 2021 Cri.L.J. 2593 : AIR Online 2021 SC 260**]

Section 438 and Sections 364, 304, 506 IPC—Anticipatory bail— Setting aside of— Allegations under Ss. 364, 304, 506, of IPC

Proceedings stayed by Supreme Court, order of grant of bail stands in conflict with stay order. Bail rejected. Liberty granted to apply for regular bail. **[Sanjay Kumar Gupta vs. State of U.P., AIR 2021 SC 2968]**

Sec. 439—Bail—Grant of

Charges of embezzlement against Branch Manager and Chief Manager of Bank. Accused is in custody from almost 15 months. Investigation is over and accused cooperated in investigation. Trial also has not progressed. Bail granted**. [Sudhir Kumar Kad vs. Central Bureau of Investigation (CBI), AIR 2021 SC 2614]**

Section 439 of the Criminal Procedure Code, 1973 : Bail in conspiracy to Murder - Matters to be considered for grant or denial of bail.

Grant of bail by High Court to accused, alleged to be contract killer and sharpshooter in conspiracy to murder husband of appellant. However, High Court granted bail to accused on very liberal terms, such as execution of personal bond to satisfaction of jail authorities and furnishing of sureties within a month of his release. The High Court simply ignored antecedents of accused and potential to repeat his acts by organizing his criminal activities. Further, High Court overlooked several aspects, such as potential threat to witnesses, forcing trial court to grant protection. It is important for courts to recognise potential threat to life and liberty of victims/witnesses, if such accused is released on bail. Hence, High Court's order granting bail to accused, set aside **(Sudha Singh v. State of Uttar Pradesh and another, (2021) 4 SCC 781)**

Section 439 of the Criminal Procedure Code, 1973: Bail on ground of parity with co-accused - While applying principle of parity, court cannot exercise its powers in a capricious manner and has to consider totality of circumstances before granting bail. Parity while granting bail must focus upon role of accused, and not only on weapon carried by accused. Merely observing that another accused who was granted bail was armed with similar weapon (as done by High Court in present case) is not sufficient to determine whether bail can be granted on basis of parity. In deciding aspect of parity, role attached to accused, their position in relation to incident and to victims is of utmost importance.

Adjudication of facts - Extent to which necessary : Though court considering bail application does not need to launch into detailed evaluation of facts on merits since criminal trial is still to take place, yet court granting bail cannot be oblivious of its duty to apply judicial mind and to record reasons, brief as they may be, for purpose of deciding whether or not to grant bail. Judicial discretion in granting or refusing bail, as in case of any other discretion which is vested in court as judicial institution, is not unstructured. Duty to record reasons is significant safeguard which ensures that discretion which is entrusted to court is exercised in judicious manner. Recording of reasons in judicial order ensures that thought process underlying order is subject to scrutiny and that it meets objective standards of reason and justice. Thus, bail order which does not contain reasons for prima facie concluding that bail should be granted is liable to be set aside for non-application of mind. **[Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli) and another, (2021) 6 SCC 230]**

Sections 439, 357, 250(1), 372 and 235(2) of the Criminal Procedure Code, 1973 Determination and payment of compensation as a pre-condition for grant of bail :

Compensation cannot be determined at stage of consideration of grant of bail. However, this does not rule out the imposition of other monetary conditions as precondition(s) for grant of bail.

It has been held that after going through Ss. 357, 250(1), 372 and 235(2) CrPC, being different provisions dealing with aspect of compensation under CrPC, the objective is clear that in cases of offences against body, compensation to victim should be a methodology for redemption - Similarly, to prevent unnecessary harassment, compensation (to accused) has been provided where meaningless criminal proceedings had been started. Hence, compensation cannot be determined at the stage of grant of bail. However, it does not mean that no monetary condition can be imposed for grant of bail. It is so as there are cases of offences against property or otherwise. However, that cannot be compensation to be deposited and disbursed as pre-condition of person being enlarged on bail. Hence, the direction in impugned order of High Court to re deposit of compensation cannot be sustained. **(Dharmesh alias Dharmendra alias Dhamo Jagdishbhai Bhagubhai Ratadia and another v. State of Gujarat, (2021) 7 SCC 198)**

Section 439

At the state of framing of the charge and/or considering the discharge application, the mini trial is not permissible. **[State of Rajasthan vs. Ashok Kumar Kashyap, 2021(116) ACC 638]**

Section 439

It is necessary for courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims.

There is no doubt that liberty is important, even that of a person charged with crime but it is important for the courts to recognise the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail. **[Sudha Singh vs. State of U.P. and another, 2021(116) ACC 644]**

<u>Section 439 of the Criminal Procedure Code, 1973 :</u> Bail - Successive bail applications upon denial/cancellation of bail on earlier occasions

Grant of bail by High Court on fourth bail application of accused without assigning any reasons - Accused main conspirator in crime leading to killing of one person - Earlier grant of bail to accused by High Court was cancelled by Supreme Court on finding of prima facie material against him - Thereafter, mere examination of principal star witness (wife of deceased) cannot be considered as change in circumstance for High Court to reconsider fourth bail application of accused and enlarge him on bail. Therefore, impugned order passed by High Court is not sustainable, hence, set aside.

It has been held that by earlier order also, High Court had enlarged Respondent 2 on bail which was cancelled by Supreme Court and thereafter statement of witnesses was recorded Though appellant herein i.e. wife of deceased was examined and contention was put forth with regard to her statement, it is not evidence in its entirety and it is premature to conclude on basis of a stray sentence Further, merely classifying appellant as principal star witness and referring to her statement is of no consequence since entire evidence will have to be assessed by trial court before arriving at conclusion - When Supreme Court at an earlier instance took note of all aspects and documents and concluded that there is prima facie material against Respondent 2, mere examination of appellant cannot be considered as a change in circumstance for High Court

to consider fourth bail application of Respondent 2 and enlarge him on bail. **(Mamta Nair v. State of Rajasthan, (2021) 7 SCC 442)**

Section 482 of Criminal Procedure Code, 1973 : Quashment in cheque dishonour cases - Plea of time-barred debt, as basis for quashment of complaint Rejection of, when the contention urged requires in-depth examination, it being a mixed question of law and fact and can be examined only during trial - Presumption incorporated in S. 139 NI Act in favour of the complainant - Effect of

It was held that High Court erred in quashing the complaint on the ground that the debt or liability was barred by limitation and, therefore, there was no legally enforceable debt or liability against the accused - Case before the High Court was not of such a nature which could have persuaded the High Court to draw such a definite conclusion at this stage Further, whether the debt was time-barred or not can be decided only after the evidence is adduced, it being a mixed question of law and fact Further, in cheque bouncing cases, the initial presumption incorporated in S. 139 NI Act favours the complainant and the accused can rebut the said presumption and discharge the reverse onus by adducing evidence - Negotiable Instruments Act, 1881 - Ss. 138, 139 and 142 — Dishonoured cheque whether issued in respect of time-barred debt - Determination of Is a mixed question of law and fact - Effect of presumption under S. 139 - Contract Act, 1872- S. 25(3) - Debt whether time-barred - Determination of Is a mixed question of law and fact

Limitation Act, 1963-S. 18-Acknowledgment - What can be - Amount borrowed shown in balance sheet - May amount to acknowledgment and the creditor might have a fresh period of limitation from the date on which the acknowledgment was made - The same has to be determined by examination of the facts in each case. **[S Natarajan v. Sama Dharman and another, (2021) 6 SCC 413]**

Role of Lower Judiciary in Preventing abuse of Court Process-

Thus, it is clear that, on receipt of a private complaint, the Magistrate must first, scrutinise it to examine if the allegations made in the private complaint, inter alia, smack of an instance of frivolous litigation; and second, examine and elicit the material that supports the case

of the complainant. **[Krishna Lal Chawla and others vs. State of U.P. and others, 2021(116) ACC 258 : (2021) 5 SCC 435]**

Draft Rules of Criminal Practice 2021

This Court is of the opinion that while furnishing the list of statements, documents and material objects under sections 207/208, Cr.P.C. 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. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under the Cr.P.C. for their production during the trial, in the interest of justice. It is directed accordingly; the draft rules have been accordingly modified.

The presiding officer therefore, should decide objections to questions, during the course of the proceeding, or failing it at the end of the deposition of the concerned witness. This will result in decluttering the record, and, what is more, also have a salutary effect of preventing frivolous objections. In given cases, if the Court is of the opinion that repeated objections have been taken, the remedy of costs, depending on the nature of obstruction, and the proclivity of the line of questioning, may be resorted to. Accordingly, the practice mandated in Bipin Shantilal Panchal shall stand modified in the above terms. **[In Re: To issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials vs. State of Andhra Pradesh and other, 2021(116) ACC 695]**

Criminal Procedure Code 1973- Sec. 438

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 (supra), 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.

We cannot be oblivious to the circumstances that Courts are faced with day in and day out, while dealing with anticipatory bail applications. Even when the Court is not inclined to grant anticipatory bail to an accused, there may be circumstances where the High Court is of the opinion that it is necessary to protect the person apprehending arrest for some time, due to exceptional circumstances, until they surrender before the Trial Court. For example, the applicant may plead protection for some time as he/she is the primary caregiver or breadwinner of his/her family members, and needs to make arrangements for them. In such extraordinary circumstances, when a strict case for grant of anticipatory bail is not made out, and rather the investigating authority has made out a case for custodial investigation, it cannot be stated that the High Court has no power to ensure justice. It needs no mentioning, but this Court may also exercise its powers under Article 142 of the Constitution to pass such an order.

However, such discretionary power cannot be exercised in an untrammeled manner. 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 Uttar Pradesh and others, 2021(6) ADJ 268(SC)]**

Criminal Procedure Code 1973- Sec. 31

While closing on the matter, we deem it appropriate to reiterate what was expounded in the case of Nagaraja Rao (supra), that it is legally obligatory upon the Court of first instance, while awarding multiple punishments of imprisonment, to specify in clear terms as to whether the sentences would run concurrently or consecutively. It needs hardly an emphasis that any omission to carry out this obligation by the Court of first instance causes unnecessary and avoidable prejudice to the parties, be it the accused or be it the prosecution. **[Sunil Kumar @ Sudhir Kumar and another vs. State of Uttar Pradesh, 2021(6) ADJ 273(SC)]**

Section 482 Cr.P.C., Section 147, 148, 149, 406, 329, 386 IPC

In this case Hon’ble High Court in exercise of powers under section 482 Cr.P.C. has quashed the criminal proceedings for the offences under sections 147, 148, 149, 406, 329,386 IPC

It was held by the Hon’ble Supreme Court, it is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C. quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the

independent witnesses and even statement of the accused persons, has filed the charge-sheet before the Learned Magistrate for the offences under Section 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 Cr.P.C. was at the state of FIR in that case the allegations in the FIR/ Complaint only are required to be considered and whether a cognizable offence is disclosed or not s required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into the considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The Apex Court quashing the proceedings under Section 406 IPC is premature, aspect need to be considered during trial, order of quashing unsustainable. [**Kaptan Singh v. State of Uttar Pradesh, 2021 Cri.L.J. 3922: AIR Online 2021 SC 512**]

Sec. 438—Constitution of India, Arts. 21, 142—Anticipatory bail—Entitlement—

The sole question to be answered by the Court in the present appeals relates to whether the High Court, while dismissing the anticipatory bail applications of the respondents, could have granted them protection from arrest.

The considerations on the basis of which the Court is to exercise its discretion to grant relief under Section 438, Cr.P.C. have been decided by this Court in a catena of judgments and needs no restatement.

A recent Constitution Bench judgment of this Court, in Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1 has clarified the extent of power exercisable by Courts under Section 438, Cr.P.C. The Court ultimately held as follows:

> "91.1. Regarding Question 1, this Court holds that the protection granted to a person under Section 438 CrPC should not invariably be limited to a fixed period; it should enure in favour of the accused without any restriction on time. Normal conditions

under Section 437(3) read with Section 438(2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event), etc.

91.2. As regards the second question referred to this Court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so." (emphasis supplied)

The Constitution Bench in Sushila Aggarwal (supra) has authoritatively held that when a Court grants anticipatory bail under Section 438, Cr.P.C., the same is ordinarily not limited to a fixed period and would subsist till the end of the trial. However, it was clarified by the Court that if the facts and circumstances so warranted, the Court could impose special conditions, including limiting the relief to a certain period.

It is therefore clear that a Court, be it a Sessions Court or a High Court, in certain special facts and circumstances may decide to grant anticipatory bail for a limited period of time. The Court must indicate its reasons for doing so, which would be assailable before a superior Court. To do so without giving reasons, would be contrary to the pronouncement of this Court in Sushila Aggarwal (supra). If the High Court had therefore decided to allow the anticipatory bail application of the respondentsaccused herein, albeit for a limited period of 90 days, the task before this Court would have been somewhat easier. We would only have had to assess the reasons assigned by the Court, if any, for the imposition of such special condition in terms of the judgment in Sushila Aggarwal (supra).

In the present appeals, the High Court, after considering the facts and circumstances of the case, particularly the gravity and severity of the accusations against the respondents, rejected the application of the respondents accused. It is after rejecting the application that the High Court chose fit to grant some relief to the respondents while directing them to surrender before the Trial Court to file a regular bail application within 90 days, by protecting them from any coercive action during that period. The appellants complainants are aggrieved by the same and are challenging the power of the Court to pass such a protective order after the dismissal of the anticipatory bail application.

To determine whether the Court can pass such orders, it is necessary to first analyze the relevant provision, viz., Section 438, Cr.P.C. The relevant portion of Section 438, Cr.P.C. is extracted below:

438. Direction for grant of bail to person apprehending arrest (1) Where any person has reason to believe that he may be arrested on an accusation of having committed a nonbailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following

factors, namely: xxx either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub Section or has rejected the application for grant of anticipatory bail, it shall be open to an officer incharge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

xxx (2) When the High Court or the Court of Session makes a direction under subsection (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including xxx (3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under subsection (1).

The focus of Section 438, Cr.P.C., when read in its entirety, clearly relates to the grant of anticipatory bail by the Court. Section 438(1) explicitly lays down certain factors that need to be considered by the Court before granting the relief sought. Section 438(2) lays down the conditions that may be imposed by the Court while granting the relief. Section 438(3) dictates the consequences of the grant of relief under the Section.

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.

This Court, in the Constitution Bench decision of this Court in Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565, which was recently upheld and followed by this Court in Sushila Aggarwal (supra), held as follows:

> “26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An overgenerous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned…”

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 (supra), 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.

Court cannot be oblivious to the circumstances that Courts are faced with day in and day out, while dealing with anticipatory bail applications. Even when the Court is not inclined to grant anticipatory bail to an accused, there may be circumstances where the High Court is of the opinion that it is necessary to protect the person apprehending arrest for some time, due to exceptional circumstances, until they surrender before the Trial Court. For example, the applicant may plead protection for some time as he/she is the primary caregiver or breadwinner of his/her family members, and needs to make arrangements for them. In such extraordinary circumstances, when a strict case for grant of anticipatory bail is not made out, and rather the investigating authority has made out a case for custodial investigation, it cannot be stated that the High Court has no power to ensure justice. It needs no mentioning, but this Court may also exercise its powers under Article 142 of the Constitution to pass such an order.

However, such discretionary power cannot be exercised in an untrammeled manner. 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.

The impugned orders passed by the High Court, in the present appeals, do not meet any of the standards as laid out above. We say so for the following reasons: firstly, after the dismissal of the anticipatory bail application, on the basis of the nature and gravity of the offence, the High Court has granted the impugned relief to the respondents without assigning any reasons. Secondly, in granting the relief for a period of 90 days, the Court has seemingly not considered the concerns of the investigating agency, complainant or the proviso under Section 438(1), Cr.P.C., which necessitates that the Court pass such an exceptional discretionary protection order for the shortest duration that is reasonably required. A period of 90 days, or three months, cannot in any way be considered to be a reasonable one in the present facts and circumstances. **[Nathu Singh vs. State of U.P., AIR 2021 SC 2606 : 2021 Cri.L.J. 2593 : 2021(6) ADJ 268 (SC)]**

Sec. 482— Quashing of FIR—Offence of cheating—FIR is outcome of civil nature dispute in family—

No over-bearing circumstances for which accused ought to be prosecuted even after family entered into settlement. In view of settlement practically no chance of recording conviction. Entire exercise of trial would be exercise in futility. FIR liable to be quashed. **[Pramod Kumar Agrawal vs. State of M.P., AIR 2021 SC 2926]**

Secs. 482, 202— Quashing of complaint

The legislature in its wisdom has itself placed the public servant on a different pedestal, as would be evident from a perusal of proviso to Section 200 of the Code of Criminal Procedure. Object of holding an inquiry / investigation before taking cognizance, in cases where accused resides outside the territorial jurisdiction of such Magistrate, is to ensure that innocents are not harassed unnecessarily. By virtue of proviso to Section 200 of Code of Criminal Procedure, the Magistrate, while taking cognizance, need not record statement of such public servant, who has filed the complaint in discharge of his official duty. Further, by virtue of Section 293 of Code of Criminal Procedure, report of the Government Scientific Expert is, per se, admissible in evidence. The Code of Criminal Procedure itself provides for exemption from examination of such witnesses, when the complaint is filed by a public servant.

Supreme Court does not find any merit in the submissions of the learned Counsel that proceedings are to be quashed only on the ground that, the Magistrate has taken cognizance without conducting inquiry and ordering investigation. In absence of showing any prejudice caused to the appellant at this stage, the same is no ground to quash the proceedings in exercise of power under Section 482 of the Code of Criminal Procedure. **[M/s. Cheminova India Ltd. vs. State of Punjab, AIR 2021 SC 3701]**

ENVIRONMENT LAW

Environment Law - Environmental Clearance/NOC/Environment Impact Assessment clearance

Environment Law - Development vis-à-vis Ecology: National, Urban and Rural Development : Economic development should not be allowed at the cost of ecology or by

causing widespread environmental destruction, the necessity to preserve ecology and environment should not hamper economic and other development. The traditional concept that development and ecology are opposed to each other is no longer acceptable.

Roads and Highways-Planning Commission Manual of Specifications and Standards for Two-Laning of Highways through Public Private Partnership-S. 10 r/w Para 2.3-Term "right of way". Toll plazas were held as included in the "right of way". There is no merit in the contention that amenities such as toll plazas and rest houses cannot be part of the "right of way".

While economic development should not be allowed at the cost of ecology or by causing widespread environmental destruction, the necessity to preserve ecology and environment should not hamper economic and other development. Both development and environment must go hand in hand. In other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. The traditional concept that development and ecology are opposed to each other is no longer acceptable.

Having held that adoption of segmentation of a project cannot be adopted as a strategy to avoid environmental clearance impact assessment, the question that arises is whether segmentation of a National Highway beyond 100 km is impermissible under any circumstance. As the Court lacks the expertise of deciding upon this issue, an expert committee should examine the permissibility of segregation. **(National Highways Authority of India v. Pandarinathan Govindarajulu and another, (2021) 6 SCC 693)**

FAMILY AND PERSONAL LAWS

Custody of Child/Minor - Visitation Rights : Welfare of the child is paramount consideration. Child has human right to have love and affection of both parents. Visitation rights and contact rights of parent not given child's custody. It was held that the Court must clearly define nature, manner and specifics of visitation and contact rights of such parent. Reasons must be assigned if one parent is to be denied any visitation rights or contact with child and Parents should reach to an arrangement so that child can live in an environment reasonably conducive to child's development.

It was further held that visitation rights should be granted in such a way that child and parent who is granted visitation rights, can meet in an atmosphere where they can be like parent and child. This atmosphere may be found in home of parent or in a park or a restaurant or any other place where child and parent are comfortable. That atmosphere can definitely not be found in office of District Legal Services Authority. **[Amyra Dwivedi (Minor) through her mother, Pooja v. Abhinav Dwivedi and another, (2021) 4 SCC 698]**

INDIAN EVIDENCE ACT, 1872

Section 3 of Evidence Act (Last seen theory), Motive

Brief facts were as such that in a murder case accused along with co accused allegedly allured deceased away on pretext of watching cinema than after committed his murder, neither of the witnesses claimed to have seen deceased and accused at public place, there was absence of independent witness to the occurrence and the witnesses deposed that they lastly saw deceased alive in company of accused two days prior to recovery of the body of deceased. Doctor opined the time elapsed since death of deceased was 36 to 72 hours. Medical evidence corroborated version of prosecution case that deceased was murdered on date when he was last seen with accused. Accused was unable to offer any explanation as to circumstance in which he departed from the company of deceased.

The Hon'ble Supreme Court held that the applicability of last seen theory should not be weighed in isolation or be segregated from other evidence led by prosecution, this theory should rather be applied taking into account case of prosecution in its entirety. The courts have to not only consider factum of last seen, but also circumstances that preceded and followed from point of deceased being so last seen in presence of accused.

An important facet of the cases related to circumstantial evidence is presence of motive. In this case motive attributed to accused is that he murdered deceased because deceased allegedly having an illicit affair with his sister. There was testimony of witness that initially there were cordial and friendly relation between accused and deceased's family but same became sour afterwards corroborated by fallow villager. Father of the deceased deposed that a panchayat was called regarding illicit relationship of deceased with sister of accused. Although the fact of deceased having an affair with sister of accused not established beyond reasonable doubt, but

fact of calling panchayat so that issue does not spiral out of control suggest that accused carried motive to eliminate deceased.

In this matter motive was proved and the last seen theory was held reliable and the conviction of accused was held proper. [**Surajdeo Mahto and another v. State of Bihar, 2021 Cri.L.J. 3831: AIR Online 2021 SC 419]**

Section 3 - Evidence Act – Testimony of disabled Prosecutrix

While changes in the law on the books mark a significant step forward, much work still needs to be done in order to ensure that their fruits are realized by those for whose benefit they were brought. In this regard, we set out below some guidelines to make our criminal justice system more disabled-friendly:

(i) The National Judicial Academy and state judicial academies are requested to sensitize trial and appellate judges to deal with cases involving survivors of sexual abuse. This training should acquaint judges with the special provisions, concerning such survivors, such as those outlined above. It should also cover guidance on the legal weight to be attached to the testimony of such witnesses/ survivors, consistent with our holding above. Public prosecutors and Standing Counsel should also undergo similar training in this regard. The Bar Council of India can consider introducing courses in the LL.B program that cover these topics and the intersectional nature of violence more generally;

(ii) Trained special educators and interpreters must be appointed to ensure the effective realization of the reasonable accommodations embodied in the Criminal Law Amendment Act, 2013. All police stations should maintain a database of such educators, interpreters and legal aid providers, in order to facilitate easy access and coordination;

(iii) The National Crimes Record Bureau should seriously consider the possibility of maintaining disaggregated data on gender-based violence. Disability must be one of the variables on the basis of which such data must be maintained so that the scale of the problem can be mapped out and tailored remedial action can be taken;

(iv) Police officers should be provided sensitization, on a regular basis, to deal with cases of sexual violence against women with disabilities, in an appropriate way. The training should cover the full life cycle of a case involving a disabled survivor, from enabling them to register complaints, obtain necessary accommodations, medical attention and suitable legal

representation. This training should emphasize the importance of interaction directly with the disabled person concerned, as opposed to their care-taker or helper, in recognition of their a gency; and

(v) Awareness-raising campaigns must be conducted, in accessible formats, to inform women and girls with disabilities, about their rights when they are at the receiving end of any form of sexual abuse.

We hasten toad that these suggestions are not a reflection of the manner in which the investigation, enquiry and trial were conducted in the instant case. They simply represent our considered view on the systemic reforms needed to ensure that cases such as the instant one are dealt with in the most appropriate way.

A survey and analysis of High Court judgments by Saptarshi Mandal indicates that the testimony of the disabled witnesses is devalued by not recording the testimony of the prosecutrix at all; or recording it without adherence to correct legal procedure, thereby rendering it ineffectual; dismissal of the testimony for its lack of intelligibility or for not being supported by the condition of her body. **[Patan Jamal Vali vs. State of A.P., 2021(116) ACC 671]**

Section 32, Section 302 and 34 Indian Penal Code

In present case Hon'ble Supreme Court while discussion the evidentiary value of dying declaration. Held that in the concerned matter the person who informed police station regarding admission of deceased in hospital stating that both hands including fingers were totally burned. The prior permission of deceased was not taken before recording dying declaration. The son and daughter in law deceased, neighbours and other witnesses from vicinity not supported prosecution case the ability of deceased to talk or narrate incriminating incident was not establish and the dying declaration was not in questions and answers form, the deceased was administered highly sedative pain killers and sustained with 80 percent burn injury the possibility of her being in state of delusion and hallucination cannot be ruled out. Apart from that judicial and executive magistrate was not called for recording dying declaration inspite of having sufficient time. There were serious contradiction between the statement of doctor and police officer recording dying declaration in respect of nature of burned injuries suffered on different body parts. There was a serious anomaly that FIR was not filled immediately after the incident and for above reasons Hon'ble Apex Court held that dying declaration cannot be reliable.

In the matter while appreciating the evidence in this murder case the Apex Court held that there were no evidence to prove the incident prior to pouring kerosene oil and setting the deceased on fire. The testimony of son of deceased revealed that she lost conciseness and was unable to speak at time when she was rushed to hospital. The motive and dying declaration as above was not established the son himself stated that mother committed suicide. Hon'ble Apex Court held that order of High Court convicting accused only on basis of dying declaration is totally erroneous and based upon misreading of evidence on record. The accused was acquitted. [**Lachma s/o Chandyanaika v. State of Karnataka, 2021 Cri.L.J. 2900 : AIR Online 2021 SC 241]**

Section 32 (1) : Multiple dying declarations - Evidentiary value and Duty of court in such cases. Each dying declaration has to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of contents of the other. The Court has to consider each of them in its correct perspective and satisfy itself as to which one of them reflects true state of affairs, and accordingly adjudicate the matter

It was held that on evaluation of both dying declarations independently, second dying declaration reflects true state of affairs and contents are supported by medical evidence and injuries sustained by deceased Further, defence came out with false case of accidental fire, which, as such, is not supported by any other reliable evidence - On the contrary, evidence speaks otherwise Therefore, when accused husband came with false defence and second dying declaration is corroborated by other surrounding circumstances and evidence and after independent evaluation of both dying declarations, when High Court has found that second declaration is reliable and inspiring confidence and thereafter when High Court has convicted accused husband, it cannot be said that High Court has committed any error. Hence, reversal of acquittal confirmed.

Section 300 of the Penal Code, 1860: Fourthly, Imminently dangerous act likely to cause death or bodily injury likely to cause death - Conscious act of pouring kerosene on wife and setting her alight by husband, fully established. Defence theory of accidental burning, not established at all. It was held that the, present case clearly falls under S. 300 Fourthly Hence, conviction under S. 302, confirmed

It was held that it emerges from evidence on record, that husband poured kerosene on deceased and not only poured kerosene but also set her ablaze by matchstick Merely because thereafter husband might have tried to extinguish fire, that will not bring the case out of cl. fourthly of S. 300 IPC Act of husband pouring kerosene on deceased and thereafter setting her ablaze by matchstick is imminently dangerous which, in all probability, will cause death. Therefore, the High Court rightly convicted husband under S. 302 IPC **(Nagabhushan v. State of Karnataka, (2021) 5 SCC 222)**

INDIAN PENAL CODE, 1860

Secs. 53, 323, 147—Sentence—Hurt and rioting—

Section 146 defines the offence of rioting. This offence is said to be committed when the unlawful assembly or any member thereof in prosecution of the common object of such assembly uses force or violence. It may be noticed here that every member of the unlawful assembly is guilty of the offence of rioting even though he may not have himself used force or violence. There is thus vicarious responsibility when force or violence is used in prosecution of the common object of the unlawful assembly.

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. **[Lakshman Singh vs. State of Bihar (now Jharkhand), AIR 2021 SC 3553]**

Sec. 153A, 505

Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquility, the law needs to step in to prevent such an activity. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153 A IPC and the prosecution has to prove the existence of mens rea in order to succeed. *Balwant Singh vs. State of Punjab, (1995)3 SCC 214.*

The gist of the offence under Section 153 A IPC is the intention to promote feelings of enmity or hatred between different classes of people. The intention has to be judged primarily by the language of the piece of writing and the circumstances in which it was written and published. The matter complained of within the ambit of Section 153A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a

sentence here and a sentence there and connect them by a meticulous process of inferential reasoning **Manazar Sayeed Khan vs. State of Maharashtra, (2007) 5 SCC 1.**

In **Bilal Ahmed Kaloo v. State of A.P., (1977)7 SCC 431**, this Court analysed the ingredients of Sections 153 A and 505 (2) IPC. It was held that Section 153 A covers a case where a person by "words, either spoken or written, or by signs or by visible representations", promotes or attempts to promote feeling of enmity, hatred or ill will. Under Section 505 (2) promotion of such feeling should have been done by making a publication or circulating any statement or report containing rumour or alarming news. Mens rea was held to be a necessary ingredient for the offence under Section 153 A and Section 505 (2). The common factor of both the sections being promotion of feelings of enmity, hatred or ill will between different religious or racial or linguistics or religious groups or castes or communities, it is necessary that at least two such groups or communities should be involved. It was further held in Bilal Ahmed Kaloo (supra) that merely inciting the feelings of one community or group without any reference to any other community or group Page cannot attract any of the two sections. The Court went on to highlight the distinction between the two offences, holding that publication of words or representation is sine qua non under Section 505. It is also relevant to refer to the judgment of this Court in **Ramesh v. Union of India, (1988)1 SCC 668**, in which it was held that words used in the alleged criminal speech should be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. The standard of an ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus" should be applied.

This Court in **Pravasi Bhalai Sangathan v. Union of India and others, (2014)11 SCC 477,** had referred to the Canadian Supreme Court decision in Saskatchewan (Human Rights Commission) v. Whatcott. In that judgment, the Canadian Supreme Court set out what it considered to be a workable approach in interpreting "hatred" as is used in legislative provisions prohibiting hate speech. The first test was for the Courts to apply the hate speech prohibition objectively and in so doing, ask whether a reasonable person, aware of the context and circumstances, would view the expression as (1988) 1 SCC 668 (2014) 11 SCC 477 [2013] 1 SCR 467 10 | P a g e exposing the protected group to hatred. The second test was to restrict interpretation of the legislative term "hatred" to those extreme manifestations of the emotion described by the words "detestation" and "vilification". This would filter out and protect speech which might be repugnant and offensive, but does not incite the level of abhorrence, delegitimization and rejection that risks causing discrimination or injury. The third test was for Courts to focus their analysis on the effect of the expression at issue, namely, whether it is likely to expose the targeted person or group to hatred by others. Mere repugnancy of the ideas expressed is insufficient to constitute the crime attracting penalty. **[Patricia Mukhim vs. State of Meghalaya and others, 2021(116) ACC 296]**

Sections 302/120-B/34 of the Indian Penal Code, 1860 - Murder of girl child - All three witnesses who were claimed to be eyewitnesses to occurrence and on whose testimonies, reliance was placed by prosecution, could not be relied. Further, not only are circumstances established by prosecution not conclusive in nature but they also do not form cogent and consistent chain so as to exclude every other hypothesis except guilt of

accused persons. Therefore it was held that the case of prosecution is not proved beyond reasonable doubt.

High Court upholding conviction of accused persons However, two eyewitnesses (uncle and brother of deceased), close relations of deceased victim, turned hostile and there is nothing on record to indicate that they were either put under any pressure or that there was any element of suspicion. Again, in circumstances on record, it is extremely difficult to accept father of deceased to be eyewitness to occurrence Observations made by High Court while placing reliance on his version, were totally incorrect. Hence, accused persons are entitled to benefit of doubt. Therefore, conviction and sentence recorded against each accused, stands set aside.

Further, certain salient features of instant case are: (1) though post mortem report discloses that victim was sexually assaulted, FSL Report on record does not establish any connection of accused with sexual assault on deceased victim; (2) dead body of victim was found lying in an open field; (3) record is again not clear as to when present appellants were arrested and how and in what manner their disclosure statements led to recovery of dead body of victim.

Also, there are circumstances like recovery of clothing apparel as well as tiffin box, etc. belonging to victim. However, such recoveries by themselves, in absence of any other material evidence on record pointing towards guilt of accused, cannot be termed sufficient to hold that case was proved beyond reasonable doubt.**[Yogesh v. State of Haryana, (2021) 5 SCC 730]**

Sections 302 and 224 r/w S. 511 of the Indian Penal Code, 1860 - Circumstantial evidence - Last seen theory : Accused allegedly killed the deceased Head Constable in the office of the Video Piracy Cell. At the relevant point of time the accused and the deceased found alone inside the premises of the office of the Video Piracy Cell. Resultantly, the accused held liable to explain under what circumstances the deceased had died. In present case, last seen theory was held to stand proved against the appellant and considering absence of explanation on his part as to how the deceased had died, requisite chain held to be completed and, thus, his conviction affirmed

Perusal of the evidence in its entirety clearly shows that the offence had taken place at 2.00 a.m. by which time PW 1 had already left the place of occurrence and at the relevant point of time the accused and the deceased were alone inside the premises of the office of the Video Piracy Cell. Under the above circumstance, it was for the accused to explain under what

circumstances the deceased was dead. The accused has failed to offer any cogent explanation in this regard. Chain of circumstances has been completely proved and established beyond reasonable doubt. Therefore, there is no reason to interfere with the concurrent findings of the courts below. **[Shanmugam v. State by Inspector of Police, Tamil Nadu, (2021) 5 SCC 810]**

Section 302 IPC, Sections 7A, 94 of Juvenile Justice (Care & Protection of Children) Act and Rule 12 of Juvenile Justice (Care & Protection of Children) Rules 2007

Hon'ble Apex Court while deciding the matter related to the determination of Juvenility as on the date of incident held that the procedure prescribed in Rule 12 is not materially different than the provisions of Section 94 of the Act to determine the age of the person. The importance of ossification test has not undergone change with the enactment of section 94 of the Act. The reliability of ossification test remains vulnerable as was under rule 12 of the Rules. It was held that at the stage when a person of around 18 years of age the ossification test can be said to be relevant for determining the approximate age of a person in conflict with law. However, when the person is around 40 to 55 year of age, the structure of bone cannot be helpful for determining of age. Thus, when the ossification test cannot yield trustworthy and reliable result, such test cannot be made a basis to determine the age of person concerned on the date of incident. Therefore, it was held that in the absence of any reliable trustworthy medical evidence to find out the age of appellant, the ossification test conducted in year 2020 when the appellant was 55 years of age cannot be conclusive to declare him as a juvenile on the date of the incident.

In the matter while examining the principle of reliability of the testimony of the witness in murder case it was held that merely because prosecution witness was not believed in respect of another accused, the testimony of said witness cannot be disregarded qua main accused. It was also held that it is not necessary for prosecution to examine all witnesses who might have witness the occurrence. It is quality of evidence which is relevant in criminal trial and not quantity. Therefore, non examination of such witness cannot be said to be of any consequence.

In the matter it was held that as per post mortem report, deceased suffered multiple injury which shows attack by more than one person and the nature of injuries show that hard and blunt object as well as sharp edged weapons were used to inflict injuries. The evidence depicted that main accused was armed with lathi where as other co accused armed with axe, the incised wound

suffered by deceased possible with axe. The conviction was held proper. [**Ram Vijay Singh v. State of Uttar Pradesh, 2021 Cri.L.J. 2805 : AIR Online 2021 SC 118**]

Sections 302/34 of the Indian Penal Code, 1860 - Death of deceased due to gunshot injury and injuries by knife/sharp weapon - Appreciation of evidence Conviction of 3 accused persons under S. 302 r/w S. 34, held, rightly upheld by High Court

Entire depositions of both eyewitnesses to incident found trustworthy and reliable. Their presence at the time of incident with deceased has been established and proved by prosecution. Their presence at the time of incident is also found natural. Both eyewitnesses are thoroughly cross-examined on each and every aspect pointed out by defence. However, they have fully supported the case of prosecution. They have specifically stated about one of the accused who fired from gun and injury sustained by deceased because of it.

Injury by gun was established and proved from medical evidence and deposition of doctor who conducted post-mortem of deceased - For convicting accused recovery of weapon used in commission of offence is not a sine qua non. It is not possible to reject credible ocular evidence of eyewitnesses who witnessed shooting. Therefore, merely because ballistic report shows that bullet recovered does not match with gun recovered, it is not possible to reject credible and reliable deposition of eyewitnesses. Further, injuries by knife/sharp weapon on different parts of body of deceased show common intention to murder on part of the other two accused. Furthermore, the said accused who inflicted the knife injuries could not establish that the said knife injuries were inflicted when victim had already died, as contended by them.

Prosecution has successfully proved motive of crime being prior long-time enmity between deceased and accused who fired on deceased. Defence has failed to prove any circumstances by which it can be said that accused persons were falsely implicated in case- Hence, courts below rightly convicted accused persons under S. 302 r/w S. 34 IPC- Therefore, conviction of all three appellant-accused stands confirmed.

Penal Code, 1860-Ss. 302/34 - Murder in furtherance of common intention - Whether established - Defence contention that some of the accused had caused injuries with sharp weapon to deceased after he had already died from gunshot injuries- Tenability of Effect of constructive liability attracted under S. 34, when sharing of common intention to murder has been established by the accused concerned

Evidence Act, 1872-Ss. 60 and 45- Murder by gunshot and from injuries caused by sharp weapon - Manner in which sharp weapon was described by witnesses - Whether material - Opinion of doctor as to nature of weapon as inferred from the wounds - Whether could have primacy over direct eyewitness evidence

It was case of defence that according to eyewitnesses weapon used was "dagger" (sharp-edged on both sides) and not "knife" (sharp-edged on only one side) and what is recovered is "knife", and PW 2 subsequently improved his deposition that the accused persons concerned caused injuries by "knives" - It is case of defence that even doctor in his cross-examination stated that it is very doubtful to say that injuries were by sharp cutting weapon on both sides Effect of the same on credibility of prosecution case

It has been held that it is to be noted that doctor answered question which was put to him One is required to consider entire evidence as a whole with other evidence on record. Mere one sentence here or there and that to the question asked by defence in cross-examination cannot be considered stand alone. Even otherwise it is to be noted that what is stated by doctor/medical officer can at the most be said to be his opinion. He is not eyewitness to incident - PWs 1 and 2 have categorically stated that other accused persons inflicted blows by knives. Same is supported by medical evidence and deposition of PW 5. It is sufficient that Injuries 2 to 8 are by sharp cutting weapon. Injuries 2 to 8 are on different parts of body which show intention and conduct on part of accused A-2 and A-3 that they shared the common intention to murder the deceased Therefore, they are rightly convicted under S. 302 IPC with aid of S. 34 IPC and their presence and participation was established and proved by prosecution by examining PWs 1 and 2 who are found to be reliable and trustworthy witnesses.

It has been reiterated that minor contradictions which do not go to root of matter and/or such contradictions are not material contradictions. It was also emphasized that for convicting accused, recovery of weapon used in commission of offence is not a sine qua non.

It was held that merely because ballistic report shows that bullet recovered does not match with gun recovered, it is not possible to reject credible and reliable deposition of eyewitnesses. (Rakesh and another v. State of Uttar Pradesh and another, (2021) 7 SCC 188)

Sec. 302 and Constitution of India, Art. 134—Murder—Appeal against acquittal

In exercise of its jurisdiction under Article 136 of the Constitution, does not generally reappraise evidence or decide issues of fact which have already been determined by the High Court. This Court in State of U.P. v. Babul Nath, (1994) 6 SCC 29 held as follows:

> "5. At the very outset we may mention that in an appeal under Article 136 of the Constitution this Court does not normally reappraise the evidence by itself and go into the question of credibility of the witnesses and the assessment of the evidence by the High Court is accepted by the Supreme Court as final unless, of course, the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record..."

An appellate Court is usually reluctant to interfere with a judgment acquitting an accused on the principle that "the presumption of innocence in favour of the accused is reinforced" by such a judgment. **[State of M.P. vs. Sharad Goswami, AIR 2021 SC 3153]**

Section 364 A IPC and Section 3 of Indian Evidence Act

In the matter accused allegedly kidnapped minor boy, detained him and demanded ransom from his father. The Hon'ble Apex Court while appreciating the evidence found no findings recorded by Sessions Judge or High Court regarding extending threat to cause death or hurt by accused. Further neither complainant nor victim claimed that accused threatened victim to cause death or hurt. Victim himself contended that he was treated well in good manner. The Apex Court also stated that there was no finding of lower court regarding conduct of accused which may give reasonable apprehension that victim may be put to death or hurt. It was clear that second condition not being fulfilled the conviction under section 364A IPC was set aside and accused were convicted under section 363 of IPC.

While analyzing section 364A IPC it was held that fulfillment of either part i.e. (a) threatens to cause death or hurt to such person or (b) by his conduct give rise to a reasonable apprehension that such person may be put to death or hurt is essential ingredients for proving the offence u/s 364(a) IPC. It was also held the conviction of accused u/s 364A altered to one under section 363 IPC was proper. [**Shaik Ahmed v. State of Telangana, 2021 Cr.L.J. 3028: AIR Online 2021 SC 316**]

Sec. 364 A — Kidnapping for ransom

The first essential condition as incorporated in Section 364A 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 organisation or any other person to do or abstain from doing any act or to pay a ransom. Third condition begins with the word "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 364A contains a heading "kidnapping for ransom, etc." The kidnapping by a person to demand ransom is fully covered by Section 364A.

The use of conjunction "and" has its purpose and object. Section 364A 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 364A, 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".

The word "and" is used as conjunction. The use of word "or" is clearly distinctive. Both the words have been used for different purpose and object. Crawford on Interpretation of Law while dealing with the subject "disjunctive" and "conjunctive" words with regard to criminal statute made following statement:-

> "……..The Court should be extremely reluctant in a criminal statute to substitute disjunctive words for cojunctive words, and vice versa, if such action adversely affects the accused."

Section 364A also indicates that in case the condition "and threatens to cause death or hurt to such person" is not proved, there are other classes which begins with word "or", those conditions, if proved, the offence will be established. The second condition, thus, as noted above is divided in two parts- (a) and 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.

The essential ingredients to convict an accused under Section 364A which are required to be proved by prosecution are as follows:-

(i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and

(ii) 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 or;

(iii) causes hurt or death to such person in order to compel the Government or any foreign State or any 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 364A cannot be sustained. **[Shaik Ahmed vs. State of Telangana, AIR 2021 SC 3062]**

Section 376 IPC

Hon'ble Apex Court while appreciating the evidence in rape case regarding the consensual sex held that there was evidence regarding accused allegedly committed rape on minor and in the testimony of prosecutrix it was clearly stated that accused raped her by laying down her on floor and she felt unconscious after the incident. The testimony of prosecutrix was corroborated by eye witnesses who stated that they found on her in unconscious state soon after the incident and there were no such evidence to prove consensual sex. Hence it was held that the conviction was proper. [**Lelu alias Lain Kumar v. State of Chhattisgarh, 2021 Cr.L.J. 3266 : AIR Online 2021 SC 298**]

Secs. 397, 392—Robbery—Proof

Mere factum of recovery of some money from the house of the appellant by itself, in Supreme Court's view, it would not be sufficient to sustain the order of conviction and sentence recorded against the appellant. **[Rajjan Khan vs. State of M.P., AIR 2021 SC 3598]**

<u>Section 498A of the Penal Code, 1860</u> : Conviction of parents-in-law of deceased living in separate house, for alleged harassment meted out to her is not sustainable in present case as there is absence of direct evidence against them. Hence, their conviction is not maintainable on probability They are entitled to benefit of doubt.

Accused-Appellant 1 (father-in-law of deceased) is 77 yrs old and accused-Appellant 2 (mother-in-law of deceased) is 69 yrs old who is bedridden. Trial court had concluded that though appellants were living in separate portion of house, but their conduct amounted to indirect harassment of deceased. That appellants allegedly fed ears of their son (already convicted) against deceased, and that they probably added fuel to fire. Hence, they were convicted under S. 498-A and sentenced to 3 years imprisonment with fine and default stipulation, which was upheld by High Court.

It was held that High Court not even bothered to discuss nature of evidence available against appellants and reasoning of trial court for conviction - Conviction of appellants is not maintainable on probability in absence of direct evidence - They are entitled to benefit of doubt - Hence, their conviction stands set aside. **(R Natarajan and another v. State of Tamil Nadu, (2021) 7 SCC 204)**

INSOLVENCY AND BANKRUPTCY CODE, 2016

Insolvency and Bankruptcy Laws-Insolvency and Bankruptcy Code, 2016 S. 7(1) second proviso [as inserted vide Act 1 of 2020] and S. 21(6-A)(b) - S. 7(1) second proviso imposing conditions on allottees of same real estate project for filing of insolvency applications, namely, that: (i) application for initiating corporate insolvency resolution process must be filed jointly; (ii) by not less than 100, or, not less than 10% of the total number of allottees under the same real estate project, whichever is less.

Order 1 Rule 8 CPC and Section 12 of the Consumer Protection Act, 1986

Since the Insolvency and Bankruptcy Code, 2016 undoubtedly bears the brand of an economic measure upon its face, and in true spirit, being one of the most significant and dynamic economic experiments indulged in by the law giver, not by becoming servile to Parliament, but by way of time hallowed deference to the sovereign body experimenting in such matters, the Court will lean heavily in favour of such a law.

It is important not to be oblivious to the scheme of the Code and to distinguish it from a civil suit laid invoking Order 1 Rule 8 CPC or a consumer complaint presented by one consumer, sharing the same interest with numerous others, again invoking Order 1 Rule 8 CPC.

As to whether the procedure contemplated in Order 1 Rule 8 CPC would have been more suitable than the one provided under the impugned proviso to Section 7(1) of the Code, or more appropriate and even more fair, is a matter, entirely in the realm of legislative choice and policy. Having regard to the scheme of the Code there cannot be scintilla of doubt that what the petitioners are seeking to persuade Court to hold, is to make a foray into the forbidden territory of legislative value judgment. This is all the more so, when the dangers lurking behind full play being given to Order 1 Rule 8 CPC in the context of invocation of proceedings under the Code, appear to be fairly clear. Invalidating a law made by a competent legislature, on the basis of what the Court may be induced to conclude, as a better arrangement or a more wise and even fairer

system, is constitutionally impermissible. If, the impugned provisions are otherwise not infirm, they must pass muster. Hence, this contention of the petitioner is rejected.

Section 9 of the Civil Procedure Code, 1908: Nature and scope of Right to file Civil Suit Contrasted with statutory rights of action

There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute, one may, at one's peril, bring a suit of one's choice. However, this does not apply to a statutory right of action which is not a civil suit, nor is in lieu of a civil suit.

Vested Rights and Retrospectivity

Rights are "vested" when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. The concept of vested right is not confined to a property right. A right of action should conditions otherwise exist, can also be a vested right. Such a right can be created by a statute and even on a repeal of such a statute, should conditions otherwise exist, giving a right under the repealed statute, the right would remain an accrued right.

It is open to the adjudicating authority to reject the application but that does not mean that the applicants had no vested right of action. The possibility of a plaint being rejected under Order 7 Rule 11 CPC or an appeal being dismissed under Order 41 Rule 11 CPC without notice being issued to the respondent or the fact that the suit can be dismissed at later stages, cannot detract from the right of the plaintiff or the appellant, being a substantive right. The same principle should suffice to reject the contention, based on admission under Section 7(5) alone, giving rise to the vested right in regard to an applicant under Section 7 of the Code. **[Manish Kumar v. Union of India and another, (2021) 5 SCC 1]**

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

Section 20, Explanation of the Juvenile Justice (Care and Protection of Children) Act, 2000 : Plea of juvenility for the first time before Supreme Court Permissible

It has been held that in terms of S. 20, in all cases where the accused was above 16 yrs but below 18 yrs of age on the date of occurrence, the proceedings pending in the court would continue and be taken to the logical end subject to an exception that upon finding

the juvenile to be guilty, the court would not pass an order of sentence against him but the juvenile would be referred to the Board for appropriate orders under the 2000 Act

Juvenile Justice (Care and Protection of Children) Act, 2000-Ss. 2(1) and S. 20 Expln. - Juvenility - Determination in pending cases needs to be in terms of S. 2(1)

As per S. 2(1) of the 2000 Act, "juvenile in conflict with law" means a "juvenile" who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence Appellant being aged more than 16 yrs as on the date of commission of offence, held, not a juvenile within the meaning of the JJ Act, 1986. However, as per S. 20 of the 2000 Act, appellant held to be juvenile as he was less than 18 yrs on date of commission of offence and, thus, submission of his juvenility for the first time before Supreme Court, held permissible. While confirming his conviction, sentence of life imprisonment set aside and his case remitted to the jurisdictional Juvenile Justice Board for determining appropriate quantum of fine that should be levied on him.

Section 32(1) and 45 of Evidence Act, 1872 : FIR as dying declaration- Relevance of opinion of Doctor regarding Mental fitness to make dying declaration

As per medical evidence, deceased was alive when the doctor conducted his initial examination - Doctor stated that when he examined the deceased, the blood pressure could not be detected - This fact by itself would not mean that the deceased was not in a physical condition to make any reporting to the police two hours earlier Assertion of the doctor that if certain symptoms were present, it could possibly be said that the person concerned would not be in a position to speak was held not material, as it was purely an opinion of an expert. Material also did not indicate that the deceased had shown these symptoms either soon after the incident or when his statement was recorded by the police official. Question in this respect also not put to material witnesses. Resultantly, the FIR held to be rightly relied upon by the courts below as dying declaration on the part of the deceased.

Criminal Trial-Witnesses Tutored/Pressurized witness : Mere assertion on the part of the witness that her earlier statement recorded during investigation was read over to her does not mean that he was tutored to follow the line of prosecution

Section 302/34 of the Indian Penal Code, 1860 : Eyewitnesses - Considering their disclosure in FIR, reliability of their evidence and support from dying declaration and recovery of weapons, conviction confirmed

As per prosecution, deceased assaulted in presence of his wife SB and sister-in-law S, FIR lodged by the deceased itself referred to the presence of these witnesses. Substantive testimony of both these witnesses clearly disclosed assault by the appellants. Assertion on the part of S that her earlier statement recorded during investigation was read over to her would not mean that she was tutored to follow the line of prosecution, particularly when no such questions put to SB. It was held that even if the testimony of S is eschewed from consideration, the deposition of SB, along with the dying declaration of the deceased, completely clinch the matter against the appellants. Additionally, the recoveries of the weapons at instance of appellants also lend sufficient corroboration to the case of the prosecution. Hence, conviction affirmed.

Juvenile Justice (Care and Protection of Children) Act, 2000- S. 2(1) and S. 2(h) of the Juvenile Justice Act, 1986- Juvenility Distinction between provisions

It was held that one of the basic distinctions relates to the age of juvenility of males and females - Under the 1986 Act, a juvenile means a male juvenile who has not attained the age of 16 yrs, and a female juvenile who has not attained the age of 18 yrs. In the 2000 Act, the distinction between male and female juveniles on the basis of age has not been maintained and age-limit is 18 yrs for both males and females. **[Devilal and others v. State of Madhya Pradesh, (2021) 5 SCC 292]**

LAND ACQUISITION ACT, 1894

Section 23 of the Land Acquisition Act, 1894 : Acquisition and development of land in phases Compensation in respect of land acquired for Phases II, III and IV of Industrial Model Township, Manesar, Gurgaon in 2002 - Determination of - Wazir, (2019) 13 SCC 101 as modified by order dt. 8-2-2019 in Hukam Singh, (2019) 13 SCC 123, further modified

Held, as compensation @ Rs 37,40,000 per acre has been received by landholders from villages concerned in circumstances stated hereinabove (e) in Wazir, (2019) 13 SCC 101, such landholders need not return amounts over and above what has been found due to them To the extent as indicated above, direction (e) in judgment in Wazir, (2019) 13 SCC 101 modified - However, subsequent allotees of lands in question will not be entitled to maintain any action for refund only on account of orders passed in these proceedings **[Haryana State Industrial and Infrastructure Development Corporation Limited and others v. Rameshwar Dass (Dead) and others, (2021) 6 SCC 355]**

LIMITATION ACT, 1963

Section 14 of the Limitation Act, 1963 : Termination of the wrongly pursued proceedings not essential for claiming exclusion of time under S. 14 of the Limitation Act i.e. exclusion can be claimed even while the proceedings in wrong forum are pending.

It has been held that the substantive provisions of sub-sections (1), (2) and (3) of S. 14 of the Limitation Act do not say that S. 14 can only be invoked on termination of the earlier proceedings, prosecuted in good faith Further, Expln. (a) cannot be construed in a narrow pedantic manner to mean that S. 14 of the Limitation Act can never be invoked until and unless the earlier proceedings have actually been terminated for want of jurisdiction or other cause of such nature. Expln. (a), which is clarificatory, only restricts the period of exclusion to the period between the date of initiation and the date of termination and an applicant cannot claim any further exclusion.

It is not mandatory to file an application in writing before relief can be granted under S. 5. Further, had such an application been mandatory, S. 5 would have expressly provided so. However, the court can always insist that an application or an affidavit showing cause for the delay be filed-Further, no applicant or appellant can claim condonation of delay under S. 5 of the Limitation Act as of right, without making an application.

It was held that Ss. 5 and 14 are not mutually exclusive: even in a case where S. 14 does not strictly apply, the principles of S. 14 can be invoked to grant relief to an applicant under S. 5 of the Limitation Act by purposively construing "sufficient cause". Also, omission to refer to the correct section of a statute does not vitiate an order.

Ordinarily, an Explanation added to a statutory provision is not a substantive provision in any sense of the term but is meant to explain or clarify certain ambiguities, which may have crept into statutory provisions. Thus, an Explanation must be read so as to harmonize with and clear up any ambiguity in the main section. Ordinarily should not be so construed as to widen the ambit of the section. **(Sesh Nath Singh and another v. Baidyabati Sheoraphuli Co-operative Bank Limited and another, (2021) 7SCC 313)**

MARITIME AND ADMIRALTY LAW

Maritime and Admiralty Law Seamen/Crew, Rights of Service - Conditions/Wages, etc. - Disability Pension

It was held that such broad interpretation in context of specific expression in agreement would efface intent of agreement between parties. Merely because of beneficial objective, clear expression in agreement must not be ignored to give another meaning which could not have been intention or understanding of contracting parties. To secure coverage of Cl. 5.9.F(ii), incapacity must relate to injury being suffered while in employment but appellant never claimed to have suffered injury during his ship duty. Moreover, impaired heart function cannot reasonably be attributed to his nine-month engagement so as to have established causal connection though he commenced engagement with fitness certificate in absence of any material produced to correlate the two. Furthermore, Dilated Cardiomyopathy not being a case of 100% disablement since it does not prevent appellant from performing jobs other than sea service. Hence, the High Court was justified in finding appellant entitled to only severance compensation under Cl. 25 of the Agreement. **(Nawal Kishore Sharma v. Union of India and others, (2021) 4 SCC 487)**

MOTOR VEHICLES ACT, 1988

Section 110(1) of the Motor Vehicles Act, 1988 r/w Rr. 112 to 116, 126 and R. 126-A of the Central Motor Vehicles Rules, 1989 : Interim relief restraining coercive steps against the manufacturer in the context of NGT's order. Not a deterrent for a third party (independent party) to lodge a police complaint and seek an investigation. Criminal complaint of a purchaser and NGT related proceedings. Held, are independent and distinct actions. Hence, criminal complaint proceedings in question to proceed further in accordance with law.

It has been held that the order of NGT, passed on the applications filed by certain individuals not claiming as purchasers of vehicles, cannot be taken as an impediment for an individual who purchased cars from the manufacturers, to lodge a complaint, if he has actually suffered on account of any representation made by the manufacturers Further, the interim order to not to take any coercive steps has to be understood only in the context of the directions of

NGT which became the subject-matter of the civil appeals Hence it is futile to contend that the pendency of the civil appeals and the interim order passed by the Court should be taken as a deterrent for anyone else to lodge a police complaint and seek an investigation Also, the proceedings before NGT were not intended to address issues relating to individuals, such as: (i) whether any emissions manipulation software, called in common parlance as "defeat devices" were installed in the vehicles purchased by certain individuals; and (ii) whether any representation was made to the purchasers of the cars in which such devices had been installed, about the emission efficiency level of the cars.

Section 154 of the Criminal Procedure Code, 1973 : Mere delay on the part of complainant in lodging the complaint, cannot by itself be a ground to quash the FIR. **[Skoda Auto Volkswagen (India) Private Limited v. State of Uttar Pradesh and Others, (2021) 5 SCC 795]**

Section 173 second proviso of the Motor Vehicles Act, 1988 : It has been held that ordinarily the word "may" is not a word of compulsion and it is an enabling word and it only confers capacity, power or authority and implies discretion. Thus, word "may" is used in S. 173 to confer sufficient discretionary powers upon the Court to entertain appeals even beyond the period of ninety days.

Motor Vehicles Act, 1988- S. 173 second proviso - Appeal beyond limitation period of 90 days - Condonation of delay was held permissible only in case of existence of "sufficient cause"

Section 173 second proviso of the Motor Vehicles Act, 1988 : Appeal seeking enhancement of compensation filed by the parents of the deceased with 45 days' delay. Delay having occurred on account of illness of the wife of appellant husband was properly explained. Further, no mala fides could be imputable against the appellants for filing the appeal after the expiry of ninety days. Therefore, the strict approach taken in the impugned dismissal order was held is hyper technical and not sustainable in the eye of the law and, thus, the impugned dismissal order is set aside and matter remitted to the High Court for disposal on merits.

Interpretation of Statutes : The interpretation of a beneficial legislation must be remedial and must be in furtherance with the purpose which the statute seeks to serve. A beneficial legislation should receive a liberal construction so as to promote its objectives.

Chapter XII of the Act is a beneficial legislation intended at protecting the rights of victims affected in road accidents. Moreover, the Act is a self-contained code in itself which provides procedures for filing claims, for passing of award and for preferring an appeal. Even the limitations for preferring the remedies are contained in the code itself.

The interpretation of a beneficial legislation must be remedial and must be in furtherance with the purpose which the statute seeks to serve. A beneficial legislation should receive a liberal construction so as to promote its objectives.

The Motor Vehicles Act is a beneficial piece of legislation enacted to give solace to the victims of the motor accident who suffer bodily injury or die untimely. Strict compliance of procedures can be relaxed in order to ensure that victims receive just compensation. The Act is designed in a manner which relieves the victims from ensuring strict compliance provided in law which are otherwise applicable to the suits and other proceedings while prosecuting the claim petition filed under the Act for claiming compensation for the loss sustained by them in the accident

Section 173 of the MV Act provides that any person aggrieved by the award passed by the Tribunal may approach the High Court within ninety days. However, the second proviso states that the High Court "may" still entertain such appeal even after the expiry of ninety days, if the appellant satisfies the Court that there exists sufficient reason behind the delay.

Ordinarily, the word "may" is not a word of compulsion. It is an enabling word and it only confers capacity, power or authority and implies discretion. "It is used in a statute to indicate that something may be done which prior to it could not be done".

The legislature by usage of the word "may" in Section 173 of the Act, conferred sufficient discretionary powers upon the Court to entertain appeals even beyond the period of ninety days. The pertinent issue relates to what the extent of such discretionary power is.

In such a case, it is always the purpose of the power which has to be examined in order to determine the scope of the discretion conferred upon the donee of the power. If the conditions in which the power is to be exercised in particular cases are also specified by a statute then, on the fulfillment of those conditions, the power conferred becomes annexed with a duty to exercise it in that manner.

The Supreme Court has firstly held that purpose of conferment of such power must be examined for the determination of the scope of such discretion conferred upon the court.

Analysis of the purpose of the Act suggests that such discretionary power is conferred upon the courts to enforce the rights of the victims and their dependants. The legislature intended that courts must have such power so as to ensure that substantive justice is not trumped by technicalities.

Secondly, it has been held that if the specific conditions wherein the power could be exercised is also provided in the statute, then the court must exercise the aforesaid discretion in the manner as specified by the statute itself. In the second proviso to Section 173 it is stated that the Court has the power to condone delay only if it is satisfied that there existed "sufficient cause".

The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant."

Even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

The Supreme Court has cautioned regarding the necessity of distinguishing cases where delay is of few days, as against the cases where the delay is inordinate as it might accrue to the prejudice of the rights of the other party. In such cases, where there exists inordinate delay and

the same is attributable to the party's inaction and negligence, the courts have to take a strict approach so as to protect the substantial rights of the parties.

What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

Therefore, the aforesaid provision being a beneficial legislation must be given liberal interpretation to serve its object. Keeping in view the substantive rights of the parties, undue emphasis should not be given to technicalities. In such cases delay in filing and refilling cannot be viewed strictly, as compared to commercial claims under the Arbitration and Conciliation Act, 1996 or the Commercial Courts Act, 2015.

Undoubtedly, the statute has granted the courts with discretionary powers to condone the delay, however, at the same time it also places an obligation upon the party to justify that he was prevented from abiding by the same due to the existence of "sufficient cause". Although there exists no straitjacket formula for the courts to condone delay, but the courts must not only take into consideration the entire facts and circumstances of case but also the conduct of the parties. The concept of reasonableness dictates that the courts even while taking a liberal approach must weigh in the rights and obligations of both the parties. When a right has accrued in favour of one party due to gross negligence and lackadaisical attitude of the other, the Court shall refrain from exercising the aforesaid discretionary relief. **(Brahampal alias Sammay and another v. National Insurance Company, (2021) 6 SCC 512)**

Sections 147 and 166 of the Motor Vehicles Act, 1988 : Liability of insurer - Determination of Insurance policy covering risk of third parties including unnamed

passengers, in respect of which premium was duly paid - Another clause covered "employees" such as driver and cleaner upon payment of additional premium, but such additional premium not paid in respect of this "employees" clause. "Employees" in insurance policy concerned deceased if "employee" of assured so as to not be covered by policy, or, fell in category of unnamed passenger, as he was contractually engaged and not a regular employee.

It was held that the insurance company would be liable under policy to pay compensation in case of death to unnamed passengers other than insured and his paid driver or cleaner, deceased being one such unnamed passenger, as premium had been paid in respect of unnamed passengers

"Employment" in insurance contract refers only to regular employees of Institute, which deceased certainly was not-Moreover, an exception to policy was that a person in employ of insured coming within scope of Workmen's Compensation Act, 1923 is excluded from cover. Deceased's contract for service made it clear that he was not employee of insured institution. Therefore as deceased did not come within scope of Workmen's Compensation Act, it was held that compensation payable due to his death in a motor accident would be covered by insurance policy in question.

Employer-Employee Relationship Contractual engagement Contract of service and contract for service

Surgeon working in a Medical Institute on honorarium and not on monthly salary pursuant to contract for service - Considering the terms of the contract between the parties in detail, and applying economic reality test. It was held that contract entered into between parties is one between an Institute and an independent professional. Thus, no employer-employee relationship can be said to exist between them.

Construction of Insurance Contracts/Interpretation of Policy Rule of contra proferentem : Applicability Exemption of liability clauses in insurance contracts, held, are to be construed in the case of ambiguity contra proferentem that is, against insurance company in case of ambiguity or doubt - Moreover, in interpreting documents relating to a contract of insurance, duty of court is to interpret words in which contract is expressed by parties, because it is not for court to make a new contract, however reasonable, if parties have not made it themselves

In a society which has moved away from being a simple agrarian society to a complex modern society in the computer age, the earlier simple test of control, whether or not actually exercised, has now yielded more complex tests in order to decide complex matters which would have factors both for and against the contract being a contract of service as against a contract for service. No one test of universal application can ever yield the correct result. It is a conglomerate of all applicable tests taken on the totality of the fact situation in a given case that would ultimately yield, particularly in a complex hybrid situation, whether the contract to be construed is a contract of service or a contract for service. Depending on the fact situation of each case, all the aforesaid factors would not necessarily be relevant, or, if relevant, be given the same weight. Ultimately, the court can only perform a balancing act weighing all relevant factors which point in one direction as against those which point in the opposite direction to arrive at the correct conclusion on the facts of each case.

Given the fact that this balancing process may often not yield a clear result in hybrid situations, the context in which a finding is to be made assumes great importance. Thus, if the context is one of a beneficial legislation being applied to weaker sections of society, the balance tilts in favour of declaring the contract to be one of service. On the other hand, where the context is that of legislation other than beneficial legislation or only in the realm of contract, and the context of that legislation or contract would point in the direction of the relationship being a contract for service then, other things being equal, the context may then tilt the balance in favour of the contract being construed to be one which is for service.

In present case, factors which would lead to the contract being one for service may be enumerated as follows: (i) The heading of the contract itself states that it is a contract for service. (ii) The designation of A is an Honorary Ophthalmic Surgeon. (iii) INR 4000 per month is declared to be honorarium as opposed to salary. (iv) In addition to INR 4000 per month, A is paid a percentage of the earnings of Respondent 3 from out of the OPD, operation fee component hospitalization bills, and room visiting fees. (v) The arbitration clause which speaks of disputes arising in the course of the tenure of this contract will be referred to the managing committee of the Institute, the decision of the managing committee being final, is also a clause which is unusual in a pure master-servant relationship. (vi) The fact that the appointment is contractual for 3 years and extendable only by mutual consent, is another pointer to the fact that the contract is for service, which is tenure based. (vii) The fact that termination of the contract can be by notice

on either side would again show that the parties are dealing with each other more as equals than as master-servant. (viii) Clause XI of the agreement also makes it clear that the earlier appointment that was made of A would cease the moment this contract comes into existence, A no longer remaining as a regular employee of the Institute.

As against the aforesaid factors which would point to the contract the contract being a contract for service, the following factors would point in the opposite direction: (i) The employment is full-time. A can do no other work, and apart from the seven types of work that A is to perform under Clause IV, any other assignment that may get created in the course of time may also be assigned to him at the employer's discretion. (ii) A is to work on all days except weekly offs and holidays that are given to him by the employer. However, what is important is that though governed by the leave rules of the Institute as in vogue from time to time, A will not be entitled to any financial benefit of any kind as may be applicable to other regular employees of the Institute under Clause V. (iii) A will be governed by the conduct rules of the Institute as invoked from time to time and as applicable to regular employees of the Institute. (iv) That in the event of a proven case of indiscipline or breach of trust, the Institute reserves a right to terminate the contract at any time without giving any compensation whatsoever.

Even otherwise, it is well-settled that exemption of liability clauses in insurance contracts are to be construed in the case of ambiguity contra proferentem, that is, against the company in case of ambiguity or doubt. In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves. **(Sushilaben Indravadan Gandhi and another v. New India Asssurance Company Limited and others, (2021) 7 SCC 151)**

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

Section 32B and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 : It was held factors other than those mentioned in S. 32-B of the NDPS Act can be considered Court which may take into account such factors as it may deem fit and also the factors mentioned in S. 32-B of the NDPS Act. But, where the court considers such factor(s) as it may deem fit other than the factors enumerated in Ss. 32-B(a) to (f) of the NDPS Act, then such factor(s) must be relevant factor(s).

Quantity of narcotic substance/drug with which the accused is charged, held, is a relevant factor which would fall within the ambit of expression "such factors as it may deem fit" - Hence, can be taken into account while imposing punishment/sentence higher than the prescribed minimum

<u>Principles for sentencing - Mitigating and aggravating circumstances</u> : Offences under NDPS Act have a deadly impact on the society as a whole. Hence, while awarding sentence in cases of the NDPS Act, the interest of the society as a whole is also required to be taken into consideration. While striking a balance between mitigating and aggravating circumstances in such cases, public interest, impact on the society as a whole will always tilt in favour of imposition of a suitable higher punishment. Merely because the accused is a poor man or is a sole bread earner cannot be the mitigating circumstances in favour of accused while awarding sentence/punishment in cases of the NDPS Act.

While considering the submission on behalf of the accused on mitigating and aggravating circumstances and the request to take lenient view and not to impose the punishment higher than the minimum sentence provided under the Act it should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to a number of innocent young victims who are vulnerable; it causes deleterious effects and deadly impact on the society; they are a hazard to the society. Organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances shall lay to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, it has a deadly impact on the society as a whole. Therefore, while awarding the sentence/punishment in case of the NDPS Act, the interest of the society as a whole is also required to be taken into consideration. Therefore, while striking a balance between the mitigating and aggravating circumstances, public interest, impact on the society as a whole will always tilt in favour of the suitable higher punishment. Therefore, merely because the accused is a poor man and/or a carrier and/or is a sole bread earner cannot be such mitigating circumstances in favour of the accused while awarding the sentence/punishment in the case of the NDPS Act. Even otherwise, in the present case, the Special Court, as observed hereinabove has taken into consideration the submission on behalf of

the accused that he is a poor person; that he is sole bread earner, that it is his first offence, while not imposing the maximum punishment of 20 years' RI and imposing the punishment of 15 years' RI only. **(Gurdev Singh v. State of Punjab, (2021) 6 SCC 558)**

Narcotic Drugs and Psycho topic Substance Act 1985 – testimony of official ultimates and independent witness

It is settled law that the testimony of the official witnesses cannot be rejected on the ground of non corroboration by independent witness. As observed and held by this Court in catena of decisions, examination of independent witnesses is not an indispensable requirement and such non examination is not necessarily fatal to the prosecution case, [see Pardeep Kumar (supra)].

In the recent decision in the case of **Surinder Kumar v. State of Punjab, (2020) 2 SCC 563**, while considering somewhat similar submission of non examination of independent witnesses, while dealing with the offence under the NDPS Act, in paragraphs 15 and 16, this Court observed and held as under:

"15. The judgment in **Jarnail Singh v. State of Punjab, (2011) 3 SCC 521**, relied on by the counsel for the respondent State also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that the accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status.

16. In **State (NCT of Delhi) v. Sunil, (2011) 1 SCC 652, it was held as under: (SCC p. 655)**

"It is an archaic notion that actions of the police officer should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way round. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature." **[Rizwan Khan vs. State of Chhattisgarh, 2021(116) ACC 301]**

This Court therefore holds that the use of reasoning/language which diminishes the offence and tends to trivialize the survivor, is especially to be avoided under all circumstances. Thus, the following conduct, actions or situations are hereby deemed irrelevant, e.g. - to say that the survivor had in the past consented to such or similar acts or that she behaved promiscuously, or by her acts or clothing, provoked the alleged action of the accused, that she behaved in a manner unbecoming of chaste or "Indian" women, or that she had called upon the situation by her behavior, etc. These instances are only illustrations of an attitude which should never enter

judicial verdicts or orders or be considered relevant while making a judicial decision; they cannot be reasons for granting bail or other such relief. Similarly, imposing conditions that implicitly tend to condone or diminish the harm caused by the accused and have the effect of potentially exposing the survivor to secondary trauma, such as mandating mediation processes in non-compoundable offences, mandating as part of bail conditions, community service (in a manner of speaking with the so-called reformative approach towards the perpetrator of sexual offence) or requiring tendering of apology once or repeatedly, or in any manner getting or being in touch with the survivor, is especially forbidden. The law does not permit or countenance such conduct, where the survivor can potentially be traumatized many times over or be led into some kind of non-voluntary acceptance, or be compelled by the circumstances to accept and condone behavior what is a serious offence.

The instances spelt out in the present judgment are only illustrations; the idea is that the greatest extent of sensitivity is to be displayed in the judicial approach, language and reasoning adopted by the judge. Even a solitary instance of such order or utterance in court, reflects adversely on the entire judicial system of the country, undermining the guarantee to fair justice to all, and especially to victims of sexual violence (of any kind from the most aggravated to the so-called minor offences).

Having regard to the foregoing discussion, it is hereby directed that henceforth:

(a) Bail conditions should not mandate, require or permit contact between the accused and the victim. Such conditions should seek to protect the complainant from any further harassment by the accused;

(b) Where circumstances exist for the court to believe that there might be a potential threat of harassment of the victim, or upon apprehension expressed, after calling for reports from the police, the nature of protection shall be separately considered and appropriate order made, in addition to a direction to the accused not to make any contact with the victim;

(c) In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and copy of the bail order made over to him/her within two days;

(d) Bail conditions and orders should avoid reflecting stereotypical or patriarchal notions about women and their place in society, and must strictly be in accordance with the requirements of the Cr. PC. In other words, discussion about the dress, behavior, or past “conduct” or “morals” of the prosecutrix, should not enter the verdict granting bail;

(e) The courts while adjudicating cases involving gender related crimes, should not suggest or entertain any notions (or encourage any steps) towards compromises between the prosecutrix and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction;

(f) Sensitivity should be displayed at all times by judges, who should ensure that there is no traumatization of the prosecutrix, during the proceedings, or anything said during the arguments, and

(g) Judges especially should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court.

Further, courts should desist from expressing any stereotype opinion, in words spoken during proceedings, or in the course of a judicial order, to the effect that (i) women are

physically weak and need protection; (ii) women are incapable of or cannot take decisions on their own; (iii) men are the “head” of the household and should take all the decisions relating to family; (iv) women should be submissive and obedient according to our culture; (v) “good” women are sexually chaste; (vi) motherhood is the duty and role of every woman, and assumptions to the effect that she wants to be a mother; (vii) women should be the ones in charge of their children, their upbringing and care; (viii) being alone at night or wearing certain clothes make women responsible for being attacked; (ix) a woman consuming alcohol, smoking, etc. may justify unwelcome advances by men or “has asked for it”; (x) women are emotional and often overreact or dramatize events, hence it is necessary to corroborate their testimony; (xi) testimonial evidence provided by women who are sexually active may be suspected when assessing “consent” in sexual offence cases; and (xii) lack of evidence of physical harm in sexual offence case leads to an inference of consent by the woman. **[Aparna Bhat and others vs. State of M.P. and another, 2021(116) ACC 337]**

Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 : Defence pleas in present case are essentially either questions of fact or a abortive attempt for re-appreciation of evidence on record - Such discourse ordinarily does not fall within the scope and ambit of powers vested in the Supreme Court under Article 136 of the Constitution. Conviction confirmed

Defence pleas being that courts below had not correctly appreciated the statements of the witnesses or the evidence comprising seizure memo, etc. Defence further argued that prosecution witnesses having been declared hostile, the remaining ocular evidence falls short of proving the appellant's guilt beyond reasonable doubt.

Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 : Claim of parity was held not available to the appellant, when unlike the appellant, none of the co-accused were apprehended at the spot and no evidence produced to connect them with the alleged offence. Contrarily, not only was appellant apprehended at the spot of the incident but also found in conscious possession of the contraband

Moreover, fact that the police did not file charge-sheet against one of the co-accused, held not material, because the appellant did not rely upon this fact either in his defence statement under S. 313 CrPC or otherwise. Hence, this supplication declined to be entertained at this belated stage before the Supreme Court. Resultantly, claim of parity, was declined and his conviction affirmed.

Crime was committed in 1997 i.e. much prior to enforcement of Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001. Hence, the punishment for contravention of

the NDPS Act would be regulated by the unamended S. 20 of the NDPS Act, as it stood before the amendment of 2001. **(S K Sakkar alias Mannan v. State of West Bengal, (2021) 4 SCC 483)**

Sections 37, 19, 24 and 27-A of Narcotic Drugs and Psychotropic Substances Act, 1985 : Object and scope of S. 37 regarding bail - Power of High Court to suspend sentence under S. 389 CrPC, where trial has ended in order of conviction under NDPS Act.

Section 37 of the NDPS Act stipulates that no person accused of an offence punishable for the offences under Section 19 or Section 24 or Section 27-A and also for the offences involving a commercial quantity shall be released on bail, where the Public Prosecutor opposes the application, unless the court is satisfied "that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail". Where the trial has ended in an order of conviction, the High Court, when a suspension of sentence is sought under Section 389(1) CrPC, must be duly cognizant of the fact that a finding of guilt has been arrived at by the trial Judge at the conclusion of the trial. It is not to say that the High Court is deprived of its power to suspend the sentence under Section 389(1) CrPC. The High Court may do so for sufficient reasons which must have a bearing on the public policy underlying the incorporation of Section 37 of the NDPS Act.

Sections 37, 23(c) and 25-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 : Suspension of sentence by High Court under S. 389 CrPC after respondent was convicted under Ss. 23(c) and 25-A of the NDPS Act.

Seizure of 2 parcels containing narcotic drugs from office of courier agency of which respondent-accused himself is proprietor, who had accepted parcels initially for booking from foreign national and which were booked to foreign destination, at behest of foreign national, by co-accused who was employee of respondent-Trial court convicted respondent under Ss. 23(c) and 25-A of the NDPS Act and sentenced him to suffer RI for 10 yrs under S. 23(c) and for 3 yrs under S. 25-A, apart from fine - However, High Court without applying its mind to governing provisions of NDPS Act, granted suspension of respondent's sentence under S. 389(1) CrPC - But on basis of material which emerged before trial court and which forms basis of order of conviction, no case for suspension of sentence under S. 389(1) CrPC is established - Hence,

order granting suspension of sentence under S. 389(1) CrPC is unsustainable and accordingly stands set aside

However, having regard to fact that respondent has undergone 4 yrs and 4 months of imprisonment, High Court requested to take up appeal for hearing and final disposal upon respondent's surrendering to sentence and dispose of it by end of 2021-Criminal Procedure Code, 1973, S. 389(1). **[State (NCT of Delhi) Narcotics Control Bureau v. Lokesh Chadha, (2021) 5 SCC 724]**

NEGOTIABLE INSTRUMENTS ACT, 1881

Section 138 of the Negotiable Instruments Act, 1881 : Dishonour of cheque and Prosecution under S. 138 : In case of liability of individual persons to pay debt jointly, person other than person who has drawn cheque on account maintained by him, cannot be prosecuted for offence under S. 138

It was held that it is only the person who is signatory to cheque and cheque is drawn by that person on account maintained by him and cheque has been issued for discharge, in whole or in part, of any debt or other liability and said cheque has been returned by bank unpaid, who can be prosecuted under S. 138. S. 138 does not speak about joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn cheque on an account maintained by him, cannot be prosecuted for offence under S. 138. A person might have been jointly liable to pay debt, but such a person cannot be prosecuted unless bank account is jointly maintained and that he was a signatory to cheque. **[Alka Khandu Avhad v. Amar Syamprasad Mishra and another, (2021) 4 SCC 675]**

Negotiable Instrument Act – Section 138

The upshot of the above discussion leads us to the following conclusions:

(1) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under section 138 of the Act from summary trial to summons trial.

(2) Inquiry shall be conducted on receipt of complaints under section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the Court.

(3) For the conduct of inquiry under section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

(4) We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in section 219 of the Code.

(5) The High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same Court relating to dishonor of cheques issued as part of the said transaction.

(6) Judgments of this Court in Adalat Prasad (supra) and Subramanium Sethuraman (supra) have interpreted the law correctly and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under section 322 of the Code to revisit the order of issue of process in case it is brought to the Court's notice that it lacks jurisdiction to try the complaint. **[In re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881, 2021(116) ACC 609]**

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT

Secs. 33, 34, 47—Constitution of India, Art. 14

Reservation in promotion claimed by person with 55% disability, appointed on compassionate grounds, source of recruitment ought not to make any difference. Employee is person with special abilities (PwD) at time for consideration for promotion, is material. Same position would be with person appointed on compassionate ground. Denial of promotion would be discriminatory and violative of mandate of Constitution of India. **[State of Kerala vs. Leesamma Joseph, AIR 2021 SC 3076]**

REGISTRATION ACT, 1908

Registration Act, 1908, S. 17(2)(vi) and Ss. 17(1)(b) & (c) - Second part of S. 17(2)(vi) which is an exception to the exception carved out by S. 17(2)(vi), and hence to which said second part, Ss. 17(1)(b) & (c) normally apply

In present case, compromise was between two brothers in respect of family property consequent to death of their father. Thus no right was being created in praesenti for the first time. Hence, there was no requirement of compulsory registration.

The judgment and decree passed by the High Court is clearly erroneous and cannot be sustained in law. The parties are the sons of late V. As an heir of deceased, the appellant had a right in the estate left by the deceased. Therefore, it was not a new right being created for the first time when the parties entered into a compromise before the civil court but rather a pre-existing right in the property was recognized by way of settlement in court proceedings.

Therefore, the compromise decree entered into between the parties in respect of land which was not the subject-matter of the suit is valid and is thus a legal settlement.

An aggrieved person can seek enforcement of family settlement in a suit for declaration wherein the family members have some semblance of right in property or any pre-existing right in the property. The family members could enter into settlement during the pendency of the proceedings before the civil court as well. Such settlement would be binding within the members of the family. Where the decree has been passed in respect of family property, Section 17(2)(vi) of the 1908 Act would be applicable. The principle is based on the fact that family settlement only declares the rights which are already possessed by the parties.

Where there is no pre-existing right but right has been created by the decree alone, that decree or order including compromise decree creating new right, title or interest in praesenti in immovable property of value of Rs 100 or above is compulsory for registration. Bhoop Singh, (1995) 5 SCC 709 was a case dealing with both the situations: decree between the parties where the decree-holder does not have any pre-existing right in the property and also the situation where decree holder has a pre-existing right. It was the second situation where the decree-holder has a pre-existing right in the property; it was found that decree does not require registration. **(Ripudaman Singh v. Tikka Maheshwar Chand, (2021) 7 SCC 446)**

RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

Human and Civil Rights-Rights of Persons with Disabilities Act, 2016 - Ss. 2(r), 2(s), 2(zc), 2(y) and 20 - Principle of reasonable accommodation: Intrinsic to individual dignity is recognizing worth of every person as equal member of society, respect for dignity of others and fostering conditions in which every individual can evolve according to his capacities - Principle of reasonable accommodation acknowledges that if disability as a social construct must be remedied, conditions must affirmatively be created for facilitating development of disabled. Exclusion negates individual dignity and worth - Accommodation implies positive obligation to create conditions conducive to growth and fulfillment of disabled in every aspect of their existence.

Accommodation which law mandates is "reasonable" since it has to meet requirement of each condition of disability Expectations of disabled person are unique to nature of his disability and character of impediments encountered as its consequence Reasonable accommodation determinations must be based on case-to-case basis in consultation with disabled person concerned - On facts held, argument that appellant must be subjected to further medical examinations even though his disability has been accepted, is emblematic of key barrier that often comes in way of disabled being able to access reasonable accommodation in India - Moreover, party contending that particular accommodation would impose disproportionate or undue burden must prove same on basis of objective criteria Words and - Phrases "Reasonable accommodation"

Human and Civil Rights - Rights of Differently-Abled/Disabled Persons and Mental Health Generally Appropriate language of discourse - Necessity - Held, Viewing disability as a social construct rather than individual pathology must also translate into linguistic shift in way person with disabilities is referred to Language of discourse must evince to make disabled feel empowered and included, not alienated and situated on differently from their able-bodied counterparts.

Human and Civil Rights-Rights of Persons with Disabilities Act, 2016 Ss. 2(r), 2(s), 2(zc), 2(y) and 20: "Difference between Persons with benchmark disabilities" and "Persons with disabilities" explained.

Human and Civil Rights-Rights of Persons with Disabilities Act, 2016 - S. 3-Scope - Statutory manifestation of constitutional commitment - Held, though Pt. III of the Constitution does not explicitly include persons with disabilities within its protective fold, nevertheless, much

like their able bodied counterparts, golden triangle of Arts. 14, 19 and 21 applies with full force and vigour to them

It was held that under the 1995 Act, disability was simply characterized as a medical condition devoid of any understanding as to how disability was produced by social structures that cater to able-bodied persons and hamper and deny equal participation of persons with disabilities, 2016 Act on the other hand, has more inclusive definition of "person with disability" evidencing shift from stigmatizing medical model of disability under the 1995 Act to social model of disability which recognizes societal and physical constraint at heart of exclusion of persons with disabilities from full and effective participation in society.

Human and Civil Rights - Rights of Persons with Disabilities Act, 2016 Ss. 2(r), 2(s), 2(zc), 2(y) and 20 : Request of appellant for scribe in CSE 2018, who had disability in form of dysgraphia (writer's cramp), denied on ground that scribe could be provided only to blind candidates and candidates with loco motor disability or cerebral palsy with impairment of at least 40% . Reasonable accommodation Necessity.

It has been held that such apprehension can furnish no valid ground to deny persons with disability who need a scribe from statutory entitlements Besides, no empirical data was produced to justify such assertion and conjecture as to misuse does not meet test of objective criteria- Further held, undue suspicion about disabled engaging in wrongdoing is unwarranted since such a view presumes persons with disabilities as a class, incompetent and incapable of success without access to untoward assistance. Moreover, when able-bodied student engages in cheating, normal consequence is their disqualification or other punitive action. Same consequence can flow from candidate using their disability to game the system Furthermore, examining body is entitled to - prescribe procedures that ensure against misuse and deal with instances that come to light. Absent such facility, persons such as appellant who suffer from chronic neurological condition would be deprived of statutory right of equal opportunity in gaining appointment to public services negating both constitutional right and its statutory recognition in 2016 RPWD Act - Service Law Recruitment Process. Disabled or Differently-Abled Persons.

Human and Civil Rights - Rights of Persons with Disabilities Act, 2016 S. 2(s) Grant of facility of scribe for person with disability Directions issued to MSJE to frame proper guidelines to regulate and facilitate grant of facility of scribe to person with disability where nature of disability imposes barrier in candidate writing examination in consultation with public,

specifically persons with disabilities and organizations representing them. **(Vikash Kumar v. Union Public Service Commission and others (2021) 5 SCC 370)**

SPECIFIC RELIEF ACT, 1963

Contract and Specific Relief Termination/Repudiation for Breach of Contract - Breaches that give rise to Right to Terminate/Repudiate - Breach of Condition - Ipso facto clauses i.e. contractual provisions which grant (an unconditional) right to a party (terminating party) to terminate the contract with its counterparty (debtor) due to the occurrence of an "event of default"-Validity of, generally, and specifically when issues of insolvency under IBC need to be addressed re the counterparty/debtor against whom termination of the contract in question is sought

Tension between the rights of corporate debtor during the insolvency process against whom the termination of contract is sought under ipso facto clause, on the one hand, as against the freedom of contract and contractual rights of terminating party on the other - Resolution of - Extent to which ipso facto clauses are regulated or invalidated by IBC, in particular S. 14 IBC

One of the key principles enshrined within our Constitution is separation of powers between our three main organs: the legislature, the executive and the judiciary. Myriad complex questions arise while deciding on the issue of the validity of ipso facto clauses. Further, the tension between the rights of a corporate debtor during the insolvency process as against the contractual rights of a terminating party, is one which has been acknowledged even by the UNCITRAL in its UNCITRAL Guide and there is a public interest underlying each of these balancing considerations.

Separation of powers - Each power vis-à-vis the other power(s)-Dialogical approach between legislature, executive and judiciary, as the preferred approach to operationalise separation of powers in a nuanced fashion, posited and explained.

Held, considering the text of S. 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor - However, in doing do, NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of

other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor

Further, the residuary jurisdiction of NCLT under S. 60(5)(c) provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings, but only in relation to insolvency resolution proceedings

Held, in the absence of the insolvency of the corporate debtor, there would be no ground to terminate PPA and termination was not on a ground independent of the insolvency Thus, the dispute solely arises out of and relates to the insolvency of the corporate debtor The PPA has been terminated solely on the ground of insolvency, which gives NCLT jurisdiction under S. 60(5)(c) to adjudicate this matter and invalidate the termination of PPA as it is the forum vested with the responsibility of ensuring the continuation of the insolvency resolution process, which requires preservation of the corporate debtor as a going concern **(Gujarat Urja Vikas Nigam Limited v. Amit Gupta and others, (2021) 7 SCC 209)**

UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

Terrorism and Organized Crime - Unlawful Activities (Prevention) Act, 1967-S. 43-D(5), proviso - Bail - Mandate of provision and relevant considerations.

As per mandate of S. 43-D(5), a person shall not be released on bail if the court is of the opinion that there are reasonable grounds for believing that the accusations made are prima facie true - Thus, while considering the grant of bail under S. 43-D(5), Court has to apply its mind to examine the entire material on record for the purpose of satisfying itself, whether a prima facie case is made out against the accused or not

Terrorism and Organised Crime - Unlawful Activities (Prevention) Act, 1967-S. 43-D(5), proviso - Expression "prima facie true."

It was held that it would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence - It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted Words and Phrases - "Prima facie true"

Appellant charged with offences under S. 120-B r/w Ss. 414, 384, 386 & 387 IPC, Ss. 17/18/21 UAPA, Ss. 25(1-B)(a) & 26/35 of the Arms Act and S. 17(1)(2) of the Criminal Law Amendment Act- As per FIR, accused were functionaries of a terrorist gang TPC and they were extorting levy from coal traders, transporters and contractors and the main accusations made against the appellant were that he conspired with members of terrorist organization, paid levy/extortion amount to the terrorist organization and an amount of Rs 9,95,000 also seized from his house.

Mere payment of extortion money by the appellant does not amount to terror funding, particularly when other members of the terrorist organization found systematically collecting extortion amounts from businessmen in certain areas. Appellant also carrying on transport business in the area of operation of the organization and material also indicated that he paid money to the members of the TPC for smooth running of his business. Hence, prima facie, there was no material to conclude that the appellant conspired with the other members of the TPC and raised funds to promote the organization

Allegation of the appellant meeting the members of the terror organization also held not material, when the appellant himself revealed in his statement recorded under S. 164 CrPC that he was summoned to meet other members of the organization in connection with the payments made by him Recovery of amount of Rs 9,95,000 from the house of the appellant was also held not material, because of this amount being accounted for by the appellant by stating that the amount was withdrawn from the bank to pay salaries to his employees and other expenses. Hence, at the stage of considering bail, amount seized from the appellant declined to be treated as proceeds from terrorist activity, particularly when there was no allegation that appellant was receiving any money. Resultantly, orders of denial of bail by the courts below held not justified and set aside and appellant directed to be released on bail subject to the satisfaction of the Special Court. **(Sudesh Kedia v. Union of India, (2021) 4 SCC 704)**

Terrorism and Organized Crime - Prevention of Money-Laundering Act, 2002-Ss. 17(1), 17(1-A) & 17(2) r/w Ss. 2(1)(v) and 2(1)(w) - Freezing of property or record and freezing of bank account. Necessary Requirements

Section 17 of the PMLA indicates that the prerequisite is that the Director or such other authorized officer in order to exercise the power under Section 17 of the PMLA, should on the

basis of information in his possession, have reason to believe that such person has committed acts relating to money-laundering and there is need to seize any record or property found in the search. Such belief of the officer should be recorded in writing. Sub-section (1-A) to Section 17 of the PMLA provides that the officer authorized under sub-section (1) may make an order to freeze such record or property where it is not practicable to seize such record or property. Sub section (2) provides that after search and seizure or upon issuance of a freezing order the authorized officer shall forward a copy of the reasons recorded along with material in his possession to the adjudicating authority in a sealed envelope. Sub section (4) provides that the authority seizing or freezing any record or property under sub-section (1) or (1-A) shall within a period of thirty days from such seizure or freezing, as the case may be, file an application before the adjudicating authority requesting for retention of such record or properties seized.

For the purpose of clarity, the freezing of the account will also require the same procedure since a bank account having alleged "proceeds of crime" would fall both under the ambit "property" and "records". In that regard, it would be appropriate to take note of Sections 2(1)(v) and 2(1)(w) of the PMLA which defines "property" and "records". **(Opto Circuit India Limited v. Axis Bank and others, (2021) 6 SCC 707)**

HIGH COURT

ARBITRATION & CONCILIATION ACT 1996

Sec. 11

This Court is of the considered opinion that Sub Section (14) of Section 11 and the Fourth Schedule relatable to it, are applicable to even Arbitral Tribunal appointed by the parties themselves in terms of their contract/agreement.

This Court is also in agreement with the observations made by the various High Courts quoted hereinabove, regarding the question of "Sum in Dispute" which has to be taken cumulatively as the claim and counter claim and not calculated separately as eventually only one of the parties to the arbitration proceedings would most likely succeed. If the claimant succeeds it would be getting around 198 crores whereas if the respondents succeed they would be getting an amount of Rs.230 crores. As each of the parties would be getting only the amount claimed by them at the termination of the arbitration proceedings.

This Court is also of the considered opinion that the Fourth Schedule is applicable to even Arbitral Tribunals appointed under Section 11(2) and the ceiling limit of Rs.30 lacs as Model Fee for all claims above Rs.20 crores would be applicable in the case of determination of Fee of Arbitral Tribunal and the orders impugned have erroneously ignored the Fourth Schedule saying that it would only be applicable to cases where the High Court has framed Rules or appointed Arbitrators.

With regard to the question whether Fee should be taken as a composite amount or is to be paid separately and individually to each Arbitrator, this Court is of the considered opinion that the arguments raised by Shri Sudeep Seth, learned Senior Counsel appeal more to reason, because under Section 2(d) of the Act the Arbitral Tribunal is defined either as a sole arbitrator or a Panel of arbitrators and the language used in Sub Section (14) of Section 11 is for “determination of Fees of the Arbitral Tribunal”. Had the Legislature intended that the Fee as mentioned in the Fourth Schedule was to be given to each of the members of the Arbitral Tribunal individually, in case it was a multi member body, then it would have clarified the same by appending another note to the Fourth Schedule by saying that in the event the Tribunal is a multi member body each of its its members would be getting the Fee as mentioned in the Schedule. **421 [State of U.P. and others vs. GVK EMRI (UP) Pvt. Ltd. and another, 2021(7) ADJ 410(LB)]**

CIVIL PROCEDURE CODE

Civil Procedure Code, 1908- Section 47-Partition suit- Preliminary decree passed – Final decree prepared in terms of compromise between the parties- Execution of – Objection regarding its executability - Dismissl of by two Courts below-Legality of- Objector was aware that part of the suit property including his share was in possession of some other person yet he entered into compromise without insisting upon eviction of such persons before entering into compromise- Such persons who came to posses the suit

property during pendency of the partition suit are bound by doctrine of lis pendens- Compromise decree cannot be said to be inexecutble merely because property, which came to the objector's share is possessed by some persons who were not party to the suit- Objection raised by objector regarding executability of the decree is without any substance- Petition dismissed.

Powers available under section 47 of C.P.C. are quite different and much narrower than those available in appeal/revision or review. Executing Court can neither travel behind decree nor sit in appeal over the same or pass any order jeopardizing rights of parties thereunder. A decree is unexecutable only on limited grounds where it suffers from jurisdictional error/infirmity or is void and a nullity, apart from the ground that decree is incapable of execution under law, either because the same was passed in ignorance of some provision of law or a law was subsequently promulgated making a decree unexecutable after its passing. An erroneous decree cannot be equaled with one which is a nullity. **[Tribhuwan Kaushik vs. Vijay Kumar @ Buddhi Ballabh and others, 2021 (152) RD 51(Uttrakhand)]**

Mandatory Injunction-Civil Procedure Code, 1908- Section 100- Second appeal- Trial Court found that temple exists on 10 biswansi of Gata No. 168- Appeal against- Dismissed –Legality of –Trial Court recorded findings basing upon khasra of plot No. 168 Plaintiff witnesses could not prove the plaint case- Khasra of plot No. 168 established that area of plot No. 168 is 4 bigha 12 biswa- Appellate Court upholding the finding of Trial Court said that the burden is upon the plaintiff to prove that he is the owner in possession of the property in dispute- Plaintiff could not take advantage of lacuna in the case of defendant in order to obtain decree in his favour-Findings recorded by two Courts below are findings of fact based on evidence on record- No interference warranted-Appeal dismissed.

The appellate court while upholding the finding of trial court has noticed that in the suit for mandatory injunction, the burden is upon the plaintiff/appellant to proof that he is the owner and in possession of the property in dispute. The appellate court further noticed that the plaintiff/ appellant could not take advantage of lacuna in the case of defendant/respondent in order to obtain a decree in his favour. The appellate court after noticing the aforesaid fact affirmed the

finding of the trial court. **[Hanuman Mandir, Jarauli vs. Kanpur Development Authority, 2021 (152) RD 84 (Alld.)]**

Civil Procedure Code, 1908- Section 100 and Order XLI, Rule 31- Second appeal- Appellate Court allowed the appeal and decreed the suit of the plaintiffs/respondents by reversing the judgment and decree of dismissal of suit passed by the Trial Court-Second appeal against- It is settled position in law that the plaintiff has to succeed on the strength of his own case and not on the weaknesses of his opponent- The burden lies upon the plaintiff to prove the factum of ownership of the suit property but the plaintiff utterly failed to plead and prove his title over the suit property-The plaintiff nowhere has pleaded on what basis he has become the owner/landlord of the suit property- Mere assertion that plaintiff is the owner/landlord of the suit property is not sufficient to deal with the title of the property- 1st Appellate Court in cryptic and cursory manner allowed the appeal of the plaintiff-Held, 1st, Appellate Court committed illegality in allowing the appeal without reversing the findings recorded by the Trial Court-Appellate Court had not followed the provisions of Order XLI, Rule 31 of CPC, as such, the judgment is vitiated in law-1st Appellate Court is the final Court of facts- Judgment of the Appellate Court must, therefore, reflect Court's application of mind and it must record its findings supported by reasons- Second appeal is allowed.

Answer to the substantial question of law:-

(c) Whether without framing proper issues arising from the pleadings of the parties, a case may be decided?

The plaintiff nowhere has pleaded on what basis he has become the owner/landlord of the suit property. Mere assertion that plaintiff is the owner/landlord of the suit property is not sufficient to deal with the title of the property. On the perusal of the issues, as framed by the trial court, would show that no question of title has been framed by the trial court. The plaintiff did not prove his title over the suit property by raising the plea in this regard, thus the substantial question of law 'c' is decided accordingly.

Answer to the substantial question of law 'd':-

Whether the lower appellate court could decree the suit without setting aside the finding recorded by the trial court?

In view of the admission himself made by Daya Ram PW3 that there is no relationship of landlord and tenant between the plaintiff and defendant. The relevant portion of the statement of PW3 is extracted below:

Vernacular Matter Omitted

The trial court recorded its finding that plaintiff failed to plead his case that on what basis he become the owner of the suit property and dismissed the suit of the plaintiff but the 1st appellate court without reversing the findings recorded by trial court or without formulating any point of determination or without recording any findings on all the issues so framed by the trial court, the 1st appellate court in cryptic and cursory manner allowed the appeal of the plaintiff. It is held that the 1st appellate court committed illegality in allowing the appeal without reversing the findings recorded by the trial court. Thus, the substantial question of law is decided accordingly.

Answer to the substantial question of law:-

(e) Whether in absence of any finding that the predecessor-in-interest of the appellant has committed any default in the payment of rent, the suit on the ground of default could be decreed?

After withdrawal of the suit from the Court of Provincial of Small Causes Court, the plaintiff instituted the suit in regular civil court claiming himself the owner/landlord of the suit property. Perusal of the plaint would reveal that neither the plaintiff has pleaded his title nor any evidence has been led in this regard. Plaintiff-Daya Ram himself has admitted in his cross examination that there is no relationship of landlord and tenant between the plaintiffs and defendant. Thus, the substantial question of law is decided accordingly.

Answer to the substantial question of law ‘f’:-

Whether the first appellate court which was the last court on facts and law erred in law in allowing the appeal without reversing/setting aside finding recorded by the trial court and without recording its finding on any of the issues or any question of law?

At this juncture, it would be apt to reproduced Order 41 Rule 31 C.P.C., same is extracted below;

“Order 41 Rule 31 Contents, date and signature of judgment - The judgment of the appellate Court shall be in writing and shall state -

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

And shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

Perusal of the judgment of 1st appellate court would reveal that the appellate court had not followed the provisions of Order 41, Rule 31 of C.P.C. as such, the judgment is vitiated in law. Hon'ble Apex Court in catena of decisions has held that 1st appellate court is the final court of facts. The judgment of the appellate court must therefore reflect court's application of mind and it must record its findings supported by reasons. The law relating to powers and duties of the first appellate court is well fortified by the legal provisions and judicial pronouncements. The 1st appellate court should be vigilante in deciding the first appeal inconsonance of the provisions contained in Order 41 Rule 31 C.P.C. Reference may be made to H. Siddiqui (Dead) by Lrs. vs. A. Ramalingam reported in (2011) 4 SCC 240. In the said case, while interpreting the Order 41 Rule 31 CPC, Hon'ble the Apex Court has held as under :-

“The said provisions provide guidelines for the appellate court as to how the court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/ evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance of the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in

terms of the said provisions and the court must proceed in adherence to the requirements of the said statutory provisions."

Answer to the substantial question of law:

(g) As to whether the second appeal is not maintainable in view of the provisions contained in Section 102 C.P.C., as applicable in the year 1988?

Learned counsel for the respondent has raised his plea before this Court that since the second appeal is arising out of the suit for recovery and ejectment, therefore, in view of the provisions contained in Section 102 of C.P.C. as applicable in the year 1988, the present second appeal is incompetent. In support of his contention, he referred the judgment of Hon'ble Calcutta High Court rendered in *Hara Mohan Saha vs. Sudhanshu Bhusan Pal and Others*., AIR 1923 Calcutta 83.

Answer to the substantial question of law:

As to whether the first appellate court erred in law in appreciating the evidence beyond the pleadings of the plaintiff?

The plaintiff has averred that he is owner/landlord of the suit property. Plaintiff has not averred that on what basis he has became the owner of the suit property. Since, the SCC suit was returned under Section 23 of the Act to be instituted in regular civil side and claiming relief of title, but the plaintiff did not make efforts to file suit by amending the plaint based on title. However, the plaintiff has filed the mortgaged deed, sale deed and rent deed but fact remains that there is no pleading in the plaint suggesting that any mortgage deed, sale deed and rent deed were executed by Bhawani Bhik in favour of Kashmiri Lal, which consequently, transferred in favour of plaintiff. It is settled law that the evidence cannot be looked into beyond the pleadings. Hon'ble Apex Court in Mahendra L. Jain & others Vs. Indore Development Authority & Others reported in (2005) 1 SCC 639, this Court held that mere non- production of documents would not result in adverse inference. If a document was called for in the absence of any pleadings, the same was not relevant. An adverse inference need not necessarily be drawn only because it would be lawful to do so. Hon'ble Apex Court in catena of judgments has held that a decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in absence of the pleadings in that respect. No party can he permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. It was further held that where the

evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon. Thus, the substantial question is decided accordingly. **[Nanak Chand and another vs. Daya Ram and another, 2021 (152) RD 218 (Uttrakhand)]**

Sec. 115, Order 21 Rule 36—Revision petition—Whether executing court was supposed to issue warrants of possession in the light of provision contained under Order 21, R. 36

At that stage, when initially the court takes cognizance of the case transferred to it and issued notices under Rule 89-A of General Rule (Civil) 1957, it was not at that stage, where even executing court at the very first instance, ever under law was supposed to issue a warrant, as contemplated under Order 21 Rule 36 of C.P.C., even prior to giving the parties to the proceedings an intimation of the transfer of the matter, the order dated 27.02.2021, the manner in which it has been interpreted, in fact it was not a stage where the executing court on the receipt of records on transfer, could have invoked Order 21 Rule 36 of the C.P.C. for issuing warrants of possession, to the judgment debtor at the first instance itself. The recourse to the said proceedings could always be pressed by the court and even by the decree holder, that is the revisionist herein only when the parties to the execution proceedings, after the receipt of notices under Rule 89-A of General Rule (Civil), have put in appearance. In fact, the revisionist intends by way of a premonition that there ought to have been an issuance of a warrant under Order 21 Rule 36 of the C.P.C. even on the first date itself when the court takes cognizance on the transfer of the matter before it. This is not the spirit envisaged under Rule 89-A. The recourse to Order 21 Rule 36 of the C.P.C. would be a stage subsequent to the information being imparted to the parties to the proceedings of the execution case. Hence, since the impugned order it's a simplicitor issuance of notice of receipt of the record on transfer, it cannot made as a subject matter of revision under Section 115 of C.P.C. as it would not fall to be a case decided. **[Harmohinder Pal Singh vs. Rajender Pal Singh, 2021 AIR CC 2156 (UTR)]**

Civil Procedure Code, 1908- Order VIII, Rule 1 –Written statement- Closing of opportunity to file written statement-Legality-In view of decision of Apex Court in case of Kailash v. Nanhku and others –Impugned order not sustainable-Set aside-Direction issued to respondent to file written statement-Revision allowed with cost.

Having heard learned Counsel for the parties and from perusal of the record, it appears that the Court while passing the order did not take note of the decision of the Apex Court in the

case of Kailash vs. Nanhku and others, (2005)4 SCC 480, where the Apex Court had the occasion to consider whether the provisions of Order VIII, Rule 1, CPC are directly or mandatory and after considering the legal submission, it was held as under:

> "41. Considering the object and purpose behind enacting Rule 1 of Order VIII in the present form and the context in which the provision is placed, we are of the opinion that the provision has to be construed as directory and not mandatory. In exceptional situations, the Court may extend the time for filing the written statement though the period of 30 days and 90 days, referred to in the provision, has expired. However, we may not be misunderstood as nullifying the entire force and impact- the entire life and vigour- of the provision. The delaying tactics adopted by the defendants in law Courts are now proverbial as they do stand to gain by delay. This is more so in election disputes because bydelaying the trial of election petition, the successful candidate may succeed in enjoying the substantial part, if not in its entirety, the term for which he was elected even though he may lose the battle at the end. Therefore, the Judge trying the case must handle the prayer for adjournment with firmness. The defendant seeking extension of time beyond the limits laid down by the provision may not ordinarily be shown indulgence.
>
> 42. Ordinarily, the time schedule prescribed by Order VIII, Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the Court whether within 30 days or 90 days, as the case may be, should not be grant4ed just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order VIII, Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended."

In view of the aforesaid, this Court is of the opinion that the impugned order cannot be sustained. Accordingly, the same is set aside. A direction is given to the revisionist to file his written statement before the Court concerned on or before 2.4.2021 with an advance copy to the opposite parties. In case if the written statement is filed as above, the same shall be taken on record and the Court concerned shall proceed with expedition. **[Baba Deen @ Vijay Prakash vs. Sundar Lal and others, 2021 (152) RD 331(Allahabad Lucknow Bench)]**

Civil Procedure Code, 1908-Order XXI, Rule 97-Execution of decree-Objection thereto-Rejection-Legality- Compromise decree-Mother and father of appellants earlier unsuccessful to obstruct execution of decree- They set up appellants to object to execution of decree- Court below lawfully recorded a finding of abuse of process of Court by appellants by moving said application- Appeal dismissed with cost.

Thus, after the mother and the father of the appellants herein, namely, Amit Kumar Singh and Smt. Pooja Singh were unsuccessful to obstruct the execution of decree passed in August, 2003, then they have set up their son and daughter (appellants herein) who filed a Misc. Case No.58 of 2017 (Km. Aishwarya Singh and another Vs. Virendra Singh and others) under Order XXI Rules 97 and 101 C.P.C. objecting the execution of decree of O.S. No.136 of 2000. The application No.20-Ga 2 and 3-Ka 1 filed by the appellants herein mainly on the ground that they being co-parcener have a right in the disputed property and therefore, the decree cannot be executed against them were rejected by the court of Additional District Judge/Special Judge (SC/ ST Act) Jalaun at Orai by two separate orders both dated 26.02.2018. *Aggrieved with these orders dated 26.02.2018, the appellants herein have filed the present appeal under Section 96 C.P.C.*

The facts of the case as noted above clearly establish gross abuse of process of Court by Amit Kumar Singh, his wife Pooja Singh and now by their son and daughter who are appellants herein. In the impugned order dated 26.02.2018 the court below while rejecting the application of the appellants herein, briefly discussed the facts and lawfully recorded a finding of abuse of process of Court by the appellants by moving the application 3-Ka 1 malafidely under Order XXI Rules 97 and 101 C.P.C. so as to frustrate the execution of decree which has been rejected by the impugned order. **[Sresth Singh vs. Virtendra Kumar Singh and others, 2021 (152) RD 514 (Allahabad)]**

CONSTITUTION OF INDIA

Constitution of India – Article 21, 226

As a matter of principle, private individuals should not be given security at State cost unless there are compelling transparent reasons, which warrant such protection, especially if the threat is linked to some public or national service they have rendered and, the security should be granted to such persons until the threat abates. But, it the threat perception is not real, it would not be proper for the Government to grant security at the cost of tax payers money and to create a privileged class. In a democratic country governed by rule of law and written Constitution providing security at State expense ought not to become an act of patronage to create a coterie of 'obliged' and 'loyal' person. The limited public resources must be used carefully for welfare schemes and not in creating a privileged class. **[Abhishek Tiwari vs. State of U.P. and others, 2021(7) ADJ 189(DB)(LB)]**

Arts. 226, 299—Writ petition—Seeking to enforce certain contractual rights and obligation in Govt. contract—Maintainability

In a case where the contract entered into between the State and the person aggrieved is of a non-statutory character and the relationship is governed purely in terms of a contract between the parties, in such situations,, the contractual obligations are matters of private law and writ would not lie to enforce a civil liability arising purely out of a contract. The proper remedy in such cases would be to file a civil suit for claiming damages, injunctions or specific performance or such appropriate reliefs in a civil court. Pure contractual obligation in the absence of any statutory compulsion would not be enforceable through a writ.

The remedy under Article 226 of the Constitution being an extraordinary remedy, it is not intended to be used for the purpose of declaring private rights of the parties. In the case of enforcement of contractual rights and liabilities the normal remedy of filing a civil suit being available to the aggrieved party, this Court may not exercise its prerogative writ jurisdiction to enforce such contractual obligations. **[M/s. R.K. Road Line Private Ltd. vs. Uttar Pradesh Co-operative Federation Ltd., AIR 2021 All 180 : 2021 (6) ADJ 167]**

Article 309

Executive instructions cannot amend or supersede the statutory rules or add something therein, nor the orders be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory rule nor does it have any force of law. In *Union of India and others vs. Somasundaram Vishwanath and others,* AIR 1988 SC 2255, the Hon'ble Supreme Court observed that if there is a conflict between the executive instructions and the rule

framed under the proviso to Article 309 of the Constitution, the rules will prevail. Similarly if there is a conflict in the rules made under the proviso to Article 309 of the Constitution and the law, the law will prevail.

The main purpose of administrative instruction/ Government order is to fill the lacunae in statutes and supplement the rules and regulations. It is often observed that such instructions directly trench upon the ambit of legislature. This gives rise to confusion as to whether the statute will be binding or the administrative instructions.

In view of the above legal proposition as held by Hon'ble Supreme Court, it is settled law that executive instructions cannot override the statutory provisions. Executive instructions cannot amend or supersede the statutory rules or add something therein, nor the orders issued in contravention of statutory rules for the reason that an administrative instruction is not a statutory rule nor does it have any force of law.

It is settled law that there is no legal right vested in the candidates to be selected for appointment. Selected candidates have only "a right to be considered". **[Pankaj Singh and others vs. State of U.P. and others, 2021(6) ADJ 29(LB)]**

Constitution of India- Article 226

The general principles which may be culled out from the aforementioned judgments is that in a case where the contract entered into between the State and the person aggrieved is of a non-statutory character and the relationship is governed purely in terms of a contract between the parties, in such situations the contractual obligations are matters of private law and a writ would not lie to enforce a civil liability arising purely out of a contract. The proper remedy in such cases would be to file a civil suit for claiming damages, injunctions or specific performance or such appropriate reliefs in a Civil Court. Pure contractual obligation in the abse3nce of any statutory complexion would not be enforceable through a writ. **[M/s. R.K. Road Lines Private Ltd. vs. Uttar Pradesh Cooperative Federation Ltd. and others, 2021(6) ADJ 167(DB)]**

CRIMINAL PROCEDURE CODE

Criminal Procedure Code – Section 41A, Indian Penal Code- Section 498

In order to ensure what we have observed above, we give the following directions:

The State Governments to instruct its police officers not to automatically arrest when a case under section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from section 41-A of Cr.P.C. 1973.

All police officers be provided with a check list containing specified sub-clauses under section 41(1)(b)(ii);

The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/ producing the accused before the Magistrate for further detention;

The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;

Notice of appearance in terms of section 41-A Cr.P.C. be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing; **[Vimal Kumar and others vs. State of U.P. and another, 2021(116) ACC 486]**

Criminal Procedure Code – Section 107

The foundation of jurisdiction for action under Section 107 is credible information from a police officer or a private person. Prior to the initiation of proceedings under Section 107, information must be given against a person from whom it is sought to take security. The condition precedent to taking security is that the Magistrate should be informed that some person is likely to commit a breach of the peace or disturb the public tranquility or to do some wrongful act that may probably occasion a breach of the peace or disturb the public tranquility. The law provides for a proceeding under Section 107, being started on information received, if in the opinion of the Magistrate there is sufficient ground for a proceeding. The Magistrate has to satisfy himself that a person is likely to commit a breach of the peace or disturb the public tranquility as mentioned in Section 107 before taking action.

Section 107, does not give discretion to the Magistrate in the sense that he “may” require the person to show cause. But when he does exercise that discretion and does decide that he will issue a notice to show cause, then that notice to show cause must be a notice which satisfies the requirements of Section 111. Persons who are sought to be bound over to keep the peace should be given an opportunity to show cause and all the procedure laid down in Chapter VIII should be followed.

For taking action under Section 107, the manner provided is clearly laid down under Section 111. Issue of a preliminary notice to show cause apart from what is provided in Section 111 does not appear to be justified. Before the Magistrate two courses are open. If he is satisfied on report on information, he will immediately draw up a proceedings under Section 107, but if he is not satisfied, then he will not take any action and leave the matter as it is.

A show cause notice has solemn purpose to inform the person about the material for which response is being sought with regard to the acts which may constitute breach of peace for which he is being directed to file personal bond for maintaining peace. For a person who is not aware of the acts or incident for which he may or may not be culpable, it is impossible for him to reply to such a show cause notice.

The notice does not mention any act or omission on the part of the applicant which may have been considered by the Magistrate at the time of issuance of the notice. The material is the foundation of the exercise of power u/s 107 Cr.P.C. which is clearly lacking in the notice. The notice either should clearly disclose the material indicating the satisfaction of the Magistrate or the same should be accompanied by the Police report and other material being relied upon by the Magistrate at the time of issuing of notice. In the present case, both are missing and therefore, the impugned notice does not fulfill the prescription of law in this regard and therefore is liable to be set aside. **[Manish Yadav vs. State of U.P., 2021(116) ACC 430]**

Section 125, Sections 12, 18 of Protection of Woman from Domestic Violence Act

It was decided by Hon'ble Allahabad High Court that the direction issued by the court for maintenance and to provide accommodation does not fall within ambit of "protection order" as envisaged in Section 18 of D.V. Act, as application was filled by wife, it was neither in prescribed format nor supported by any affidavit further no date was fixed for hearing on said application. The alleged order was passed without issuing notice and without providing any opportunity of hearing to husband, thus the order was set aside and the matter was remitted back. [**Saddam Hussain alias Pintu v. State of U.P., 2021 Cri.L.J. (NOC) 508 (All.): AIR Online 2020 All. 2293**]

Criminal Procedure Code – Section 154, Indian Penal Code – Section 304B, 306 - Sentencing

It is settled principle of law that only on the ground that F.I.R. was lodged by delay, the prosecution case cannot be thrown out because no time limit has been prescribed for lodging the F.I.R. either in Evidence Act or in the Code. The delay, caused in lodging the F.I.R., depends upon facts and circumstances of the each case and if such delay is natural and reasonable, it cannot be treated fatal to the prosecution story.

It is also pertinent to point out at this juncture that for offence of dowry death as provided under Section 304-B I.P.C., prosecution has to prove unnatural death of a woman within seven years of her marriage. In addition to that, she was subjected to cruelty by her husband or his relatives in relation to demand of dowry soon before her death. If anyone of the above ingredients is not proved by prosecution, accused cannot be convicted for offence of dowry death. The offence of Section 306 I.P.C. is lesser and different from the offence of dowry death.

For this offence only abetment which leads to commitment of suicide of a person is required to be proved and if such suicide is done by women within seven years of her marriage, due to cruelty caused by her husband or any relation of her husband, the Court may presume the offence of abetment of suicide, in view of statutory presumption as provided under Section 113-A of Evidence Act. Further accused charged for offence of Section 302 or 304 I.P.C. may be convicted for offence under Section 306 I.P.C. without framing separate charge for offence under Section 306 I.P.C Three judges Bench of Supreme Court, relying on Constitutional Bench Judgment in Willie Slaaney vs. State of M.P. AIR 1956 SC 116 and three Judges Bench Judgment in **Gurubachan Singh vs. State of Punjab, AIR 1957 SC 623,** in **Dalbir Singh vs. State of U.P., 2004 SCC (Cr.) 1592**, where question arose, whether the appellant convicted for offence under Section 302 and 498 I.P.C. but acquitted for offence under Section 304-B I.P.C. by trial Court, can be convicted for offence under Section 306 I.P.C., convicting the appellant for offence under Section 306 I.P.C., has held as under :

> "There is a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 CrPC, it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that **Sangaraboina Sreenu [(1997) 5 SCC 348 : 1997 SCC (Cri) 690]** was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC."

It is settled principle of sentencing and penology that undue sympathy in awarding the sentence with accused is not required. The object of sentencing in criminal law should be to protect the society and also to deter the criminals by awarding appropriate sentence. In this regard Hon'ble Supreme Court has observed in **State of Madhya Pradesh vs. Saleem @ Chamaru, AIR 2005 SC 3996** which is as under:-

The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal." **[Smt. Chameli and others vs. State of U.P., 2021(116) ACC 383]**

Section 156 (3) Cr.P.C.

Hon'ble Allahabad High Court held while discussing the option available before a Magistrate on an institution of written complaint is that, Magistrate has on institution of written complaint regarding commission of cognizable offence has the following two options : (1) At the pre-cognizance stage he may direct to concerned police station to register FIR on the basis of

facts narrated in the complaint if commission of cognizable offence disclosed prima facie and Investigating officer would conduct the investigation. Thus the Magistrate exercises a very limited power under Section 156(3) and so is it's discretion. It does not travel into the arena of merit of the case, if such case was fit to proceed further (ii) At the post cognizance-after taking cognizance, he may adopt procedure of complaint cases provided under Sections 200 and 202, Cr.P.C. If the Magistrate is not satisfied with the conclusions arrived at by the Investigating Officer in report submitted under Section 173 then the Magistrate may take cognizance upon original complaint sent to S.H.O. at pre-cognizance stage and proceed further to examine the complaint under section 200 and the witnesses under section 202, Cr.P.C. Rejection of complaint at the pre-cognizance stage under Section 156(3) does not debar institution of second regular complaint. It would be post-cognizance stage, if the Magistrate takes cognizance on the original complaint or after rejection at pre-cognizance stage, if second complaint is filed by the complainant. In genuine cases, if averments of the complainant are true and trustworthy or these are found so after preliminary inquiry, then the Magistrate under section 156(3) may direct the S.H.O. to register FIR and conduct investigation on the basis of averments of the complaint. The Magistrate may dismiss the complaint under section 156(3) if by way of instituting complaint, defence version is created to absolve the complainant from the case registered earlier or on the basis of allegations made in the complaint. If dispute is purely of civil nature or the Magistrate considers that the complaint is false and frivolous. The Magistrate has to power to test the truth and veracity of the allegations leveled against the proposed accused persons and if there is no substance in the averments of the complainant then at pre-cognizance stage, the complaint may be dismissed under Section 156(3)

Magistrate has ample discretion at pre-cognizance stage to direct concerned Police officer to register FIR on basis complaint instituted. Special Judge, at pre-cognizance stage has not exercised such discretion in favour of complainant. Special Judge duly considered facts, in which complaint was instituted. At post cognizance stage complainant may institute regular complaint on basis, of which Special Judge may record statement of complainant and then proceed according to law on basis of regular complaint, if instituted. Dismissal of complaint instituted u/s 156(3), at pre cognizance stage, has no effect on regular complainant, if instituted by complainant. [**Ram Khelawan v. State of Uttar Pradesh, 2021 Cri. L.J. 2913: AIR Online 2021 All 129]**

Criminal Procedure Code – Sections 156(3), 190, 200, 202, 203, 204

The following legal proposition emerge on a careful consideration of the facts and circumstances of this cases:

(i) That a Magistrate can order investigation under Section 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under Sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation under Section 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.

(ii) Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

(iii) In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

(iv) Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190.

It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) of the Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter -- proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g. ordering investigation under Section 156(3), or issuing a search warrant".

Section 156(3) appears in Chapter 12 which deals with information to the police and the powers of the police to investigate a crime. This section is therefore placed in a Chapter different from Chapter 14 which deals with initiation of proceedings against an accused person. It is, therefore, clear that Sections 190 and 156(3) are mutually exclusive and work in totally different spheres. In other words, the position is that even if a Magistrate receives a complaint under Section 190 he can act under Section 156(3) provided that he does not take cognizance. The position, therefore, is that while Chapter 14 deals with post cognizance stage Chapter 12 so far as the Magistrate is concerned deals with pre-cognizance stage, that is to say once a Magistrate starts acting under Section 190 and the provisions following he cannot resort to Section 156(3).

The Magistrate's powers under Section 156(3) of the Code to order investigation by the police have not been touched or affected by Section 202 because these powers are exercised even before cognizance is taken. In other words. Section 202 would apply only to cases where the Magistrate has taken cognizance and chooses to enquire into the complaint either himself or through any other agency. But there may be circumstances as in the present case where the Magistrate before taking cognizance of the case himself chooses to order a pure and simple investigation under Section 156(3) of the Code.

The question is, having done so, is he debarred from proceeding with the complaint according to the provisions of Sections 190, 200 and 204 of the Code after receipt of the final report by the police?

On the perusal of the above-mentioned provisions of Section 156(3) Cr.P.C. and precedents of Hon'ble Supreme Court and of Allahabad High Court, it is well settled proposition of law that the concerned Magistrate has on institution of written complaint regarding commission of cognizable offence has the following two options:-

(i) At the pre-cognizance stage- he may direct to concerned police station to register F.I.R. on the basis of facts narrated in the complaint if commission of congnizable offence disclosed prima facie and Investigating officer would conduct the investigation. Thus the Magistrate exercises a very limited power under section 156(3) Cr.P.C. and so is it's discretion. It does not travel into the arena of merit of the case, if such case was fit to proceed further.

(ii) At the post cognizance- after taking cognizance, he may adopt procedure of complaint cases provided under Section 200 and 202 Cr.P.C. If the Magistrate is not satisfied with the conclusions arrived at by the Investigating Officer in report submitted under section 173 Cr.P.C. then the Magistrate may take cognizance upon original complaint sent to S.H.O. at pre-cognizance stage and proceed further to examine the complaint under section 200 Cr.P.C. and his witnesses under section 202 Cr.P.C.

Rejection of a complaint at the pre-cognizance stage under Section 156(3) Cr.P.C. does not debar institution of second regular complaint. It would be post-cognizance stage, if the Magistrate takes cognizance on the original complaint or after rejection at pre-cognizance stage, if second complaint is filed by the complainant. In genuine cases, if averments of the complainant are true and trustworthy or these are found so after preliminary inquiry, then the Magistrate under section 156(3) Cr.P.C. may direct the S.H.O. to register F.I.R. and conduct investigation on the basis of averments of the complaint.

The Magistrate may dismiss the complaint under Section 156(3) Cr.P.C. if by way of instituting complaint, defence version is created to absolve the complainant from the case registered earlier or on the basis of allegations made in the complainant, if dispute is purely of civil nature or the Magistrate considers that the complaint is false and frivolous. The Magistrate has to power to test the truth and veracity of the allegations leveled against the proposed accused persons and if there is no substance in the averments of the complainant then at pre-cognizance stage, the complaint may be dismissed under section 156(3) Cr.P.C.

Likewise, in the facts and circumstances of a particular case, Magistrate may take cognizance on the basis of the complaint instituted before him and may adopt the procedure provided under Sections 200 & 202 of Cr.P.C. and if there is no substance in the prima-facie evidence adduced by the complainant, the complaint may be dismissed under section 203 Cr.P.C.

In the present scenario of the society, several false and frivolous complaints are being filed by the unscrupulous litigants. Therefore, heavy duties have been cast upon the concerned Magistrate to exercise above mentioned discretion consciously, expeditiously and judiciously on the basis of the facts and circumstances of each case to ensure that faith of the litigants in the Justice Delivery System of India should be maintained at interest of justice should not be defeated. **[Mewa Lal Bhargav vs. State of U.P. and another, 2021(116) ACC 433]**

Criminal Procedure Code – Sec. 164, 173

We, before parting, are of the view that considering the issues involved, it would be just and appropriate to issue following directives:

(i) The 'Monitoring Cell' of all the districts of the State shall collect monthly data of the number of cases in which after recording the statement of victim of sexual offences under Section 164 of the Code in support of prosecution. Final Report(s) has/have been submitted.

(ii) In the Monitoring Cell meetings, all the district judges of the State shall ensure that all Police Report(s) are submitted in accordance with the directions issued by the Apex Court in State of Gujarat vs. Kishanbhai and others, (2014) 5 SCC 108. **[Rama Shankar Mishra vs. State of U.P. and others, 2021(8) ADJ 374(DB)]**

Criminal Procedure Code – Sec. 197 Indian Penal Code – Secs. 409, 120B Prevention of Corruption Act, 1988 – Secs. 13(1)(a), 13(2).

It is, therefore, well settled that in order to constitute a valid sanction, it must be established that the case was given in respect of the facts constituting the offence with which the accused is proposed to be charged. The facts may be stated in the order granting sanction or may be proved by extraneous evidence. If the facts do not appear on the face of the sanction, the prosecution must prove it by other evidence that the material facts constituting the offence were placed before the sanctioning authority and he had granted the same after consideration of the said facts. It follows as a corollary that where the facts constituting the offence do not appear on the face of the sanction, it will be open for the prosecution to lead evidence that the material facts were place before the sanctioning authority before grant of sanction, and the occasion for leading the evidence can arise only during the course of trial.

The aforesaid discussion shows that an order of sanction can be assailed only on two grounds viz. (1) it has been granted by an authority who was not competent to do so; and (2) it has not been given in respect of the facts constituting the offence charged. However, if the challenge to sanction is based upon the ground that the facts constituting the offence do not

apepar on the face of the sanction, then, such a plea cannot be entertained at the initial stage before the trial has commenced, as the prosecution can have no opportunity to lead evidence in order to show that the sanction had been granted after consideration of relevant material. Therefore, such a plea cannot be entertained and examined in any proceedings including a writ petition under Article 226 of the Constitution of India before commencement of the trial. It is only after the trial has concluded and the prosecution has been given the opportunity to lead evidence that the validity of the sanction can be examined on this ground. **[Sukh Lal Yadav vs. State of U.P. and others, 2021(116) ACC 79]**

Section 204 – Order of Summoning – Requirement of

The law is clear and settled that summoning an accused to face criminal trial is a serious matter. The 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 allegation in the complaint and the Magistrate, merely in view thereof, has to set the Criminal law into motion. The Magistrate has to examine the nature of the allegations made in the complaint and the evidence both oral and documentary in support thereof. The Magistrate has to apply his judicial mind to the facts of the case and the law applicable therein. He has to *prima-facie,* arrive at satisfaction that the offence is made out and the accused deserves summoning for trial. Not only this, the application of judicial mind and the satisfaction must also be reflected from the order. Although it is not required that the Magistrate.

Although, it is not required that the Magistrate should discuss in detail or make a comparative assessment of the evidence, but, mere statement that the Magistrate had gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient to demonstrate application of judicial mind; the Magistrate cannot act in a mechanical manner, as has been held also in **Anil Kumar vs. M.K. Aiyappa and another, 2014(84) ACC 695(SC)**. At the same time, the order of summoning under section 204, Cr.P.C. does not require any explicit reasons to be stated and a detailed expression of his views is neither required nor warranted as held in *Bhushan Kumar vs. State (NCT of Delhi), 2012(77) ACC 667 (SC).* **[Om Prakash and others vs. State of U.P. and another, 2021(116) ACC 179]**

Criminal Procedure Code – Sec. 204

In view of the above, the conduct of the judicial officers concerned in passing orders on printed proforma by filling up the blanks without application of judicial mind is objectionable and deserves to be deprecated. The summoning of an accused in a criminal case is a serious

matter 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. **[Dharmraj and others vs. State of U.P. and another, 2021(7) ADJ 274]**

Criminal Procedure Code – Sec. 204

In view of the above, the conduct of the judicial officers concerned in passing orders on printed proforma by filling up the blanks without application of judicial mind is objectionable and deserves to be deprecated. The summoning of an accused in a criminal case is a serious matter 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. **[Surendra Kumar and others vs. State of U.P. and another, 2021(7) ADJ 61]**

Criminal Procedure Code – Sec. 227

The aforesaid decisions have almost settled the legal position that at the stage of charge the court is not required to consider pros and cons of the case and to hold an enquiry to find out truth. Marshaling and appreciation of evidence is not in the domain of the court at that point of time. What is required from the court is to sift and weigh the materials for the limited purpose of finding out whether or not a prima facie case for framing a charge against the accused has been made out. Even in a case of grave or strong suspicion charge can be framed. The court has to consider broad probabilities of the case, total effect of the evidence and the documents produced including basic infirmities, if any. If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, but the court should not weigh the evidence as if it were holding trial. Accused can be discharged only when the charge is groundless. **[Shivam Tiwari vs. State of U.P. and another, 2021(7) ADJ 162(LB)]**

Criminal Procedure Code – Sec. 227, 228

The ambit and scope of exercise of power under Section 227 and 228 of theCode, are fairly well-settled. It has been consistently held that the standard of test and judgment which is to be finally applied before recording of finding regarding the guilt or otherwise of the accused is

not exactly to be applied at the stage of framing of charge. The test to be applied at this stage would be whether there is sufficient ground for proceeding and not whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. The Court has clearly to sift the elements in order to find out whether or not there is sufficient ground for proceeding against the accused and if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 of the Code, if not he will discharge the accused. At the stage of framing of charge or considering discharge of the accused, no mini trial is contemplated and only probative value of material has to be gone into, to see if there is a *prima facie* case for proceeding against the accused. **[Kamlendra Bahadur Mishra and others vs. State of U.P. and another, 2021(7) ADJ 12]**

Criminal Procedure Code – Section 311

There is no requirement under the law to file questionnaire along with the application for recalling the witness. **[Amarjeet @ Kaluwa vs. State of U.P. and another, 2021(116) ACC 362]**

Criminal Procedure Code – Sections 311, 164

Undoubtedly, the rejection of an application under section 311 of the Cr. P. C. would amount to an interlocutory order against which a revision is not maintainable as per section 397(2) of the Cr. P. C.

Considering the aforesaid statutory provisions in light of the facts of the instant case, it is clear that the petitioner is requiring summoning of the Judicial Officer only with regard to giving evidence to the fact that the statement was made voluntarily and was not taken under pressure as deposed by the witnesses during trial.

In light of the provisions of section 164 read with section 281 of the Cr.P.C. the statement of the complainant as well as the other witnesses of the prosecution were to be recorded in the manner provided in the said sections and further no declaration was required by the Magistrate with regard to the voluntariness of the statement as it was only a statement of the complainant. The application of the petitioner requiring summoning of a judicial officer to prove the voluntariness of the statement was clearly misconceived.

The statement recorded under section 164 of the Cr. P. C. would be a public document as per Section 74 of the Evidence Act and, therefore, does not require any formal proof by summoning the Magistrate to prove the same. This view of the matter has been has been so interpreted. **[C.B.I. through S.P., New Delhi vs. State of U.P. and another, 2021(116) ACC 397]**

Criminal Procedure Code – Section 319

After having gone through the arguments of rival sides, this Court is of the view that the law is very clear in respect of an accused who has been summoned to face trial under Section 319 Cr.P.C. that the moment he has been produced as an accused before Court, the trial would revert back to the first stage of trial and the entire evidence has to be recorded again afresh in keeping with the mandate of law that trial has to be a *de novo* trial and on the basis of citations which have been relied upon by the learned A.G.A. quoted above, it is also very clear that there can be no estoppel against law, therefore, if law lays down that a particular procedure has to be followed while conducting a de novo trial, it has to be followed in letter and spirit as mandated under law and no deviation can be allowed to happen even at the concession/concurrence given by counsel or party of any side. In the case at hand, it appears that learned counsel for the applicant/ accused when facing trial before the court below, had given in writing that he was ready to cross-examine P.W. 1 and whatever he had stated in examination-in-chief before summoning of the accused applicant can be taken to be an examination-in-chief recorded against the accused applicant but that would be against the principle of law laid down under Section 319(4)(a) of Cr.P.C. as it mandated de novo trial which would include re-recording of evidence of all witnesses. In the present case, there is no dispute with respect to recording of statements of other witnesses of prosecution i.e. P.W. 2 to P.W. 9 in presence of accused applicant in totality but dispute is there only with regard to not recording the statement (examination-in-chief) of P.W. 1 in presence of the applicant and his counsel because of the written consent having been given on their part that they were ready to cross-examine the said witness, therefore, same is being found against the provision of law. **[Bablu @ Vishnu Dhar Dubey vs. State of U.P. and another, 2021(116) ACC 586 : 2021 (7) ADJ 699]**

Cr.P.C.- Sec. 340

18. In *Pritish* vs. *State of Maharashtra and others,* (2002) 1 SCC 253 the Hon'ble Supreme Court has held that the hub of Section 340 Cr.P.C. is formation of an opinion by the Court, before which proceedings were held, that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed but, even when the court forms such an opinion it is not mandatory that the court should make a complaint. Sub section (1) of Section 195 Cr.P.C. confers power on the court to do so, but, it does not mean that the court should, as a matter of course, make a complaint. In *Iqbal Singh Marwah* vs. *Meenakshi Marwah,* 2005(2) SCC 549, the Constitution Bench of the Hon’ble Supreme Court has held that under Section 340 Cr.P.C. the Court is not bound to make a complaint regarding commission of

an offence referred to in Section 195(1)(b), as the Section is conditioned by the words “Court is of opinion that it is expedient in the interest of justice.” This shows that such a course will be adopted only if the interest of justice requires and not in every case. This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint.

19. In Pritish (Supra), Iqbal Singh Marwah (Supra), and also in the State of Goa Vs. Jose Maria Albert Vales @ Robert Vales, (2018) 11 SCC 659, the Hon'ble Supreme Court has held that the Court at the stage envisaged in Section 340 of the Code would not decide the guilt or innocence of the party against whom the proceedings are to be instituted before the Magistrate and at that stage the Court is to be examine as to whether it was expedient in the interests of justice that an inquiry should be made into any offence affecting the administration of justice and that no expression of the guilt or innocence of the persons should be made while passing the order under Section 340 of the Code.

20. So far as holding of a preliminary enquiry as contemplated by Section 340 Cr.P.C. is concerned in *Pritish* (supra) it was held that the court is empowered to hold a preliminary enquiry although it is not peremptory that such an enquiry should be held and even without such a preliminary enquiry the court can form an opinion when it appears to the court that an offence of the nature contemplated by Section 195(1)(b) has been committed in relation to a Court. In Pritish (supra) it was also held that in such preliminary enquiry, if held, an opportunity to the would-be accused before the filing of the complaint is not mandatory. However, the Hon’ble Apex Court in Sharad Pawar vs. Jagmohan, (2010) 15 SCC 290 observed that it was necessary to conduct a preliminary inquiry under Section 340 Cr.P.C. and to afford an opportunity of hearing to the would-be accused. Learned A.G.A. has placed before this Court the judgment in State of Punjab versus Jasbir Singh (2020) 12 SCC 96 wherein the Hon’ble Supreme Court has referred the matter to the Larger Bench for consideration of the questions as to whether Section 340 Cr.P.C. mandates a preliminary inquiry and an opportunity of hearing to the would-be accused, before a complaint is made under Section 195 of the Code, by a Court. **[Sukhraj vs. State of U.P. and Another, 2021(6) ADJ 15]**

Sections 397 (1)(2) and 311 Cr.P.C.

It was held by Hon'ble Allahabad High Court while discussing the power of revision that it is accepted by Hon'ble Supreme Court that on plain reading of section 482 Cr.P.C., however, it would follow that nothing in the Cr.P.C., which would include sub section (2) of section 397 Cr.P.C. also, shall be deemed to limit or effect the inherent power of High Court. It is said that bar under section 397(2) of Cr.P.C. is not to operate in exercise of inherent power at all, it will be setting at naught one of the limitation imposed upon the exercise of revisional power applying harmonious interpretation, Hon'ble Supreme Court has opined that bar provided in sub section (2) of section 397, Cr.P.C. operates only in exercise of revisional power of the High Court, meaning thereby that the High Court have no power of revision in relation to interlocutory order and in the eventuality of orders other than interlocutory order, inherent power will come into play, there being no other provision of Cr.P.C. for redressal of grievances of the aggrieved party. In this view of matter, by introducing the bar under sub section (2) of section 397 Cr.P.C. legislation is intended to curve the protected litigation and try to ensure early disposal of cases.

It was held that order passed for summoning witness or for production of documents are only one step in furtherance of trial, shall be 'interlocutory order' and hence it is not revisable. It was also held that assailing such order in revision petition is clearly bared under section 397(2)Cr.P.C. [**Manoj Kumar Patel v. State of Uttar Pradesh and others, 2021 Cri. L.J. 2999: AIR Online 2020 All 2621]**

Criminal Procedure Code – Sec. 438, SC/ST Act – Sec. 18, 18A – Bar created u/S 18, 18A shall not applicable – condition of -

Perusal of the law laid down by Hon'ble Supreme Court in the case of Rahna Jalal (supra) and in the case of *Prithvi Raj Chauhan vs Union of India and others*, (2020) 4 SCC 727 *(supra) would show that Section 438 shall apply to the cases under the Act, 1989 if the complainant does not make out a prima facie case for applicability of the provisions of the Act, 1989. If an accused is able to demonstrate that the complaint does not make out a prima facie case for applicability of the provisions of the Act, 1989, then the bar created by Sections 18 and 18(A) shall not apply.*

In view of the above discussion we hold 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 18A of the Act, 1989 shall not apply. **[Gopal Mishra vs. State of U.P. and others, 2021(8) ADJ 316(DB)]**

Criminal Procedure Code – Section 439

In view of aforesaid discussion, this Court is of the view that conditions for grant of bail ought not to be so strict as to be incapable of compliance, thereby making a grant of bail illusory. The conditions while granting bail should be reasonable, so that it may not frustrate the very object of granting bail. Discretion exercised by the Court while imposing conditions should not be arbitrary, but it should be keeping in mind to strike balance between the accused and prosecution.**[Amit Kumar Kataria vs. State of U.P. and another, 2021(116) ACC 375]**

Criminal Procedure Code – Power of Appellate Court, Circumstantial Evidence

The Appellate Court has full power to review or re-appreciate or reconsider the evidence upon which the order/judgment of acquittal has been based and there is no limitation, restriction in exercise of such power bythe Appellate Court and the Appellate Court may reach at its own conclusion on the same set of evidence, both on question of facts as well as on law. However, it is to be kept in mind that in case of acquittal, the presumption of innocence which was initially with the accused persons has been fortified, reaffirmed, strengthened and also the golden principle which runs through the Web of criminal jurisprudence is that if two reasonable and logical conclusions can be derived on the basis of evidence on record the Appellate Court should not normally disturb the finding of the Trial Court. But simultaneously it is also to be kept in mind that the benefit of only a reasonable doubt can be given to accused persons in a criminal trial. The accused person cannot claim the benefit of each and every doubt. To get the benefit of a doubt the same has to pass the test of reasonableness and a reasonable doubt is a doubt which emerges out of the evidence itself.

The summarized principles of law deduced by the Apex Court on circumstantial evidence may be mentioned as under:

1. The circumstances relied upon by the prosecution which lead to an inference to the guilt of the accused must be proved beyond doubt.

2. The circumstances should unerringly point towards the guilt of the accused;

3. The circumstances should be linked together in such a manner that the cumulative effect of the chain formed by joining the links is so complete that it leads to only one conclusion i.e. the guilt of the accused;

That there should be no probability of the crime having been committed by a person other than the Accused. **[State of U.P. vs. Shiv Kumar Verma and another, 2021(116) ACC 540]**

EDUCATIONAL MATTERS

Educational Institution- Grant-in-aid-Application

Where application is invited fixing a last date for submission and after receiving the application, notices were issued by remove deficiencies, if any, within certain time. In case, deficiencies so pointed out, has been removed by the person/ Institution concerned within the time given, application cannot be rejected on the ground that deficiencies are removed after last date of submission of form, otherwise purpose of issuance of notice for removing the deficiencies would be frustrated and it would be a futile exercise only.

Further, once an application is rejected on one or more grounds by the Competent Authority. After challenge, rejection order is set aside by the Appellate Authority/ Court and matter is remanded back to pass fresh order. Competent Authority would have no right to reject the same again on a different ground/ grounds which were available at the time of first rejection order. It is required on the part of Competent Authority to take all such grounds of rejection in its rejection order available at the time of passing rejection order. Otherwise it would be unending process resulting into the harassment of applicant. **[Committee of Management, Purvanchal Prachya Ved Vidyaly Bharauli vs. State of U.P. and others, 2021(8) ADJ 657]**

INCOME TAX ACT, 1961

Income Tax Act 1961 – Sec. 2(15), 2(13), 11, 11(4A)

A careful reading of the above provisions shows that under the Act the “business” means to include any adventure or concern in the nature of trade, commerce or manufacture whereas the words “charitable purposes” include “education”. The word “education” in Section 2(15) of the Act is not qualified by any restrictions. It has been used in its widest amplitude so as to include education of all level to all classes of the society or category. Clearly, it cannot been confined to any section or class of the society or any particular type or level of Education. Meaning thereby any activity which includes or relates to education would be for charitable purposes within the meaning of Section 2(15) of the Act. Section 11(1)(a) provides that the income derived from property held the trust, wholly for charitable or religious purposes shall be exempted from the total income to the extent to which such income is applied for such purposes and where any such income is accumulated or set apart for application to such purposes, to the extent to which the income so accumulated or set apart is not in excess of 15% of the income from such property. The assessee herein is seeking benefit of Section 11(1)(a) of the Act with the assertion that the income derived from the hostel facility, a property held under the trust, had been wholly utilised for charitable purposes for imparting education and hence the same has to be excluded from the

total income and the Assessing Officer cannot treat the surplus, if any, on account of the hostel receipt as taxable income by applying the conditions of Section 11(4A) of the Act.

It is argued that the hostel income being subservient to the main object of the education, the Assessing Officer has gravely erred in treating the same as business income for disallowing the exemptions under Section 11(1) of the Act.

Sub-section (4A) of Section 11 is the bone of contention between the parties. A careful reading of the said provision indicates that it talks of any income of the trust or an institution which is in the nature of "profit and gains of business" and states that sub-section (1) of Section 11 would not apply unless two conditions mentioned therein are fulfilled, i.e (i) such business is incidental to the attainment of the objectives of the trust;(ii) and separate books of accounts are maintained by such trust or institutions in respect of such business.

Sub-section (4) of Section 11 states that for the purpose of Section 11 "property held under the trust" includes "business undertaking so held".

The crucial word in sub-section (4A) is "business" which has to be understood as per the meaning provided under Section 2(13) of the Act. The "business" in sub-section (4A) can mean any activity including any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce, or manufacture. A business undertaking of the trust may also be included as property held under the trust in view of the sub-section (4) of Section 11. But for getting the benefit of sub-section (1) of Section 11, the income derived from property held under the trust whether wholly or in part, must be used for charitable or religious purposes. Under sub-section (4A) of Section 11, income of any business of the trust in the nature of profit and gains of such business can be exempted under sub-section (1) of Section 11 only if two pre-conditions mentioned in the said sub-section are fulfilled. The first condition is that the business must be incidental to the attainment of objectives of the trust.

While considering the scope of sub-section (4A) of Section 11 which came into effect by the Finance (No.2) Act 1991 w.e.f. 01.04.1992, in Assistant Commissioner of Income Tax vs. Thanthi Trust, 2001 (247) ITR 785, the Apex Court had noted that the substituted sub-section (4A) gave trust and institution a wider latitude than the earlier sub-section (4A). In the wide language of sub-section (4A), a trust is entitled to the benefit of Section 11, if it utilises the income of its business for the purpose of achieving its charitable objects. In this way, the trust is allowed to create a corpus by indulging in business activity to feed the charity. As the provision stands, all that is required for the business income of the trust or institutions to be exempted from the tax is that the business should be incidental to the attainment of the objectives of the trust or institution. A business whose income is utilised by the trust or the institution for the purpose of achieving the objectives of the trust or the institutions, is, surely, a business which is incidental to the attainment of the objectives of the trust. It was, thus, held that the substituted sub-section (4A) is more beneficial to a trust or institution than the original provision.

It can, thus, be seen that sub-section (4A) of Section 11 presupposes a business venture of the trust or institution which is though independent to its main activity but incidental to the attainment of the objectives of the trust. The "business" as mentioned in the said sub-section can be an adventure or concern in the nature of trade, commerce or manufacture.

Having held that the applicability of the sub-section (4A) of Section 11 presupposes income from a business, being profit and gains of the business, the test applied is whether the activity which is pursued is integral or subservient to the dominant object or is independent/ancillary/incidental to the main object or forms a separate activity in itself. The issue whether the institution is hit by sub-section (4A) of Section 11 of the Act will essentially

depend upon the individual facts of the case of the institutions where considering the nature of the individual activity, it will have to be tested whether the same forms incidental, ancillary, connected activity (ies) and whether the same was carried out pre-dominantly with the profit motive in the nature of trade, commerce etc.

The question, therefore, would be whether the hostel activity of the trust which is imparting dental education in the institution established by it is a business activity incidental to the attainment of its objectives or it is an activity which is an integral and inseparable part of the main activity (education) carried on by the assessee. The determinative test shall be the theory of dominant purpose which has all through the years, been upheld to be the determining factor laying down whether the Institution is Charitable in nature or not. **[Daya Nand Pushpa Devi Charitable Trust Ghaziabad vs. Additional Commissioner of Income Tax Ghaziabad, 2021(6) ADJ 156(DB)]**

INDIAN EVIDENCE ACT

Evidence Act – Related witness – Admissibility's of

It is settled that merely because witnesses are close relatives of victim, their testimonies cannot be discarded. Relationship with one of the parties is not a factor that affects credibility of witness, more so, a relative would not conceal the actual culprit and make allegation against an innocent person. However, in such a case Court has to adopt a careful approach and analyse the evidence to find out that whether it is cogent and credible evidence. **[Badri and others vs. State of U.P., 2021(6) ADJ 396(DB)]**

Evidence Act – Injured Witness, India Penal Code – Section 34

The law on the point can be summarized to the effect that:-

(i) The testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and an injured witness will not let his actual assailant go unpunished merely with a view falsely implicate a third party.

(ii) Even if a portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained.

(iii) Trial will not be affected due to delay in sending Special report in relation to crime to the Magistrate.

(iv) Section 34 of I.P.C. stipulates that the act must have been done in furtherance of common intention. It is not necessary that the prosecution must prove that the action done by a particular or a specified person. It can be invoked where some of the co-accused may be acquitted **[Jagdamba and others vs. State of U.P., 2021(116) ACC 512]**

Indian Evidence Act, Section 9 – T.I.P.

It is settled principal of law that if the accused were not known to the prosecution witnesses and prosecution case is based only on the identification of the accused (T.I.P.) or on the identification produced before the Court, the prosecution must prove that the accused were not known to the prosecution witnesses prior to the occurrence and they had sufficient opportunity to see the special characteristics as well as identification marks on the person of the accused, committing the crime including identification marks on their faces. In addition to above, the prosecution also has to produce a link evidence to rule out of all the possibilities of opportunity of seeing the accused persons by the prosecution witnesses. Further, It is also settled principle of criminal jurisprudence that identification of accused by the witnesses before the Court is substantive piece of evidence whereas evidence of TIP is very weak evidence, it has only the corroboratory value and where the offenders were unknown to the witnesses and the prosecution case is based only on the evidence of identification, prosecution has to prove that prosecution witnesses had proper and sufficient opportunity to see and identify the respondents and they had properly seen and identified them.

The object of TIP is to find out whether the suspected offender arrested by police during investigation is real culprit or not. Evidence of TIP can be held as reliable and trustworthy only where the suspects were neither shown to the witnesses nor the witnesses had an opportunity to see them prior to TIP and the proceeding of TIP is not irregular. Thus if evidence of TIP is shaky and doubt due to aforesaid reason, the evidence of identification before the Court cannot be relied upon. **[Kamlesh vs. State of U.P., 2021(116) ACC 420]**

Section 32 - Dying Declaration-Juristic theory of applicability thereof-Essential ingredients of dying declaration for its acceptance discussed.

The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Nothwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination, the Court insist that the dying

declaration should be of such a nature as to inspire full confidence of the Court in its truthfulness and correctness. The Court however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring of prompting or a product of imagination. The Court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a Police Officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate is absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, when evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the Court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise. **[Ashiq Ali and another vs. State of U.P., 2021(116) ACC 1]**

Evidence Act, 1872- Section 68- Will-Duly signed by the Executor on both pages- Witnesses had not signed on each of the pages of the Will- Effect of- Mere absence of the signature of the witnesses on both the pages will not affect the substantial right of the

beneficiaries-Will has been proved by one of the witnesses of the Will-Will stands proved in terms of section 68 of the Act, 1872- Mutation on the basis of cannot be faulted with.

After hearing learned counsel for the petitioners and going through the record, it is apparent that two different Revision petitions were filed before the Court of the Commissioner, Chitrakoot Dham being aggrieved of the order passed by Sub-Divisional Officer, Naraini under the provisions of Land Revenue Act. Both the Revision petitions were heard together and it has come on record that Will, which was executed in favour of the respondent nos.5 and 6 was duly signed by the Executor on both the pages and was proved before the court of law. The only ground to challenge the Will in favour of the respondent-daughters is that witnesses had not signed on each of the pages of the Will. However, it has come on record that testator had signed the concerned Will in favour of the daughters on both the pages and, therefore, merely absence of the signatures of the witnesses on both the pages will not affect the substantial right of the beneficiaries, as has been held in case of Ammu Balachandran vs. O.T. Joseph and others; AIR 1996 Mad. 442 wherein in para 49, this issue has been discussed and answered in the following terms:-

> "49. The other suspicious circumstances are, that there is no signature in pages 1 and 2 and those pages are also not numbered in the Will. The argument that is taken is that pages 1 and 2 must have been subsequently substituted, and that is why page number is not found in those pages. If pages 1 and 9 have been subsequently substituted, in that attempt, the numbering of pages 1 and 2 would not have been forgotten as it is an obvious thing. Again, pages 1 and 2 are appearing on a single sheet of paper, and as such, there is no necessity for numbering the first sheet and there was only one more sheet and since it was a separate sheet, the page number was given. We must also remember that P.W. 2 has stated that when he signed in the Will, there were two sheets pinned together. In the absence of any other positive evidence, no inference can be drawn that pages 1 and 2 were subsequently substituted. The other suspicious circumstance alleged is that the Will is not signed in all the pages. That also cannot be said to be a suspicious circumstance since the Will is only a declaration of the last Will of the testator. Law does not say that every page should be signed. In paruck on The Indian Succession Act, Eighth Edition, 1993, the learned Author has commented on this point, at pages 118 and 119 of that book. The learned Author says that if a Will is written on several sheets of paper, it is not necessary that all the pages should be severally signed. One signature on the last sheet, made with the intention of executing the Will is sufficient. Section 63 of the Indian Succession Act only says that the signature or mark of the testator or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as Will. The signature or mark of the testator can be either at the commencement or at the end, but it must be so placed that it shall appear that it was intended to give effect to the instrument as a Will. Under the English Law, there is a slight difference. At pages 118 and 119 of the said book, the learned Author has said thus:-
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> ".... In England the Law is different. The Will Act, 1837, Sec. 9, enacted that no Will was valid unless it was signed "at the foot or end thereof. The Will Act Amendment Act, 1852, Section 1, provided that "every Will shall, so far as regards the position of the signature of the testator be deemed to be valid if the signature shall be so placed at or after or following or under or beside or opposite to the end of the Will, that it shall be

apparent on the fact of the Will that the testator intended to give effect by such his signature to the writing signed as his Will... but no signature shall be operative to give effect to any disposition or direction which is underneath or which follows it". The signature on the top right hand corner of the Will is not valid according to English law."

In so far as the Indian Succession Act is concerned, the learned Author has stated (at page 119) thus:-

"... the signature need not necessarily be at the end of the Will. It does not matter in what part of the Will the testator signs. In the Wills executed in vernacular language it is usual to put the signature on the top of the Will. This is valid execution."

All the suspicious circumstances alleged by the appellant are no circumstances which vitiate the Will".

Even the revisional court has accepted that Will recorded in favour of the daughters of the testator was proved by examining witness no.2-Shrwan Kumar son of Krishna Kumar Sharma in the court on 18.12.2009, and this witness had proved the Will executed in favour of Smt. Sampit Devi and Samit Devi, as the Will has been proved by one of the witnesses of the Will, then in terms of the provisions contained in Section 68 of the Evidence Act, Will has been rightly held to be proved and on the basis of such Will, mutation has been carried out, which cannot be faulted with. **[Raja Ram and others vs. State of U.P. and others, 2021 (152) RD 17 (Alld.)]**

Evidence Act, 1872- Section 81- Public interest litigation- News paper cuttings- Whether admissible under the provisions of Act, 1872 –Held, petitioner failed to substantiate his claim through any other substantial documentary evidence –No efforts to do proper research on the subject to collect material credible in nature- Petition could not accepted as Public Interest Litigation- Petition dismissed with cost of Rs.20,000/-.

After hearing learned Counsel for contesting parties and going through the pleadings, it is evident that provisions of section 81 of the Evidence Act, even when read in totality then also the presumption of genuineness attached under section 81 to a news paper report, cannot be treated as proof of the facts reported therein.

In case of Laxmi Raj Shetty and another vs. State of Tamil Nadu, AIR 1988 SC 1274, para-5, it is held that facts stated in a news paper are hearsay in nature. They are inadmissible in evidence unless maker of statement is examined. Judicial notice of facts stated in news paper cannot also be taken.

In case of B.Singh vs. Union of India and others, AIR 2004 SC 1923 (1924, 1929), it is held that petitioner not claiming to have any personal knowledge of allegations made against respondent in said representation and paper cuttings of news item and is also not aware of authenticity or otherwise of news item; te news paper report per se, not admissible in evidence. SC held that petitioner is busy body bent upon self publicity. No element of public interest

involved in the petition and dismissed the petition filed with oblique motive as misconceived with exemplary costs. SC further held that it is open for Court to examine the locus standi of petitioner to veil on public interest and see private malice etc. lurking behind it. Similarly, in case of Ravinder Kumar Sharma vs. State of Assam, 1999 (37) ALR 453(SC), it has been held that presumption of genuineness created under section 81 of the Evidence Act does not give rise to any presumption of genuineness about news paper reports and it is not to be treated as proof of facts stated in them. Such statements are merely hearsay.

Thus, in view of said legal position, when petitioner has failed to substantiate his claim through any substantial documentary evidence and has not taken pains to do proper research on the subject to collect material which can said to be credible in nature, we are not persuaded to accept this petition as Public Interest Litigation (PIL), but are constrained to term it as a publicity oriented litigation, which needs to be curtailed and grafted in its root. Therefore, petition fails and is dismissed with cost of Rs. 20,000/-. **[Rahul Singh vs. State of U.P. and others, 2021 (152) RD 636 (Allahabad)]**

INDIAN PENAL CODE

IPC – Sec. 306, Mens Rea

This Court must still again remark that cases where the charge is about abetment to commit suicide, there are very subtle features of evidence that may show the necessary *mens rea* and the relevant persistent conduct of the accused in driving the deceased to commit suicide. There could be cases where on the material collected during investigation, there is hardly anything to show that the accused or one of them *ex facie* committed an act proximate in point of time that could drive the deceased to take his life. Again, there could be cases where the role of one of the accused is overt and proximate in point of time, by the standard of a man similarly circumstanced and a sensible man at that, that could lead him to commit suicide. The proximate and immediate conduct of one of the accused rendering the deceased option-less to commit suicide, may not be an impromptu action, provoked by the action of the accused on occasion. It could be the precipitating event behind which stand a long trial of instigation or aid, driven by persistent conduct of one or more of the accused acting together. This is in particular true of a matrimonial relationship, which comes as it does, with abiding social obligations and much legal consequences. A spouse at the receiving end of matrimonial cruelty –mental and physical or

both, cannot be compared to a person placed in a different situation of harassment, like an employee perceiving or being actually harassed by his employer, or a student by his teacher. It is for this reason that special laws have been made for women where they commit suicide, within seven years of marriage in the matrimonial home.

No doubt, social realities have not yet arisen in the perception of law makers and others as well in similar terms for the other partner in marriage, but the reality remains that in the nature of relationship in matrimony, social and legal obligation arise, which when inter-laid with persistent cruel conduct by the wife, may lead a man to find himself optionless. Of course, it depends on the circumstance4s of a man, his financial and social status and his general outlook towards life. But, what cannot be ignored is the fact that in the matrimonial relationship both spouses, in sometime, become aware of the others general outlook and the threshold of toleration beyond which the other may not be driven, and if persistently harassed, may adopt fatal options.

There is yet another angle to the matter, which holds stronger in case of a matrimonial alliance. The person actually involved in doing an act proximate in point of time to the deceased taking his life, may have others participating with him/her leading to the 'build-up', where the fatal event occurs. These could be those persons who have conspired with the instigator or the one who have conspired with the instigator or the one who actively aids the deceased through a proximate act. The role of such persons in the shadows who have conspired would in no measure be less culpable and certainly relevant under Section 107 IPC. No doubt, the evidence about their role would have to be more carefully sifted at the trial, than the person who has acted as the agent provocateur, proximate in point of time.

One may legitimately think as to what would possibly be the shade of the *mens rea* that the victim's wife or his in-laws would herbour to covet death for him. In the opinion of this Court, if a person, particularly one in a relationship of great trust like man and wife, were to betray that trust persistently and indulge in harassment of the other in a manner that the victim-spouse, could reasonably be expected in the circumstances to be driven to take the extreme step, the precise kind of *mens rea* that would be involved, may not be very relevant. The necessary *mens rea* of whatever shade and fuelled by whatever motivation, would be inferable from the persistent conduct of the accused. **[Chitra @ Bebi vs. State of U.P. and another, 2021(7) ADJ 166]**

Sections 325, 323 IPC and Section 3 Evidence Act.

In this matter the prosecution case was based on the evidence of interested witness and independent eye witnesses. The trial court convicted an accused for the charge under section 323 and 325 of IPC, while acquitting from the charge of 394 of IPC. There was no finding of trial court in segregating the evidence on record for convicting of appellant for the offence under section 323 and 325 of IPC, while acquitting of offence of Section 394 of IPC. Offence of Section 394 of IPC itself involves causing of hurt at the time of committing theft or extortion.

It was held that testimony of informant was not corroborated with the testimony of eye witnesses as eye witnesses deposed that no alleged occurrence caused by accused persons and informant sustained injuries in an accident and falsely implicated accused due to animosity. In on oath evidence the animosity of causing murder of brother of accused persons by relative of informant victim was admitted by informant himself. It was held that testimony of informant who is interested witness cannot be relied upon, being not corroborated with testimony of interested eye witnesses. Hence conviction was set aside. [**Guru Dev Singh v. State of U.P., 2021 Cri.L.J. 2834 : AIR Online 2021 All 600**]

Sec. 364

On a bare reading of Section 364 I.P.C., it is manifestly clear that the prosecution must prove kidnapping by the accused, such person was kidnapped in order (a) that such person might be murdered; or (b) that such person might be so disposed of as to be put in danger of being murdered. In case of abduction, the prosecution must prove that the accused compelled the person to go from the place in question, that he so compelled the person by means of force; or that he induced that person to do so by deceitful means and that he so abducted the person in question in order that (a) such person might be murdered, or (b) such person might be so disposed of as to be put in danger of being murdered. The prosecution must prove that person charged with the offence had the intention at the time of kidnapping or abduction that the person kidnapped should be murdered or would be so disposed of as to be put in danger of being murdered. In order to bring home a charge under this Section, the Court must be satisfied that at the time when the accused took away the victim/ person so kidnapped, he had the intention to cause his death.

In order to invoke the provisions of Section 368 I.P.C., the following ingredients must be satisfied;

(i) the person has been kidnapped or abducted;

(ii) the accused was knowing that fact; and

(iii) the accused must have concealed or confined such person. **[Dinesh vs. State of U.P., 2021(116) ACC 22]**

Indian Penal Code – Section 375

It is settled principle of law that for offence of rape, the prosecution case based on solitary evidence of the prosecutrix, whose evidence is trustworthy, unblemished and of sterling quality, cannot be thrown out for want of corroborative evidence and independent witness.

In **Krishan Kumar Malik v. State of Haryana, 2011 (74) ACC 611**, Hon'ble Supreme Court was also of the view that for offence of rape, the solitary evidence of victim is sufficient, provided that it inspire confidence of the Court and is reliable trustworthy and of sterling quality. **[Guddu and another vs. State of U.P., 2021(116) ACC 405]**

IPC – Sec. 376

Therefore, in the light of above discussion, it is necessary for the legislature to provide a clear and specific legal framework to deal with the cases where the accused obtained consent for sexual intercourse on the false promise of marriage. But till such law is enacted, the court should take into consideration the social reality and reality of human life and continue giving protection to such women who have suffered on account of false promise of marriage. Unless there is prolonged relationship which raises a strong inference of consensual sex, in other cases, particularly, in cases of single act of sexual intercourse as is the case in the present case, or relationship for a short time, persuaded by false promise of marriage or where circumstances show that the accused never intended to fulfill the promise or he could not be able to fulfill the promise on account of factors such as the accused was already married, he disclosed wrong identity, name, religion and other details to play deception to obtain consent for sexual intercourse, or the like. Obtaining consent for sexual relationship by false promise of marriage should be termed as consent given under misconception of fact and must amount to rape. The court cannot become a silent spectator and give license to those who are trying to exploit the innocent girls and have sexual intercourse with them on the pretext of a false promise of marriage. This feudal mind set and male ‘chauhanism’ that women are nothing but an object of

enjoyment is required to be rigorously addressed and strictly dealt with in order to create a healthier society and to increase a sense of security and protection in the mind of women. And, this is emphasized that this is the responsibility of all the democratic institutions in the country, more so because, all the women protective laws against all forms of sexual exploitation and abuse have been enacted to make the constitutional goal of gender justice a social reality. **[Harshvardhan Yadav vs. State of U.P. and another, 2021(7) ADJ 295]**

JUVENILE JUSTICE ACT

Section 12 – Bail to Juvenile – Determination of

It is clear that even though Juvenile Justice Act has been amended and the juvenile above 16 years in age, can be tried as an adult by the Children Court, there is no amendment in respect of considerations which is taken into account for the bail of juvenile. Section 12 of the Juvenile Justice Act makes the bail of the juvenile mandatory and the grounds on the basis of which his bail application can be rejected is also to serve the best interest of the juvenile himself. Therefore, the bail of juvenile can only be rejected if the Court comes to a conclusion that the release on bail will adversely affect the interest of juvenile. **[Jai Kishan (Minor) vs. State of U.P. and another, 2021(116) ACC 48]**

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Delay in Lodging FIR in Rape Case by Victims – Effect of -

So far as the argument relating to delay in lodging the F.I.R. in a rape case is concerned, it is not of much “significance” as the victim has to muster courage to come out in open and expose herself in a “conservative social milieu”.

In rape cases the delay in filing the FIR by the prosecutrix or by the parents in all circumstance is not of significance. Sometimes the fear of social stigma and on occasions the availability of medical treatment to gain normalcy and above all psychological inner strength to undertake such a legal battle.

Regarding non-availability of independent witnesses, it is noteworthy that in such type of cases of rape accused always chooses separate or solitary place for committing the offence where approach of independent witnesses cannot become possible.

Lack of independent witness does not affect the credibility of the testimony of victim. Victim herself is injured witness and her testimony cannot be said to be unreliable on the basis of lack of independent witness because she herself is injured and she would not like to conceal the real culprit and to implicate false one. **[Munna alias Teerathra vs. State of U.P., 2021(116) ACC 54]**

J.J. Act, 2015 – Section 37

Section 37 of J.J. Act empowers the Child Welfare Committee that on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, it may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders as provided in clauses (a) to (h) of Sub-Section (1) of Section 37. Section 37 of the J.J. Act is reproduced below:

Section 37(1)(c) of the J.J. Act empowers the Child Welfare Committee to place a child in Children's Home or fit facility or Specialized Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child. The order dated 25.12.2020 passed by the Child Welfare Committee is in exercise of powers under Section 37 of the J.J. Act. Under the circumstances, when undisputedly detenue- petitioner is a juvenile within the meaning of Section 2(35) and is in need of care and protection within the meaning of

Section 2(14), the order passed by the Child Welfare Committee under Section 37 is in exercise of powers under the J.J. Act, cannot be said to suffer from any illegality.

In the present set of facts, it is not in dispute that as per the school leaving certificate of victim/detenue, the date of birth of the detenue is 02.04.2004. Hence, keeping in mind the provisions of Section 94 of the J.J. Act, the age recorded in the educational certificate cannot be discarded in the proceedings under the J.J. Act moreso when detenue in her statement recorded on 23.12.2020 under Section 164, Cr.P.C. has stated that her age is 17 years.

Once the detenue has been found to be a child as defined by Section 2(12) of the J.J. Act and allegedly, a victim of a crime, she would fall in the category of "child in need of care and protection" in view of clauses (iii), (viii) and (xii) of sub-Section (14) of Section 2 of the J.J. Act. Hence the order passed by the Child Welfare Committee placing the minor child in a Children Protection Home would be within its powers confers under Section 37 of the J.J. Act. **[Vandana @ Bandana Saini and another vs. State of U.P. and another, 2021(116) ACC 478]**

JJ Act – Secs. 7A, 68, JJ Rules 2007, U.P. JJ Rules 2004

On the basis of the submissions as made and on the basis of the statutory provisions that existed on the date of the incident what has to be determined is

(a) whether the claim of juvenility is to be decided on the basis of 2007 Rules or 2004 Rules;

The Full Bench of this Court had the occasion to consider the applicability of 2004 Rules vis-a-vis applicability of 2007 Rules in view of the conflict and in terms of the mandate of Section 68 of the JJ Act, 2000 the Full Bench, after dealing with the scope of the said two rules and after noticing the inconsistencies in between the said two rules finally in **Jai Prakash Tiwari vs. State of U.P. and another, 2016 (9) ACC 627(FB)** held as under:

> "32. The procedure that has been provided for determining the question of juvenility under Central Rules as to how the question of juvenility is to be determined, the same will have a prevailing effect on U.P. Juvenile Justice (Care and Protection of Children) Rules, 2004 as the State of Uttar Pradesh has not framed any rule in tune with the Central Rules referred to above and Central Rule would apply for the inquiry to be held until Rules in this regard are framed by the State of Uttar Pradesh, in view of this, answer to the question posed i.e. "whether the U.P. Juvenile Justice (Care & Protection of Children) Rules 2004 need be recast consequent upon addition of section 7-A of the Juvenile Justice (Care & Protection of Children) Act, 2000 (as amended by Act No. 33 of 2006)" is 'Yes' as the provisions of the U.P. Juvenile Justice (Care & Protection of Children) Rules 2004 on its own after introduction of Section 7-A and keeping in view the provisions of the Central Rules until and unless it is not revamped and not at all brought in consonance with the provisions as are contained under the Juvenile Justice (Care & Protection of Children) Rules 2007, the same cannot be subscribed and in view of this, same needs to be modified.
>
> The answer to the second question i.e. "And in case it is found that they need not be recast whether the U.P. Juvenile Justice (Care & Protection of Children) Rules 2004 framed by State Government or The Juvenile Justice (Care & Protection of Children) Rules 2007 framed by the Central Government shall apply to the matter, in Uttar Pradesh" is that it needs to be modified and till it is not revamped, on the issue of juvenility being raised, the answer to the said

question will have to be found on the parameters of the provisions as are contained under The Juvenile Justice (Care & Protection of Children) Rules 2007 and the same shall apply to the matter in the State of Uttar Pradesh also."

In view of the specific decision of the Full Bench as quoted above, the argument of Sri Sharique Ahmed cannot be accepted and it is thus held that the only recourse available before the Board was to determine the question of juvenility on the basis of 2007 Rules. This answers the first question.

On the basis of interpretation of law by Apex Court and discussed above, the salient features that can be culled out for determination of age of a juvenile under the 2007 Rules are:

(i) If Matriculation Certificate is available, only the same is to be relied upon for determination of age.

(ii) Matriculation Certificate can be disbelieved only if it is forged or fabricated which has to be adjudicated after enquiry and sufficient evidence to be dealt with in accordance with procedure established to hold a document as forged and fabricated.

(iii) If Matriculation Certificate is not available or in its absence alone can resort be taken to determination on basis of date of birth certificate from school first attended (Rule 3 (a) (ii) of the Rules 2007.)

(iv) If date of birth certificate is not available or is disbelieved if found to be forged and fabricated after the adjudication and considering the evidence and following the procedure for holding the document as forged and fabricated.

(v) Resort can be taken to the birth certificate given by the corporation or a municipal authority.

(vi) If the said birth certificate given by the corporation or a municipal authority is not available or is held to be forged and fabricated and not worthy of reliance after conducting the enquiry on the basis of evidences adduced, resort can be taken to Clause 12 (3) (b) of the Rules 2007. **[Meghraj Sharma vs. State of U.P. and another, 2021(6) ADJ 616]**

LAND ACQUISITION ACT, 1894

Land Acquisition Act 1894- Sec. 48

It has been held by the Hon'ble Supreme Court in large number of decisions that that once possession has been taken and land has not been utilized, there cannot be withdrawal from the acquisition of any land. Land cannot be restituted to the owner after the stage of possession is over. **[Vijaypal and others vs. State of U.P. and others, 2021(6) ADJ 88(DB)]**

MAINTENANCE & WELFARE OF PARENTS & SENIOR CITIZENS ACT, 2007

Maintenance & Welfare of Parents & Senior Citizens Act, 2007 – U.P. Maintenance & Welfare Parents & Senior Citizens Rules 2014 – Rule 20, 21

Thus, cancellation of approval has to be a measure of last resort, to be adopted when no realistic possibility is seen to exist to help or make such old age home run in accordance with the laws. It may be adopted only after (i) serious deficiencies/ lacuna/ violations are noticed by the respondent authorities in the course of their regular inspections or otherwise, (ii) those deficiencies/lacuna/violations have been notified to the person running the facility by means of a prior written notice (issued by the District Magistrate) requiring it to rectify the same in a reasonable time or to show cause, (iii) the person has failed to offer necessary rectification and (iv) the District Magistrate is satisfied for cogent reasons to be recorded in writing (a) upon consideration of the reply furnished by the petitioner to that notice [(ii) above], that the facility/old age home was being run contrary to any mandatory provision of the Act or the Rules or the Scheme framed by the State Government, to the detriment of the inmates/potential inmates and (b) that the person failed to or is unable to make necessary corrections as may ensure that the old age home is run in accordance with the Act read with the Rules and the Scheme. At that stage and before taking that final decision, the views of the inmates of the old age home must be ascertained and considered before taking any decision that may result in transferring them out from the existing facility.

The power given to the respondents under the Rules and the Scheme is to monitor and to regulate such facility. Once the facility has been set up in accordance with law, its approval cannot be cancelled or tinkered with in a casual or whimsical manner as that action has, amongst others, a negative impact on the inmates for whose benefit it exists. It also brings a wholly avoidable uncertainty in their lives. Any defect or deficiency that may have been noted in the running the facility, duly approved, ought to be corrected by issuing necessary directions and by seeking necessary compliance/s, in the spirit of collaboration, in a time bound manner. **[Kisan Seva Sansthan and another vs. State of U.P. and others, 2021(7) ADJ 264(DB)]**

MOTOR VEHICLES ACT, 1988

Motor Vehicle Act 1988 – Secs. 2, 3

Considering the aforesaid definitions, we are of the opinion that any “goods vehicle”, “heavy goods vehicle” or “public service vehicle” can be commonly called as “transport

vehicle". In other words, the heavy goods vehicle is not different from a transport vehicle. Any person possessing a driving license for a transport vehicle can be said to hold a valid license to drive either a goods vehicle or a public service vehicle. **[Oriental Insurance Company Limited vs. Smt. Gitanjali Sharma and others, 2021(8) ADJ 541(DB)]**

Sec. 4-A(3)(a) – Liability of insurance company.

"4A. Compensation to be paid when due and penalty for default.-

Compensation under section 4 shall be paid as soon as it falls due.

In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall?

(a.)direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and (b.)if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears, and interest thereon pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.?For the purposes of this sub-section, ?scheduled bank? means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934)."

Insurance company has to be made liable and further the relevant date from when the interest would be payable is decided therein, namely, one month from the date when the compensation accrues. The decision of this court in Miskina vs. HDFC Ergo General Ins. Co. **[Chanda Begum and another vs. Shahnawaz and others, 2021 ACJ 2016]**

Sec. 4(1-B)

This FAFO has been filed by the claimants being aggrieved by the award dated 14.08.2020 passed by the Commissioner under the Employees Compensation Act, 1923 at Kanpur only on the ground that the income of the deceased has been construed at Rs. 8,000/- (eight thousand rupees) per month whereas he was drawing a salary to the tune of Rs. 12,000/- (twelve thousand rupees), but learned tribunal has not even taken the income @ minimum wages as applicable on the date of the accident for a skilled labourer i.e., @ Rs. 9,873.08/- (nine thousand eight hundred seventy three rupees and eight paise) per month. However, taking into consideration the cap provided under the Employees Compensation Act on the maximum income to be computed for the purposes of compensation at Rs. 8,000/- (eight thousand rupees) per

month, compensation has been calculated taking income at Rs. 8,000/- (eight thousand rupees) per month and not even @ of minimum wages prescribed by the State Government for a skilled labourer.

Learned counsel for the appellant though vehemently submits that wages should have been computed at least at the minimum wages prescribed by the State authorities, but is not in a position to dispute the fact that an amendment was affected in Section 4 (1B) of the Employees' Compensation Act, 1923 whereby it is provided that "the Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary."

The Central Government has specified for the purpose of sub-section (1), "Eight thousand rupees" as monthly wages, vide S.O. 1258(E), dated 31st May, 2010. It is true that vide Gazette Notification published in the Gazette of India dated 3rd January, 2020, S.O. 71(E) has been issued whereby in exercise of its authority provided under Section 4(1)(B), the notification dated 31st May, 2010 has been revised and the monthly wages, with effect from the date of publication of the notification in the Official Gazette has been enhanced to Rs. 15,000/- (fifteen thousand rupees).

Hon'ble Supreme Court in case of K. Shivaraman and Others vs. P. Sathish Kumar and Another as reported in 2020 (4) SCC 594 has held that the effect of the notification is not retrospective but prospective inasmuch as the amendments enhancing the compensation payable under the 1923 Act confer a benefit upon employees, a corresponding burden is imposed on employers to pay a higher rate of compensation.**[Kaptan Singh and another vs. Raj Narayan and anothers, 2021 ACJ 1839]**

Motor Vehicles Act 1988 – Secs. 67, 181

The challenge to the jurisdiction of the Regional Transport Authorities to issue e-challan on the basis of the data of overload vehicles passed through weigh-in-motion machines installed at the toll plazas of National Highways Authority of India is, thus, found baseless. The Transport Authority is empowered to give effect to the directions issued by the State Government under Section 67 of the Act and to exercise and discharge such powers and functions which are necessary to coordinate and regulate the activities and policies of the Regional Transport Authority.

In view of the above, the weigh-in-motion machines installed at the toll plazas being accredited by the competent authority i.e. the Controller, Weights and Measures and the Metrology Department, it cannot be said that they are not certified weighing devices within the meaning of Rule 181 of the Rules, 1998. **[Search operator Association and others vs. State of U.P. and others, 2021(6) ADJ 132(DB)]**

Sec. 147 – A motor Vehicle can be used for social, domestic and pleasure purpose and insured's own business.

Liability of the insurance company in a motor accident claim.

That a tractor-trailer combination would constitute a motor vehicle and even a 'goods carriage' under section 2(47) if it is used as a vehicle for commercial purpose of transporting goods and would fall under section 2(14) as a 'goods carriage' for the reason that both chassis and trailer attached would fall within the meaning of expression motor vehicle, hence in such a case, trailer attached to the tractor is to be separately registered and insured, but if at the relevant time it is not being used for any commercial purpose then trailer does not require separate insurance and registration. **[Cholamandalam MS General Ins. Co. Ltd. vs. Nagina Devi and others, 2021 ACJ 1976]**

Sec. 147(2)(b) – Extent of liability of insurance company.

It is not in dispute that the alleged accident occurred on 1.10.1994, the liability arises, out of a contractual dispute between the insurer and the insured. The legislature has done away with the limit by means of the amendment which has been introduced on 9.8.2019. This amendment cannot come to the rescue of the appellant to give him benefit of a contractual condition which was prevalent in the Act both at the time of accident as well as the decision rendered by the Motor Accident Claims Tribunal. Moreover, the appeal was filed in the year 2000 when the aforesaid amendment did not exist. Merely because the appeal remained pending before this court for 19 years during which the amendment came into force will not entitle the appellant for the benefit thereof. It is also to be noted that the amendment is not in the nature of beneficial legislation in so far as the insured is concerned. It is merely a contractual condition which has a statutory force which is between the insurer and the insured.

The last submission of the learned counsel for the appellant regarding reduction in the rate of interest also does not hold any merit for the reason that neither such a ground has been raised and grant of interest has also been awarded by the Tribunal from the date with a condition that if the amount is not paid within a period of one month from the date of the award only then 12 per cent interest is to be paid. **[Yunus Mirza vs. Mohd. Shafi and others, 2021 ACJ 1984]**

Sec. 149(2)(a)(ii) – Fake license – Insurance Company failed to discharge the onus to Prove that driver was not holiday a valid license.

Considering the aforesaid pronouncements of the Hon'ble Apex court it is clearly borne out that the onus of proving that the driving license was fake and invalid lay upon the insurance company. The insurance company was under an obligation to lead sufficient credible evidence before the Tribunal which could show that the diving license off respondent No.7 was fake. A perusal of the impugned judgement would indicate that apart from producing the report obtained by it from its agent, no other evidence was led by the appellant Insurance Company. Even the report only records hearsay evidence of the dealing clerk in the office of the Transport Authority. It was open for the insurance company to have applied for and also obtained and verified the driving licence from the Transport Authority, but they failed to do so nor did they place any evidence before the Tribunal to take any contrary view in the matter.

The Insurance Company in its overwhelming zeal to avoid payment of compensation has acted in the most irresponsible manner in the present case by firstly not producing any evidence in support of its contention before the Tribunal and secondly persisting with their untenable stand in the present appeal. With regard to issue No.2 the Tribunal has clearly recorded a finding that the appellant insurance company did not oppose or deny the validity of the licence.

In exercise of its appellate powers, this Court can certainly look into questions pertaining to perversity of findings recorded by the Tribunal, and only when examining the record which may indicate existence of overwhelming evidence adduced by one party, and recording of a contrary finding of fact by the Tribunal, this Court would have sufficient powers to reverse such a finding. In the present case not an iota of evidence has been led by the appellant so as to give an occasion to this Court to embark on an exercise for re-examination of the evidence with regard to the driving licence of respondent no.7. This Court after examining the entire record of the case as produced by the appellant in the instant appeal, disposes of the same at the admission stage itself as the Court does not find any material or ground to entertain the appeal.

In this regard, it would also be relevant to refer the judgement of the Hon'ble Supreme Court in the case of in *Rakesh Kumar Vs. United Insurance Company Ltd*., 2016 (17) SCC 219 wherein in paras 19 and 20 it was held as under:-

> “In our considered opinion, the Tribunal was right in holding that the driver of the offending vehicle possessed a valid driving license at the time of accident and that the Insurance Company failed to adduce any evidence to prove otherwise. This finding of the Tribunal, in our view, should not have been set aside by the High Court for the following reasons:
>
> First, the driver of the offending vehicle (N.A.-2) proved his driving license (Exhibit- R1) in his evidence. Second, when the license was proved, the Insurance Company did not raise any objection about its admissibility or manner of proving. Third, even if any objection had been raised, it would have had no merit because it has come on record that the original driving license was filed by the driver in the Court of Judicial Magistrate First class, Naraingarh in a criminal case arising out of the same accident. Fourth, in any event, once the license was proved by the driver and marked in evidence and without there being any objection by the Insurance Company, the Insurance Company had no right to raise any objection about the admissibility and manner of proving of the license at a later stage (See Oriental Insurance Company Ltd. Vs. Premlata Shukla & Ors.,

(2007) 13 SCC 476) and lastly, the Insurance Company failed to adduce any evidence to prove that the driving license (Ex.R1) was either fake or invalid for some reason."

Considering the aforesaid judgments the onus clearly lies upon the Insurance Company to prove that driving licensee of Sarvesh Kumar Verma was either fake or invalid. The appellant have failed to discharge the onus by adducing any credible evidence to enable this Court to return a contrary finding. Apart from the report of the investigating officer who seems to have only met the concerned dealing clerk in the office of Regional Transport Officer, who orally told him that the said license was not in his record, no other material has been placed by the appellant so as to return a finding of fact in favour of the appellant.

The Tribunal has considered all the evidence, including the evidence adduced by respondent no. 7 with regard to the validity of the driving license and also the information obtained under Right to Information Act from the transport authority which also confirmed the existence of valid and effective driving license, and therefore there is no occasion for this Court to interfere with the judgment passed by the Tribunal. **[National Insurance Co. Ltd. vs. Ram Prakash and others, 2021 ACJ 1470]**

Quantum – Fatal accident – Assessment of Income.

Hon'ble Apex Court in the case of Arvind Kumar Mishra, 2010 ACJ 2867(SC), held that the Second Schedule under Section 163-A of the Act 1988 has no application to the claim petition made under Section 166 of the Act 1988, and in the case of V. Mekala, 2014 ACJ 1441(SC) [the case of brilliant student of XI Standard, who on account of accident became permanently disable], the Hon'ble Supreme Court took the view that Rs.10,000/- per month should be taken for just and reasonable compensation. Accordingly, we are of the view that the Tribunal, in instant case of brilliant student, has erred in awarding the compensation to the appellants by taking the notional income of deceased as Rs.15,000/- per annum as per the provision of Second Schedule of Section 163-A of the Act 1988.

Therefore, in view of law propound by the Hon'ble Apex Court in V. Mekala's case, 2014 ACJ 1441(SC), we are of the consistent opinion that Rs.10,000/- per month should be taken as the notional income of the deceased for awarding just and reasonable compensation, meaning thereby Rs.1,20,000/- per annum instead of Rs.15,000/- per annum. **[Jagannath Pal and another vs. Rakesh Kumar and others, 2021 ACJ 1750]**

Quantum – Fatal accident – Award of Rs. 4,87,000 enhanced to Rs. 12,79,600.

This appeal, at the behest of the claimants, challenges the judgment and order dated 15.12.2019 passed by Motor Accident Claims Tribunal/ Additional District Judge- XVI,

Allahabad (hereinafter referred to as Tribunal) in M.A.C.P. No.450 of 2005 awarding a sum of Rs.4,87,000/- with interest at the rate of 67% as compensation.

Learned counsel for the appellant has submitted that the income of the deceased should be considered at least Rs.10,000/- and that 45% should be added as future loss of income of the deceased in view of the decision in National Insurance Company Limited vs. Pranay Sethi and Others,2017 ACJ 2700 Supreme (SC). It is further submitted that under non-pecuniary heads, the claimants are entitled to at least Rs.70,000/- and that the interest at the rate of 9% should be awarded.

Learned counsel for the respondent-Insurance Company submits that for a trainer in Northorn Regional Institute of Printing Technology the income cannot be Rs.10,000/- even in the year of accident. It is also submitted that the quantum of compensation awarded by the Tribunal is just and proper and does not call for any interference of the Court.

After hearing the counsel for the parties and after perusing the judgment and order impugned, his income can be considered to be Rs.6,000/-, to which as the deceased was in the age bracket of 31-35 years, 40% will have to be added. Hence, the compensation payable to the appellants in view of the decision of the Apex Court in Pranay Sethi (Supra) is computed herein below:

(i)	Income	Rs.6,000/-
(ii)	Percentage towards future prospects : 40% namely	Rs.2400/-
(iii)	Total income : Rs. 6,000 + 2400	Rs.8400/-
(iv)	Income after deduction of 1/4th : (as survived by more than four persons.)	Rs.6300/-
(v)	Annual income : Rs.6300 x 12	Rs.75,600/-
(vi)	Multiplier applicable : (as he was 35 years of age)	16
(vii)	Loss of dependency: Rs.75,600 x 16	Rs.12,09,600/-
(viii)	Amount under non pecuniary heads :	Rs.70,000/-
	Total compensation :	Rs.12,79,600/

[Shashi Yadav and others vs. Mewa Lal and others, 2021 ACJ 1603]

Quantum – Fatal accident – Appellate court took income at Rs. 77,871 p.m., added 50 per cent of income for future prospects, deducted half of income for personal expenses, considering the age of deceased adopted multiplier of 16 and allowed Rs. 1,12,13,424 plus Rs. 15,000 for loss of estate and Rs. 15,000 for funeral expenses – Award of Rs. 18,71,146 enhanced to Rs. 1,12,43,424.

Since it was a case of contributory negligence, so 50 per cent of the liability was fastened upon the car driver who is the deceased himself and accordingly 50 per cent of the amount of total compensation assessed as Rs. 18,71,146, was directed to be awarded.

The multiplier of 16 corresponding to the age of deceased shall be applicable. Accordingly, the award of the Tribunal dated 26.8.2010 is modified by enhancement. Now the compensation will be transcribed as under:

Annual income of the deceased after deducting taxes. (Rs. 77,871 x12	Rs. 9,34,452
Future prospects (50 per cent of Rs. 9,34,452	Rs. 4,67,226
Total income	Rs. 14,01,678
Deduction towards personal expenses (1/2 of total income	Rs. 7,00,839
Dependency	Rs. 7,00,839
Multiplier	16
Compensation (Rs. Rs. 7,00,839 x 16)	Rs. 1,12,12,424
Funeral expenses	Rs. 15,000
Loss of estate	Rs. 15,000
Total compensation	Rs. 1,12,43,424

[Nand Lal and another vs. Oriental Insurance Co. Ltd. and anothers, 2021 ACJ 1713]

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

Sections 8, 20, 27-A and 29, Sec. 67

The legal position now that stands is that the statement under section 67 of the Act stands hit of section 25 of the Indian Evidence Act, 1872 in view of paragraph 155 of the Toofan Singh's judgment.**[Vijai Kumar alias Pyare Lal vs. State of U.P. andother, 2021(116) ACC 222]**

NATIONAL COUNCIL FOR TEACHER EDUCATION ACT 1993

National Council for Teacher Education Act 1993 – Sec. 12A, Right of Children to Free & Compulsory Education Act 2009 – Sec. 23

The qualification for appointment of teachers is now governed by the Act of 2009 and Rules made thereunder. Section 12-A of the Act of 1993 cannot to operate in conflict to the provisions of the Act of 2009 and notification issued therein. The field is now occupied by the Act of 2009 to provide educational qualification for appointment of teachers. Section 12-A of the Act of 1993 would not apply only for the reason that notification dated 23 August, 2010 was issued by the Council. It was not under the Act of 1993 but the Act of 2009. It is by the Council as an academic authority. Under Section 23 of the Act of 2009, the Government of India had nominated Council as academic authority to lay down the qualification for appointment under the Act of 2009. The proviso to Section 12-A cannot apply dehors the Act of 2009 and Rules made thereunder. Therefore, we are not inclined to accept the argument of learned counsel for the petitioner-appellants that even if the appellants were not possessing TET certificate, their appointments should not have been cancelled in reference to the circular of the Government.

At this stage, it is to be clarified that even compassionate appointment cannot be given *dehors* the statutory provisions only in reference to the Government Order dated 4 September, 2000. The administrative order cannot stand in conflict with statutory provisions. **[Badri Narain Sharma and others vs. State of U.P. and others, 2021(8) ADJ 617(DB)]**

NATIONAL FOOD SECURITY ACT 2013

Secs. 3, 4, 5, 6, 7, 8, 14, 33

Complainant is very often a card holder and bene4ficiary of the welfare schemes. Malpractices indulged by the fair price shop dealers directly and adversely impact such complainant. He is an aggrieved party. The right to obtain food grains and essential commodities at controlled prices and the entitlements to the benefits of various distribution schemes are vested in the card holders by the National Food Security Act, 2013 (hereinafter referred to as the 'Act of 2013') and the Rules framed there-under. Irregularities committed by the fair price shop dealer in distribution of essential commodities leads to denial of statutory rights. The card holder and his

family members come within the meaning of aggrieved persons as defined in the Act of 2013. Such card holder being aggrieved person is entitled to get his complaint verified against the defaulting fair price shop dealers. An inquiry can be initiated on the complaint. The card holder-complainant may tender evidence in the enquiry.

The assertion of the right by a complainant ensures transparency in the distribution of food-grains and enforces accountability in the functioning of the fair price shop dealer. The right of a card holder and other aggrieved persons to complain against denial of essential commodities/ food-grains under beneficent schemes covered by the Act of 2013 is recognized by the legislature. However, there are limits. The right of the complainant to prosecute his complaint does not extend to persecute the fair price shop dealer. The complainant cannot prolong the litigation endlessly.

The fair price shop has a certain purpose to fulfill. The fair price shop dealer has definite rights, which he can assert.

The fair price shop dealership is the agency through which the food-grains and essential commodities are distributed to the cardholders. It is the instrument through which the National Food Security Act, 2013 is implemented. The fair price shop is a pivot in the distribution chain of essential commodities.

The fair price shop dealer has to be held accountable but not made vulnerable. In the former case, the purpose of appointment of a fair price shop dealer will be fortified in the latter event it will be frustrated.

An unscrupulous complainant can exploit a fair price shop dealer with the threat of intermainable litigation and the reality of endless prosecution of complaints. Such a situation would impede the functioning of a fair price shop dealership and cause disruption in supply of essential commodities.

Clearly red lines have to be drawn. The Courts have to distinguish a *bona fide* complainant from a professional blackmailer, a deprived card holder from a chronic litigant. Conduct is the key to the distinction. Litigation is not the sport of the complainant and the Courts cannot be made the play field.

Once the complainant has been verified, the inquiry set on foot of such complaint has to be completed. In case such inquiry returns an indictment of the conduct of the fair price shop dealer, the license holder is required to be noticed by the license authority. The complainant

certainly has a right to lead evidence against the dealer and in support of his complaint in the enquiry process.

After the licensing authority issues a notice to the license holder, the law will take its course. It becomes a lis between the two contracting parties namely, the fair price shop licence and the State. The complainant cannot be a party to the lis as it is not a party to the lis as it is not a party to the contract. Action has to be taken against the license holder in terms of the contract, the provisions of the Control Order and Government Orders regulating the field. The licensee has full liberty to assert his rights in the aforesaid proceedings. The licensee can refute the charges lid out against him. He can carry any adverse order in appeal as per law. The complainant is ousted from the proceedins after the conclusion of the inquiry. The complainant can have no say in the quantum of punishment or nature of penalty which is imposed by the licensing authority upon the fir price shop licence holder. The complainant or the card-holder has no privity of contract with the State or the fair price shop dealer. In this view also the complainant cannot be permitted to exercise rights, beyond the limits set out earlier in the judgment. Any further enlargement of the rights of the complainant would fetter the contractual choices of the parties to the contract and interfere in the efficiency of the public distribution system.

The rights of ration card holder are defined, regulated but also restricted by the National Food Security Act, 2013 and the Rules framed there under. The card holder can also be granted compensation or allowance for denial of the entitlements under the Act of 2013. However, card holder cannot decide the quantum of punishment to be imposed on a defaulting fair price shop dealer, as per the provisions of the Act of 2013. This function falls in the jurisdiction of the authorities under the Act, the Uttar Pradesh Essential Commodities (Regulation of Sale and Distribution Control) order, 2016, and he Government Order holding the field. The preceding paragraphs catalogue the rights and remedies of eligible persons under the Act. They also detail the jurisdiction and obligation of the authorities under the Act. No further right to the ration card holder is vested by the legislature. No additional right to the ration card holder or complainant can be granted by the Courts. **[Durving Singh vs. State of U.P. and others, 2021(8) ADJ 506]**

NATIONAL INVESTIGATION AGENCY ACT

Sec. 6

From a bare perusal of Section 6 of the NIA Act, it is abundantly clear that it prescribes the manner of investigation of the scheduled offence listed in the Schedule attached to the NIA Act. It provides that a Police Officer, In-charge of the Police Station, on receipt of the report of the offence shall forward the same to the State Government forthwith, which, in turn, shall forward the report to the Central Government, as expeditiously as possible.

On the receipt of the report of the State Government, the Central Government has to decide and determine based on the information made available by the State Government or received from other sources, within fifteen days from the date of the receipt of the report, whether the offence is a "Scheduled Offence" or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.

It also stipulates that if the Central Government is of the opinion that the offence is a “Scheduled Offence” and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence. *It is, thus, only where the Central Government determines the offence in question to be a Scheduled Offence or a case fit to be investigated by the Agency that it can be investigated by the Agency.*

It emanates from the scheme of the NIA Act that the scheduled offence is one enumerated in the schedule appended to the NIA Act. Thus, any further declaration in this regard by the Central Government in view of Section 6(3) would virtually render the provisions of Section 2(1)(f) and (g) as redundant.

It is also ascertainable from the scheme of the NIA Act that the words “Save as otherwise provided in this Act” occurring in Section 10 of the NIA Act clearly refer to the provisions of Section 6(6) of the NIA Act, which provides that where Central Government has issued a direction under Section 6(4) or Section 6(5) of the NIA Act for getting the Scheduled Offence (s) investigated by the Agency, the State Government and any Police Officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

If it is interpreted to convey *that in the absence of determination under Section 6(3) of the NIA Act by the Central Government, the State Government would not have power to investigate in respect of Scheduled Offence, then such an interpretation would not only be against the legislative intent but it would also render the provisions of Section 10 of the NIA Act as redundant.* **[Anshad Badarudheen vs. Union of India and others, 2021(7) ADJ 153(LB) (DB)]**

NATIONAL SECURITY ACT

Section 3

From the aforesaid legal position expressed by Hon’ble Supreme Ccourt about the representation, it is clear that the second or successive representation maybe made by the detenu during the period of his detention and such representations are to be considered and decided expeditiously. **[Mohhammad Sazir vs. Superintendent, District Jail, Lucknow and anothers, 2021(116) ACC 465]**

Section 3

While dealing with the question as to whether one solitary instance can be the basis of an order of detention, the Apex Court in **Smt. Bimla Rani vs. Union of India, 1989(26) ACC 589 SC**, observed that the question is whether the incident had prejudicially affected the 'public order'. In other words, whether it affected the even tempo of the life of the community. In **Alijan Mian v. District Magistrate Dhanbad, 1984(21) ACC 42(SC)** it was held that even one incident may be sufficient to satisfy the detaining authority in this regard, depending upon the nature of the incident. Similar view has been expressed in the host of other decisions. The question was answered more appropriately and with all clarity in the case of **Attorney General of India v. Amratlal Prajivandas, AIR 1994 SC 2179**, wherein the Apex Court ruled that it is beyond dispute that the order of detention can be passed on the basis of a single act. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activities. It cannot be said as a principle that one single act cannot be constituted the basis for detention. Thus, the argument of learned counsel for the petitioner that since it is solitary incident of the petitioner, he deserves sympathy, is rejected. Now the law, as it stands, is that even one solitary incident may give rise to the disturbance of 'public order'. It is not the multiplicity but the fall out of various criminal acts. **[Rajeev Singh through his wife Smt. Kiran Singh vs. Union of India and other, 2021(116) ACC 592]**

NEGOTIABLE INSTRUMENT ACT

Secs. 138, 147

Considering the facts as narrated above, the following two questions arise for consideration-

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.

In view of the aforesaid discussion, 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.

As discussed above, the Court is inclined to hold accordingly only because there is no formal embargo in Section 147 of the N.I. Act. This principle would not help any convict in any other law where other applicable independent provisions are existing as the offence punishable under Section 138 of the N.I. Act is distinctly different from the normal offences made punishable under Chapter XVII of IPC (i.e. the offences qua property. **[Rishi Mohan Srivastava vs. State of U.P. and another, 2021(7) ADJ 659(LB)]**

PREVENTION OF CORRUPTION ACT, 1988

Sections 7/3(1)(d), 13(2) and 19- Constitution of India, 1950- Article 226- Sanction for prosecution.

Discussion made and conclusions reached above by us are briefly summarized as under:-

(i) Sanction for prosecution under Section 19 of the P.C. Act has been provided by law as a safeguard to public servants to save them from vexatious and frivolous prosecution so as to give them freedom and liberty to perform their duty without fear or favour and not succumbed to the pressure of unscrupulous elements. Thus, Section 19 of the P.C. Act empowers the sanctioning authority to protect the innocent public servants from uncalled for prosecution but it is not intended to shield the guilty.

(ii) Sanction lifts the bar for prosecution. In every individual case, the prosecution has to satisfy the court by leading evidence that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. The court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction which is an administrative function based on satisfaction of the sanctioning authority that relevant facts would constitute offence.

(iii) *The legality and/ order validity of the order granting sanction would be subject to review by the criminal courts* whereas an order refusing to grant sanction may attract judicial review by the superior courts.

(iv) The court as referred in the Section 19, P.C. Act, is the court of Special Judge appointed under Section 3 to try cases under Section 4, as per procedure provided under Sections 5 and 6 of the P.C. Act.

(v) Ordinarily, question of sanction would be dealt with by the court at the stage of taking cognizance but if the cognizance is taken erroneously and the same comes to the notice of the court at a later stage, finding to that effect is permissible and such a plea can be raised at the time of framing of charges and it can be decided *prima facie* on the basis of accusation. Objection can be raised even before the appellate court.

(vi) Writ petition under Article 226 of the Constitution of India to challenge the order granting sanction for prosecution is ordinarily not maintainable inasmuch as the

accused public servant has an opportunity before the court, i.e. Special Judge appointed under Section 3 of the P.C. Act to raise objection to the grant of sanction for prosecution. Therefore, without expressing any opinion on merits of the case of the petitioner, the present writ petition is held to be not maintainable.

(viii) An accused public servant who claims protection under Section 197 of the Cr.P.C., has to show that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in discharge of official duty as well as in dereliction of it. The act of the accused complained of must be such that the same cannot be separated from the discharge of official duty. But where there is no reasonable connection between the act complained of and the performance of official duties, no sanction under Section 197, Cr.P.C. would be required.

(ix) In order to come to the conclusion whether claim of the accused that the act which he did was in the course of performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it.

(x) Where the acts are performed by an accused public servant using the office as a mere cloak for unlawful gains, such acts are not protected. Where a criminal act is performed under the colour of authority but which in reality the act is for the public servant's own pleasure or benefit, then such acts are not protected under the doctrine of State immunity.

(xi) If a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted. Whether the alleged act is intricately connected with the discharge of official functions and whether the matter would come within the expression "while acting or performing in discharge of their official duties", would get crystallised only after evidence is led and the issue of sanction can be agitated at a later stage as well. **[Kanhaiya Lal Saraswat vs. State of U.P. and others, 2021(116) ACC 815 (Alld)]**

Section 19

Neither Cr.P.C. nor the Act of 1988 mandates departmental inquiry before registration of the F.I.R. If crime has been committed, it is not mandatory to hold and depend on the departmental inquiry before lodging F.I.R. The Apex Court has permitted simultaneous proceeding of departmental inquiry and the criminal case. A reference to the judgment of the Apex Court in the case of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another, (1999)3 SCC 679** and **State Bank of Hyderabad and another v. P. Kata Ro, JT 2008(4) SC 577** are relevant. The administrative order cannot override the statutory provision. The Cr.P.C. provides for registration of F.I.R. on the commission of offence and is not made subject to departmental enquiry. **[Ranveer Singh @ Ranbir Singh vs. State of U.P. and others, 2021(116) ACC 190]**

It has been well settled by now, that at the stage of summoning, the Magistrate is required to apply his judicial mind only with a view to find out whether a prima facie case has been made out for summoning the accused persons. At this stage, the Magistrate is not required to consider the defence version nor is he required to evaluate the merits of the materials or evidence of the complainant, as has been laid down by Hon'ble the Supreme Court in the case of **R.R. Kapur vs. State of Punjab, AIR 1960 SC 866 and State of Haryana vs. Bhajan Lal, 1991(28) ACC 111(SC)**. **[Sanjay Sharma and others vs. State of U.P. and anothers, 2021(116) ACC 197]**

PREVENTION OF FOOD ADULTERATION ACT 1954

Secs. 7, 16, 17

From the perusal of the aforesaid judgments, it is crystal clear that for maintaining the Complaint under Section 7/16 of the Act, 1954, "Company" is necessary party and no Complaint is maintainable until "Company" is made party.

In light of the discussions made hereinabove as well as judgments relied upon, it is held that 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. **[S.P.Mathur vs. R.P. Sharma Food Inspector P.H.C. Noorpur Bijnore and another, 2021(7) ADJ 359]**

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Sec. 45, POCSO Rules

Accordingly, the following timeline to execute the different statutory functions by the respective authorities shall be implemented:

Sr.		Time Period

No.		
1	Information of crime to be given by local police/ SJPU to CWC (Ref: Section 19(6) of the POCSO Act 2012)	24 hours after report of crime
2	Time period for CWC for creation of an assessment report and to identify person from amongst the parents/ guardian/ person in whom the child has trust or to nominate support person (if required) who is best suited to protect the best interests of child and receive bail notice on its behalf.	Within 3 days from date of lodgement of the F.I.R.
3	Time period for service of notice of bail application by the local police/ SJPU upon CWC	Within 3 days from date of service of notice of bail application upon the office of the Government Advocate at the High Court.
4	Time period for service of notice of bail application by the local police /SJPU upon the child and to apprise it about information and services entitled under the POCSI Act 2012 read with POCSO Rules, 2020.	Within 4 days from date of service of notice of bail application upon office of Government Advocate High Court.
5	Time period for CWC and District Legal Services Authority for providing legal aid before the hearing of the bail application ……. Information and services entitled to the child under the POCSO Act, 2012 read with POCSO Rules, 2020.	Within 5 days from date of receipt of notice of bail ……
6	Time period for CWC and High Court Legal Services Committee, DLSA for providing legal aid before hearing of the bail application	Within 5 days from date of receipt of notice of bail application by CWC

	in the High Court and District Court respectively.	
7	Time period for child/child's parents/ guardian/ any other person in whom the child has trust and confidence/ support person to engage counsel of choice for the hearing of the bail application before the High Court and the District Court.	Within 5 days from date of service of notice of bail application by local police/ SJPU upon the child.
8	Time period for police authorities to provide instructions to the Government Advocate, along-with report of service of bail application upon victim and CWC, report apprising the child of entitled information and services under the POCSO Act, 2012 read with POCSO Rules, 2020 and other reports described earlier.	Within 8 days from date of service of notice of bail application upon the office of the Government Advocate at the High Court. Under all circumstances the same should be provided to the Government Advocate before the bail application is placed before the Court
9	Time period for CWC to submit report before the High Court regarding the status of information and services including legal aid provided to the child.	Report to be produced when bail application is first placed before the Court.
10	Time period for HCLSC and DLSA to inform the High Court and trial Court respectively about the grant of legal aid to the victim and requisition in this regard by CWC.	When the bail application is placed before the Court.
11	Time for the Registry to place the bail application before the Court.	On the 10th day after service of notice of bail application upon the office of the Government Advocate at the High Court.

The timeline of duties stated above has to be strictly adhered to by the respective authorities.

In case application is not filed in time for it to be placed before the High Court, in the above stipulated time, a further notice of two days shall be given to the Government Advocate as well as counsel for the victim.

The same procedure with necessary adaptions shall be implemented by the trial courts in all district judgeships in the State of U.P.

Regular monitoring of the implementation of the directions in this judgement is essential. For this purpose the following directions are being issued:

I. The Director General of Police, UP Police/competent officer in the PHQ shall create a framework and standard operating procedures for the State of U.P. to ensure compliance of the directions and strict adherence to the timeline of duties stated earlier. The framework shall include nomination of officials responsible for executing specific tasks with a corresponding time line.

II. The Senior Superintendent of Police/ Deputy Commissioner of Police/Superintendent of Police (in districts where there is no post of Senior Superintendent of Police) of the concerned district shall be the nodal officer, who shall supervise the staff charged with the duty of actually serving the bail notice upon the victim and the CWC, imparting information about entitlements under the POCSO Act, 2012 read with POCSO Rules, 2020 to the victim, and submitting the assessment (Form B) to the CWC and to furnish timely instructions to the Government Advocate/District Government Counsel in bail applications. In case, there is default on part of such official, the S.S.P./ D.C.P/ S.P. of the concerned district shall take immediate action in accordance with law against such erring official.

III. The Director General of Police shall create a State Level Committee headed by Officer not below than the rank of Additional Director General of Police. The aforesaid committee shall prepare biannual reports which review the working and implementation of the above said directions throughout the State of U.P., & examine the action taken against the officials who violate the directions.

IV. The District Magistrate of the concerned district to ensure that the reports as directed in this order are produced by the CWC before the Court when the bail application is placed in Court. Appropriate action shall be taken against those who default.

V. Biannual reports shall be prepared by the Principal Secretary/competent authority in the Ministry of Child Welfare, Government of U.P. regarding compliance of the directions by the CWCs in State of U.P. and the action taken against erring officials.

VI. Reports under Direction Nos. III and V shall be placed before the High Court Legal Services Committee; High Court Committee for monitoring the expeditious disposal of rape and Protection of Children From Sexual Offences Act cases; High Court Committee for monitoring implementation of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000, twice in an year.

VII. The Director General of Police, U.P., the Principal Secretary, Child Welfare Committee, Government of U.P., L.R., Government of U.P. to respectively file compliance affidavits before the Registrar General, Allahabad High Court, Allahabad on or before 12.09.2021.

VIII. The Registry shall ensure that the child or its parents are not joined as parties to the bail application by name. It should also be ensured that any other information like address or neighbourhood which will reveal the identity of the child shall not be stated in the bail application. The aforesaid details shall be anonymised.

IX. The Registrar General shall ensure compliance of all the directions, related to the Registry of this Court.

[Junaid vs. State of U.P. and another, 2021(6) ADJ 511]

PROVINCIAL SMALL CAUSE COURT ACT, 1889

Section 15-Civil Procedure Code, 1908- Order XIV- Formulation of specific issues – Non framing of Legality- Formulation of a specific issue not a condition precedent in a case pending before JSCC Court - Petition dismissed.

I am of the view that under the Civil Procedural Law, even in those proceedings which are held before the JSCC Court, for e.g. like the proceedings under section 15, as in the present

case, where the formulation of a specific issue may not be with same intensity, as it has been provided under Order XIV of the CPC, may not be a condition precedent, but simultaneously, when the Small Causes Courts, formulates a point of determination, which is to be answered by the Court for deciding a matter, it is always based upon the pleadings raised by the parties, it is mandatory and rather expected too also, from the parties which are likely to be affected by non framing of a proper point of determination, to have raised the specific plea, attracting the attention of the Court by requesting the Small Causes Courts, to frame an appropriate issue or a point of determination, as expected to be framed by the parties, who wants the Court to answer the said question in his favour. Having not availed the said opportunity, the petitioner cannot now belatedly at writ stage, be permitted to take the advantage of its own lack of diligence in vigilantly participating in the proceedings. **[Paniram vs. Additional District Judge and others, 2021 (152) RD 638 (Uttrakhand)]**

RAILWAYS ACT, 1989

Sec. 20A, 20D

A perusal of the extracted provisions reflect that for a notification declaring intention to acquire the land, under sub-section (1) of Section 20A of the 1989 Act, the Central Government must be satisfied that for a public purpose any land is required for execution of a special railway project. Sub-section (1) of section 20 D of the 1989 Act provides that any person interested in the land may, within a period of thirty days from the date of publication of the notification under sub-section (1) of section 20A, object to the acquisition of land for the purpose mentioned in that sub-section. Sub-section (2) of Section 20 D provides that every objection, under sub-section (1), shall be made to the competent authority in writing, and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

From a plain reading of the aforesaid provisions, it is clear that the scope of the objection is set out in sub-section (1) of section 20 D of the 1989 Act whereas, the mode and manner in which the objection is to be taken and dealt with is laid down in sub-section (2). Importantly, sub-section (2) does not specify the grounds that are necessarily to be taken in the written objection. It merely states that the grounds for the objection must be set out. Once an objection is taken in writing, the competent authority has to give opportunity to the objector of being heard, either in person or through a legal practitioner. Importantly, sub-section (2) of section 20 D does not state that if the grounds of objection are not proper, the competent authority may deny opportunity of hearing. Thus, taking into account that the provision to raise an objection is for the benefit of the landowner who is to lose his land, a construction that enables it to serve its

purpose fully is to be preferred. Such purpose is best served by allowing the objector to be heard once he takes an objection. Accordingly, we are of the view that once written objection to the proposed acquisition is taken and submitted before the competent authority, the competent authority is under an obligation to offer opportunity of hearing to the objector, either in person or through a legal practitioner. No doubt, thereafter, it is open to the competent authority to reject the objection on the ground that the objection does not question the purpose of the acquisition as set out in sub-section (1) of section 20A of the 1989 Act. But, the competent authority cannot treat the objection as a waste paper, before hearing the objector, on the ground that the written objection is not worth consideration.

The decisions that have been cited before us are clear that wherever the statute provides for an opportunity to a person to oppose the acquisition of his land then that person should not be deprived of that opportunity except in rare circumstances. Even in cases where acquisition notifications were coupled with dispensation clause i.e. sub-section (4) of Section 17 of the 1894 Act to deprive a person of his right to object under section 5 A of the 1894 Act, the courts had been strict in allowing invocation of such dispensation power and have consistently deprecated the practice of casual dispensation of the requirement of hearing. Here, under the 1989 Act, there is no provision to dispense with the requirement of hearing on objections under Section 20 D of the 1989 Act therefore, in our considered view, once a written objection, under Section 20 D, to the acquisition is taken, a duty is cast on the competent authority to take a decision on the objection after hearing the objector or his legal practitioner. **[Jaiveer Singh and others vs. Union of India and others, 2021(8) ADJ 257(DB)]**

REVENUE LAW

Nazul Manual – Rule 5A

It is settled law that mutation proceedings are summary in nature and if an order is passed in such proceedings or any writ petition thereafter challenging such orders passed in mutation proceedings, in favour of a litigant, it would not establish his right to the property in question. The ultimate establishment of right would only be through a competent Court by way of a declaration, therefore, this Court ordinarily does ot interfere in orders passed in mutation proceedings. There have been exceptions carved out which have been mentioned in d e tail by this Court in Smt. Hadisul Nisha vs. Additional Commisioner (Judicia) Faizabad and others, 2021(6) ADJ 176(DB) which exceptions from the said judgment are being quoted hereinbelow:

"(i) If the order is without jurisdiction;

(ii) If the rights and title of the parties have already been decided by the competent Court, and that has been varied by the mutation Courts;

(iii) If the mutation has been directed not on the basis of possession or simply on the basis of some title deed, but after entering into a debate of entitlement to succeed the property, touching into the merits of the rival claims;

(iv) If rights have been created which are against statutory provisions of any Statute, and the entry itself confers a title on the petitioner by virtue of the provisions of the U.P. Zamindari Abolition and Land Reforms Act;

(v) Where the order impugned in the writ petition have been passed on the basis of fraud or misrepresentation of facts, or by fabricating the documents by anyone of the litigants.

(vi) Where the Courts have not considered the matter on merits for example the Court have passed order on restoration applications etc. (Vijay Shankar vs. Additional Commissioner, 2015(3) ADJ 186(LB)".

[Mahanth Chaturbhuj Das @ Chanda vs. State of U.P. and others, 2021(7) ADJ 99(LB)]

Land Records Manual – 89A, 89B, 102B

The party who is claiming, on the basis of adverse possession in some property, is to prove as to the date, time and manner in which he entered into possession and when the possession converted into open, hostile and adverse. The claim under Clause 9 on the basis of adverse possession is not tenable at all unless it is proved that the entry was strictly in accordance with the provisions of the Land Record Manual and thereafter the notice was sent to the recorded tenure holder. A joint reading of paragraph 89-A, 89-B and 102-B of the Land Records Manual makes it clear that if any entry is made in PA-10 the same is required to be communicated to the person or persons concerned or their heirs and their signatures are required to be taken on the communication. It was further required to be reviewed by the Revenue Inspector at the time of verification (Padtal) as to whether the signatures of the recipient has been obtained or not. Therefore in case any entry made on the basis of adverse possession the same has to be communicated to the person concerned and the person claiming on the basis of said entry is required to prove that it was in accordance with the Land Records Manual. Therefore it was required to be proved by the opposite party no.3, but he failed to do so. **[Azadar Hussain Khan and others vs. Deputy Director of Consolidation Faizabad and others, 2021(7) ADJ 196(DB)(LB)]**

Land Records Manual – Para 89A, 89B, 102B

Reading of the aforesaid provisions makes it clear that if any entry is made in PA-10, the same shall be communicated to the person or persons concerned recorded in columns 3 and 4 or their heirs and obtain their signatures. Records on being submitted to the Revenue Inspector, he shall ensure at the time of Padtal i.e. verification of the village that it has been issued in all the cases and the signatures obtained by the recipients. Therefore, in case, any entry made on the basis of adverse possession the same was to be communicated to the person concerned and the person claiming is required to prove that it was in accordance with the manual and as to what was nature of possession and when it started in the knowledge of the tenant and the possession was continuous and how long it continued. **[Babu Ali and another vs. D.D.C. and others, 2021(8) ADJ 579(LB]**

SABKA VISHWAS (LEGACY DISPUTE RESOLUTION) SCHEME 2019

Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019- Sec. 121, 129

As noted above, the Scheme being a piece of reformative legislation, 'redemption fine' that is a penalty in rem must clearly be shown to have been excluded from the meaning of the word 'penalty' used in Section 129 of the Scheme, before it may be inferred that a Discharge Certificate may be issued only upon payment of the 'redemption fine'/ penalty in rem. In absence of any provision to exclude 'redemption fine'/penalty in rem from the benefits of the Discharge Certificate contained in Section 129 of the Scheme, no such inference may be drawn, against the plain language and intent of the Scheme. In absence of any express exclusion created by the Scheme, 'redemption fine' would always remain a 'penalty' covered under the meaning of that word used in Section 129(1)(a) read with Section 121 (u) of the Scheme. Thus, we have reached the same conclusion on the point as the Gujarat High Court, but for reasons of our own. **[M/s. Jay Shree Industries vs. Union of India and another, 2021(7) ADJ 379(DB)]**

SERVICE LAW

Fundamental Rules, CSR, Central Civil Services (Pension) Rules 7

I, therefore, hold that a Government servant retiring on 30th June would be entitled to benefit of increment falling due on 1st July on account of his good conduct for the requisite length of time i.e. one year, in a regime of progressive appointment. **[Nand Vijay Singh and others vs. Union of India and others, 2021(6) ADJ 358]**

Disciplinary Proceedings, Departmental Enquiry

1. Whether the services of an employee on deputation can be terminated by the borrowing department on the allegation of misconduct or negligence during service ?

2. Whether unexplained inordinate delay in framing charges would amount to violation of principles of Natural Justice and vitiate the entire disciplinary proceedings ?

3. Whether the preliminary inquiry report/fact finding report can be relied upon by the disciplinary authority to terminate the services of the delinquent employee on the ground of the misconduct or negligence ?

Thus, in the light of the aforesaid discussions, the issue No. 1 is answered accordingly to the effect that the services of an employee on deputation cannot be terminated by the borrowing department, in case of any negligence or misconduct, he can only be repatriated to his parent department alongwith the report about his conduct.

Delayed initiation of proceedings is bound to give room for allegations of bias, mala-fides and misuse of power. Such delay is likely to cause prejudice to the delinquent officer in defending himself. Therefore, the delay and laches on the part of the employer in conducting departmental enquiry without any satisfactory explanation for the inordinate delay are sufficient to vitiate the entire disciplinary proceeding.

Law is settled that the employer can always conduct preliminary enquiry in order to ascertain correct facts and in case the allegations against the employees are found to have substance, then a regular disciplinary enquiry has to be instituted. Since the preliminary enquiry is merely a fact finding report, therefore, its object is merely to form an opinion as to whether a formal enquiry in the matter is required to be conducted or not.

Once the decision is taken by the authorities to institute regular disciplinary proceedings then findings in the preliminary enquiry report ordinarily is not to be relied upon. In case such a report is to be relied upon then the delinquent employees has to be confronted with such materials, and only after hearing their version in the matter that such a report could be relied upon. Any other course followed would clearly be a violation of principles of natural justice. **[Wing Commander Rajesh Kumar Nagar vs. State of U.P., 2021(6) ADJ 658(LB)]**

Civil Service Regulations – Regulation 351 AA

The word "judicial proceeding" used under Regulation 351-AA would include every proceeding pending in the Court whether original or at the appellate stage. The judicial proceeding means proceeding over which Judge presides. A criminal appeal cannot be taken out from the definition of "judicial proceeding" and thereby, if one is acquitted but appeal thereupon is pending, he/she would be governed by Regulation 351-AA and thereby, entitled to the provisional pension. **[State of U.P. and others vs. Mahanand Pandey and another, 2021(7) ADJ 143(DB)]**

Service Law- Compassionate Appointment

At the outset, I am in agreement with the contentions of opposite party that the required condition for appropriate post should be fulfilled by the candidate holding such post and there cannot be any compromise. This Court may not relax such condition, inasmuch as, this is a domain of concerning authority to fix mandatory condition for particular post. Therefore, I do not interfere the impugned order dated 22.9.2021 (Annexure 1) as for as it provides that on account of non-obtaining the required condition the petitioner would not be eligible to hold the post of Junior Assistant.

However, the another relevant issue in the present case is that the appointment was provided to the petitioner under Dying-in-Harness Rule as the bread earner of the family died in-harness and on a ccount of that demise the family of the deceased employee has suffered a lot, therefore, it had been rightly considered by the competent authority to provide any appropriate appointment to the petitioner under Dying-in-Harness Rule on the compassionate basis. The law stipulates that the appointment under Dying-in-Harness Rule is of permanent nature and as per letter and sprit of the particular rule any suitable appointment on compassionate ground is provided to one eligible member of the family of deceased employee at the earliest so that sufferance and distress of the family could be met out.

Therefore, if any appointment is provided subject to any condition and non-fullment thereof may cause cancellation of appointment would not be proper in a case where appointment under Dying-in-Harness Rule has been provided. **[Durgesh Srivastava vs. State of U.P. and others, 2021(7) ADJ 146(LB)]**

Financial Handbook Part II – Chapter III

The short question of law which arises before the Court is whether the services of a permanent teacher can be dispensed with on the ground of being absent from duty for a sufficiently long time under the provisions of Rule 18 of Financial Handbook Part II (Volume 2 to 4) Chapter III without resorting to disciplinary proceedings under the disciplinary rule.

Rule 18 has been amended vide notification dated 12.9.1989 wherein absence beyond 5 years has been indicated to attract the provisions of rules relating to disciplinary proceedings meaning thereby that with effect from 1989 disciplinary proceedings are *sine-qua-non* prior to imposition of any penalty against an employee for his absence from duty beyond five years. **[Smt. Kamla Devi vs. State of U.P. and others, 2021(7) ADJ 219(LB)]**

Reservation

Insofar as the OBC certificate bearing the name of the husband of the petitioner is concerned, the Court finds that the stipulation of the caste certificate bearing the name of a parent serves a salutary and significant purpose. Caste as is well-settled is determined by birth. The identification of a person as belonging to a particular caste or social class has an unbroken and undeviating connect with the family of the individual. The candidate must therefore necessarily establish that he or she was born into a family which belongs to a backward class duly recognized as such by the appropriate Government. A certificate bearing the name of the parent thus serves the purposes of enabling the respondents to ascertain and verify the actual caste of the holder thereof as existing at the time of birth.

It is well-settled that benefits of reservation cannot be obtained by virtue of marriage. **[Suman vs. State of U.P. and others, 2021(7) ADJ 374]**

Departmental Proceedings-

The sole question before this Court to adjudicate is that if there is no provision, rules or regulations authorizing the Competent Authority to make deduction of any amount or to punish employee after retirement on any of the misconduct, as to whether such employee may be compelled to face the departmental trial after retirement and whether any punishment order may be awarded against him after his retirement.

Admittedly, the aforesaid question is no more res integra after the dictum of Bhagirathi Jena (supra) and it has been held by the Hon'ble Apex Court that if there is no such statutory

prescription to make deduction of any amount from the employee or to punish him/ her after his/ her retirement for any misconduct, no such order can be passed against such employee after his/ her retirement. Even the Hon'ble Apex Court in re: Dev Prakash Tewari (supra) has held that not only such departmental enquiry would lapse after retirement of such employee, he/ she shall be entitled for the emoluments payment to him/ her. **[Ashok Kumar Singh vs. U.P. State Food and Essential Commodities Corp. and others, 2021(8) ADJ 177(LB)]**

STAMP ACT 1899

Secs. 49, 50

12. From the law noticed above, the legal position that emerges is as follows: (i) Stamp Act is a taxing statute;

(ii) in construing taxing statutes equity and hardship are not relevant, one has to strictly look at the words/ language used and there is no room for searching intendment or of drawing any presumption while construing the provisions of a taxing statute; (iii) in case of ambiguity in charging provisions, the benefit must necessarily go in favour of subject /assessee, but in case of ambiguity in an exemption provision, the benefit of ambiguity must be strictly interpreted in favour of the Revenue/ State. However, if, by a strict construction of the exemption clause, the ambiguity is resolved and the subject falls within the exemption clause then to give full play to the exemption clause a liberal construction may be made.

Some of the legal principles deducible from the decision of the Apex Court, noticed above, are as follows:-

(a) where the instrument is rendered unfit for the purpose for which it was executed, the claimants can seek refund under Section 49 (d) (2) read with Section 50 (3) of the Stamp Act;

(b) where an instrument is executed under order of the court and by the order of the court the instrument is cancelled with liberty to seek refund of the stamp duty paid, benefit of refund is not to be denied on technical grounds of limitation more so because an act of the court is to prejudice none; and

(c) where a case for refund of stamp duty can be brought under Section 49(d)(2) read with Section 50(3), an interpretation which advances the cause of justice and is based on principle of equity, should be preferred.

When we read the extracted provision as a whole, what is noticeable is that allowance available under sub-clause (2) of clause (d) of Section 49 of the Stamp Act is for impressed stamps spoiled to execute an instrument which has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended. At this stage, we may observe that though clause (d) uses the word stamp, which is singular, but, by virtue of Section 13(2) of the General Clauses Act, 1897, singular shall include plural, and vice versa, therefore, the word stamp used in clause (d) would include stamps. Thus, once the allowance is for impressed stamps spoiled to execute an instrument, executed by any party thereto, which has been afterwards found unfit for the purpose originally intended, the allowance is for the stamps spoiled to execute that instrument. Whether an allowance would be admissible for any part of the stamps spoiled to execute an instrument which fails in part, that is whether allowance could be claimed for bad part only, is an issue which has not been specifically addressed by the provisions of Section 49(d) of Stamp Act. Can in such circumstances under clause (d) of Section 49 allowance be claimed for the bad part only? The answer to it would have to be rendered upon construction of the provision with reference to the principles governing the rules of interpretation of a taxing statute inasmuch as it is well settled that Stamp Act is a taxing statute. The principles governing interpretation of a taxing statute have already been noticed by us above, and the same are recapitulated below: (i) in construing taxing statutes equity and hardship is not relevant, one has to strictly look at the words/ language used and there is no room for searching intendment or of drawing any presumption while construing the provisions of a taxing statute; (ii) in case of ambiguity in charging provision, the benefit must necessarily go in favour of subject / assessee but, in case of ambiguity in an exemption provision, the benefit of ambiguity must be strictly interpreted in favour of the Revenue/ State. However, if, by a strict construction of the exemption clause, the ambiguity is resolved and the subject falls within the exemption clause then to give full play to the exemption clause a liberal construction may be made. In the instant case, we have already found above, there is no excess payment of stamp duty on the instrument of lease. Here, after execution of the lease instrument, on account of failure of the demise in part, allowance has been sought. The provisions of the Stamp Act, at least those that have been placed before us, are silent for such an eventuality. In our view, in absence of clarity in the provisions of the Stamp Act with regard to admissibility of an allowance where the instrument fails in part, the claim for allowance would have to be rejected by keeping in mind the general legal principle that in case of

ambiguity in an exemption provision, the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State. An allowance though, strictly, cannot be equated with an exemption but for interpretation of an allowance strict rule of interpretation would have to be applied at the threshold to find out whether the subject falls within its ambit or not because the initial burden is on the subject who seeks allowance to make out a case for allowance. For all the reasons recorded above, we respectfully agree with the view of the Full Bench of the Madras High Court in the case of Chief Controlling Revenue Authority, Board of Revenue, Madras vs. B.P. Eswaran and others (supra) that Section 49(d) does not contemplate allowance for spoilation of stamps, where a composite instrument embodying rights and liabilities fails only in part and is good for the remaining part. Otherwise also, on simple logic, an instrument executed by spoiling several impressed stamps cannot be dissected to sever out the bad part from the good, so as to enable use of the good. The decision of the Apex Court in Libra Buildtech's case (supra) does not come to the rescue of the first respondent because in that case the entire instrument was found unfit for the purpose originally intended and was thus cancelled. In the instant case, part of the lease instrument remained operative therefore the instrument did not fail the purpose originally intended.

In tax matters equity has a limited role. Doctrine of unjust enrichment is based on equitable principles and has statutory recognition in Sections 65 and 72 of the Contract Act. As tax is compulsory exaction of money by a sovereign with the sanction of law and is not payment for services rendered or to be rendered, a refund of the tax or the duty paid under a fiscal statute is not to be made unless and until the duty paid is found not payable. **[State of U.P. vs. M/s. S.J.P. Infracon Limited and another, 2021(6) ADJ 114(DB)]**

THE INDIAN ELECTRICITY ACT, 1910

Section 135 of Electricity Act

In this matter Hon’ble Allahabad High Court while deciding the matter of modification of sentence regarding the offence related to theft of electricity it was held that the accused has undergone sentence for more than 9 month, accused was not having any criminal antecedent, it was held that criminal justice jurisprudence adopted in India is not retributive but reformative and corrective, it was also held that nothing on record show that accused is incapable of being

reformatted. Thus, the sentence of one year was reduced to the period already undergone and fine was modified to Rs. 1000 in place of 5000. [**Dayaram v. State of Uttar Pradesh, 2021 Cri.L.J. (NOC) 541 (All.):AIR Online 2020 All. 2567**]

THE LIMITATION ACT, 1963

Art. 37 & Sec. 18—Default in payment of loan

The period for the purposes of limitation for institution for the suit for an amount payable under a bond by way of instalments, in an event of commission of a default, would be three years as provided in column 2 of the Schedule of the Limitation Act, which here would be the date of admission of liability, which is the acknowledgement of 31.03.2001, which would be treated to be default admitted by the defendants/appellants. Since the suit was filed on 21.03.2004, the bar of Section 18 to be read with Article 37 of the Schedule to the Limitation Act will not be attracted, hence I hold the suit for recovery as filed on 21.03.2004, was well within 3 years from the date of acknowledgement of liability i.e. 31.03.2001.

In such an eventuality, if Section 18; is read with Article 37 ; in that eventuality the acknowledgement of the liability of dues in writing once it fails to be with effect from 31.03.2001 and the suit itself since having been instituted on 21.03.2004, it will fall to be well within the prescribed period of three years of limitation as provided under Article 37 of the schedule contained to the Limitation Act and hence the inference drawn by the court below with regards to the aforesaid provision, that the suit was not barred by limitation is decided against the defendants/appellants holding thereof that the suit was filed well within time. Thus, the findings recorded on issue numbers 3 and 5 suffers from no apparent judicial error. **[Govindi Devi vs. Naninital Almora Kshetriya Gramin Bank, 2021 AIR CC 2050 (UTR)]**

U.P. CONSOLIDATION OF HOLDINGS ACT, 1953

Sec. 9C, UPZA & LR Act

It is settled law that an undivided share in a joint family property cannot be sold off by one of the co-sharers without there being any partition by metes and bounds. Even if there is an assertion that an oral partition took place, the value of the property involved in the partition being more than hundred rupees, such oral partition is not permissible. Registration of such partition was also required. If the partition has not been proved by independent and competent witnesses before the court of law, such partition could not be said to have taken place at all. The Consolidation Officer in his order says that the sale deeds were proved by the witnesses of the Vendee. The Consolidation Officer also says that the boundaries were verified by such witnesses. However, he does not say in his order that the share of the Vendee was proved to have been determined by a family partition by such witnesses. This property in question was still a joint property of the petitioner and his brothers and, therefore, if his brothers alienated the same without the consent of the petitioner, such as sale would be void and not a voidable document. Every alienation of joint Hindu family property without the consent of the coparcener makes the sale deed void. Even if such land was not joint Hindu family property, it being a property having joint ownership of the petitioner and his brothers without a regular partition between them any sale of such property would be void. **[Rajendra Prasad vs. Deputy Director of Consolidation Sitapur and others, 2021(7) ADJ 456(LB)]**

Sec. 19

A consideration of this Court's observation in Asbaran (supra) and Srinath (supra) makes it amply clear that the provision of Section 19 are not to be lightly ignored. However, Section 19 only provides two conditions which have to be mandatorily followed. One relates to allotment to a tenure holder of chak upon the land to which he has already made some improvements, the second requires the authorities to allot to a tenure holder chak over the largest part of his holding. If a chak holder is to be allotted land which was not part of his original holding, i.e., an udaan chak, the same must necessarily be allotted in the vicinity of the original land held by him in that sector/ area. The principles laid down in Section 19 are guiding factors hedged by the phrase "as far as possible" only to better facilitate consolidation and allotment of compact areas to facilitate better utilization of land and other resources.

This Court in Jeet Narain vs. Deputy Director of Consolidation and others, 1983 ALJ 1998, has observed in paragraph 8 of its judgement that "no tenure holder can be allotted any

land by the consolidation authorities merely for the purpose of extension of Abadi or for using it as a Sehan land, if he is not otherwise entitled to get the land allotted to him in his Chak near village Abadi. If a tenure holder is holding some land in his original holding near Village Abadi he can certainly be allotted land in his Chak to that extent at that place. He may or may not utililse that plot for cultivator purpose and may use it for extension of Abadi or use it as Schan land. But if he had no land near the village Abadi in his original holding, he would not be entitled to get a Chak allotted near Abadi merely on the ground that his house is situated near the land in question and he would require that land for being utilized as his Sehan or for extension of his Abadi. No land can be allotted to him at the cost of other tenure holders merely for the aforesaid purpose if he is not otherwise entitled to get a Chak allotted to him near the village Abadi as aforesaid. The consolidation authorities certainly make necessary reservation of land for the purpose of extension of Abadi, but such land would belong to the Gaon Sabha, and has to be allotted by it in accordance with the provisionsl contained in U.P. Zamindari Abolition and Land Reforms Act. No land can, however be reserved nor it can be allotted by the consolidation authorities to any particular individual tenure holder, merely on the ground that he would require it for extension of Abadi or for being utilized as Schan land, if otherwise he is not entitled to land at that place near village Abadi as mentioned above……..” **[Rakesh Singh vs. State of U.P. and others, 2021(6) ADJ 224(LB)]**

U.P. CO-OPERATIVE SOCIETIES ACT, 1965

Sections 128, 98,99 – U.P. Cooperative Societies Rules, 1968 - Rule 269

The points which arise for our consideration are:

(1) Whether the Registrar, Co-operative Societies has the power of review under the U.P. Cooperative Societies Act, 1965 to review an order passed by him under Section 127 of the Act, 1965?

(2) What is the scope of Rule 269 of the Rule 1968?

(1) There is no power of review in the Registrar against its order passed under Section 128 of the Co-operative Societies Act, 1965, but if the order has been passed under an erroneous assumption of its own power going to the root of the matter, or, if inter alia, it is found that there was willful suppression of material fact or fraud was practiced the Registrar will have the power to review its earlier order.

(2) The Scope of rule 269 of the Rules, 1968 is only for correction of clerical or arithmetical mistakes in judgments or order of errors arising therein from any accidental slip or omission and any error or omission which goes to the merits of the case is beyond the scope or rule 269 of the Rules, 1968. **[Shiv Kumar Mishra vs. State of U.P. and others, 2021(8) ADJ 645(LB)(DB)]**

U.P. CO-OPERATIVE SOCIETIES EMPLOYEES SERVICE REGULATIONS 1975

Here, in the present case, it is admitted case of the parties that at the time of retirement of the petitioner, under the rules applicable there was no provision to continue the disciplinary proceeding against the petitioner, therefore, stoppage of payment of post retiral dues to him cannot be held to be legally sustainable. **[Ram Surat Chaudhary vs. State of U.P. and others, 2021(6) ADJ 407(LB)]**

U.P. GANGSTER & ANTI SOCIAL ACTIVITIES (PREVENTION) ACT 1986

Secs. 2 & 3

Such type of incomplete or half backed gang charts is reflective of informant's attitude and, his professional incompetence. Any material lapse in preparing the exhaustive gang chart should be plugged at the earliest and not the stage of bail. Presently, it seems that the informant either does not want to prepare the complete gang chart for any 'particular reason' or 'motive' or he has got lack of information regarding antecedents of particular individual and his *modesoperandi. It is true that there shall not be repetition of case crime numbes as it may attract the vice of double jeopardy, but there is no restriction if any 'addenda' is added to the gang chart spelling out his previous criminal antecedents. That would be easy for the law Courts to fathom the depth and gravity of the individual seeking bail after having holistic and comprehensive picture of the criminal history.* The Court expects that the gang chart must give a

concrete information not only the crimes committed by him in his individual capacity but also as member of that gang. Besides this, the area of operation i.e. within the district or touching the other districts or even gone beyond the limits of the State. While considering the bail application of that accused, the Courts are also curious to know the stage of trial of other cases in which that individual is enjoying bail. The said gang chart must indicate that as to whether he has misused his liberty of bail by indulging any other offence after coming out of jail.

Principal Secretary (Homes) Lucknow and the Director General of Police, Lucknow are hereby directed to:

(1) Start exercise to frame proper Rules of the present enactment pursuant to the provisions contained in Section 27 of the U.P. Act 7 of 1986 latest by 31st December, 2021 positively.

(2) Meanwhile, issue proper circular to all the SSP/ SPs of the District to appoint any officer at least C.O. Rank, be placed in the office of S.P., either exclusively or with additional charge to become authority concern and author of gang chart of the individual, under the U.P. Gangster Act, 1986 who shall act as Nodal Officer of all the police stations within the District. The alleged gang chart of individual shall be elaborative, comprehensive on giving all the necessary details of that accused viz. (i) name, sex, permanent address (ii) Number of total cases to his credit either in his individual capacity or as member of the gang. (iii) If there are successive prosecution under the U.P. Gangster Act, then details of previous cases in the form of "Addenda" (iv) State of trial of those cases before the trial Court. (v) Family background, his social, financial status of that accused including his ill-gotten wealth. (vi) Whether he has misused the liberty of bail granted to him earlier by the law Courts and have indulged in subsequent offences. (vii) Area of operation of that gang within the district alone or in the adjoining districts or has gone beyond the limits of State and lastly types of cases, mean9ing thereby the gang is having expertise in committing particular type of offence or assorted crimes and lastly his general reputation in the locality. The Court requires a complete, extensive criminal dossier of that individual, with above mentioned particular.

The S.P./S.S.P. of the district after marking in depth probe and cross-check, regarding authenticity of the gang chart shall approve it after putting his signatures. Any laxity by the

authority concern in preparing the gang chart would warrant serious consequences on his own shoulders.

The Special Judge (Gangster Act) which are operational in every Sessions Divisions in the State are *also directed to speed up the trial and make all necessary endeavour to conclude the same within a year of submission of its charge-sheet.* The proceeding under the U.P. Gangster Act shall be given priority over any other trial.

Normally, the Court shuns and avoid to give any advice to the State agency for the initiation of successive proceedings under the U.P. Gangster Act. It may suffer from the vice of double jeopardy, but in a given and changed circumstances, they may lodge subsequent FIR under the aforesaid Act of 1986. **[Nishant @ Nishu vs. State of U.P., 2021(6) ADJ 461]**

Secs. 2,3

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. **[Ritesh Kumar @ Rikki vs. State of U.P. and another, 2021(7) ADJ 305(DB)]**

Secs. 2,3

Accordingly, we hold that a First Information Report under Section 2/3 of the Act, 1986, can be registered against a person even if only one criminal case is registered against him, and on the ground of registration of merely one criminal case. **[Arjun vs. State of U.P. and others, 2021(7) ADJ 481(DB)]**

U.P. GOODS & SERVICES TAX ACT, 2017

U.P. State Goods & Services Tax Rules 2017 – Rule 86A

Plainly, the Rule does not contemplate any recovery of tax due from an asessee. It only provides, in certain situations and upon certain condition being fulfilled, specified amount may be held back and be not allowed to be utilized by the assessee towards discharge of its liabilities on the outward tax or towards refund. It creates a lien without actual recovery being made or attempted.

The words ‘input tax available’ used in the first part of sub-rule (1) of Rule 86-A cannot be read as actual input tax available on the date of the order passed under that Rule. Those words are relevant for the purpose of laying down the first condition for the exercise of power by the Commissioner or the authorized officer. Thus, for a valid exercise of power, the authorized officer must have ‘reasons to believe’ that any credit of ‘input tax available’ (i.e. that was available in the electronic credit ledger of an assessee) had either been fraudulently availed or the assessee was not eligible to avail the same.

The words ‘input tax available’ have to be read only in the contexst of the infringement being alleged by the revenue. i.e. fraudulent availment or availment *dehors* eligibility to the same. Consequently, if an assessee is found to have either fraudulently availed or to have availed such ‘input tax credit’ that he was ineligible to avail, he may expose himself to action under the Rule, in future, when such an event may come to the knowledge of the authorized officer, subject of course to the rule of limitation.

Thus the word ‘available’ used in the first part of sub-Rules of Rule 86-A would always relate back in time when the assessee allegedly availed input tax credit either fraudulently or which he was not eligible to avail. It does not refer to and, therefore, it does not relate to the input tax credit available on the date of Rule 86-A being invoked. The word “has been” used in Rule 86-A(1) leave no manner of doubt in that regard.

As to the third submission advanced by learned counsel for the petitioner, the provision of Rule 86-A is not a recovery provision. In fact, it does not allow the revenue to reverse or appropriate any part of the credit existing in the electronic credit ledger of an assessee or to adjust that credit against any outstanding demand or likely demand. It is at most a provision to secure the interest of revenue, to be exercised in the presence of the relevant ‘reasons to believe’, as recorded.

The Rule only enables the authorized officer to not allow debit of an amount equivalent to ‘such credit’. The submission of Shri Mishra that the words ‘such credit’ refers only to any existing amount of positive credit in the electronic credit ledger or that it must be credit arising from the same seller, cannot be accepted as that intent is clearly non-existing in the Rule.

The operative portion of sub-rule (1) of Rule 86-A limits the exercise of power (by the authorized officer), to the amount that would be sufficient to cover the input tax that, according

to the revenue, had either been fraudulently availed or to which the assessee was not eligible. It is an amount equal to that amount which has to be kept unutilized.

To that effect, the legislature has chosen the words 'not allow debit'. To not allow debit and to appropriate the same are two different things in the context of the Statute. They lead to different consequences. While the first only creates a lien in favour of the revenue by blocking utilization of that amount, appropriation of an amount would necessarily involve transfer of title over the money with the revenue. Plainly, the Rule does not contemplate or speak of such a consequence. **[M/s. R M Dairy Products LLP vs. State of U.P. and others, 2021(7) ADJ 449(DB)]**

Sec. 108, U.P. Goods & Services Tax Rules 2017 – Rule 86A, Central Goods & Services Tax Act 2017- Sec. 16, 108

The Rule 86A is in respect of the power and procedure for blocking the input tax credit (ITC) in the electronic credit ledger of a registered person. A bare reading of Section 86A indicates that the Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible, may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount. The invocation of Rule 86A of the Rules for the purpose of blocking the input tax credit may be justified, if the concerned authority or any other authority, empowered in law, is of the prima facie opinion based on some cogent materials that the ITC is sought to be availed based on fraudulent transactions like fake/bogus invoices etc. However, the subjective satisfaction should be based on some credible materials or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or far-fetching, which would warrant the formation of the belief. The power conferred upon the authority under Rule 86A of the Rules for blocking the ITC could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on subjective weighty grounds and reasons. The power under Rule 86A of the Rules should neither be used as a tool to harass the assessee nor should it be used in a manner, which may have an irreversible detrimental effect on the business of the assessee. The aspect of availing the credit and utilization of credit are two different stages. The utilization of credit is a vested right. No vested right accrues before taking credit. There needs to be some guidelines or procedure for the purpose of invoking Rule 86A of the Rules. In the absence of the same, Rule 86A could be misused and may have an irreversible and detrimental effect on the business of the person concerned.

The jurisdiction under Section 108 of the SGST Act can be exercised by the revisional authority on his own motion and upon information received by him or on request of Commissioner of Central Tax, if he considers that any decision or order passed by any officer subordinate to him is erroneous insofar as it is prejudicial to the interest of revenue and illegal or

improper or has not taken into account any material facts, he may stay the operation of such decision or order and after giving the person concerned an opportunity of being heard, pass such order, as he thinks just and proper including enhancing or modifying or annulling the decision or order. In the present matter, admittedly the respondent no.3 has neither served any notice nor granted opportunity of hearing to the petitioner before passing the impugned order.

The pre-conditions to the exercise of this powers were two folds, namely, error in the order passed by an officer subordinate to the revisional authority and prejudicial to the interest of revenue. Once these two conditions stood fulfilled, the revisional authority was authorized to give an opportunity to the assessee of being heard and after making such inquiry as he thought fit he could pass appropriate orders as the circumstances of the case would justify. This power was essentially a supervisory power. However, in order to ascertain whether the officer subordinate to him had passed an erroneous order, which was also prejudicial to revenue, the Commissioner was required to call for and examine the record of such proceedings. Therefore, the revisional authority had to call for the records, he had to examine such records, he had to be satisfied regarding fulfilment of the above two conditions and thereafter give opportunity to the assessee of being heard and on making appropriate inquiry the revisional authority is empowered to pass appropriate orders.

The preconditions for the exercise of powers are basically two folds, namely, error in the order passed by an officer subordinate to the revisional authority and prejudice to the interest of revenue. Once these two conditions stood fulfilled, it was incumbent upon the revisional authority to give an opportunity to the assessee of being heard and after making such enquiry as he thought fit he could pass appropriate orders as circumstances of the case would justify. This power is basically a supervisory power. However, in order to ascertain whether the officer subordinate to him has passed an erroneous order, which may be prejudicial to the revenue, the Commissioner is required to call for and examine the record of such proceedings.

In the present matter, admittedly without summoning the record the notice was prepared by the subordinate officers in which two options were indicated to the revisional authority with an observation that in case second option is approved, accordingly stay order may be prepared. This may not be intention of the legislature while incorporating the said feature. Once the supervisory power is being exercised in absence of relevant record merely on the basis of certain noting, which is forwarded to the revisional authority for exercising the powers it is sheer misuse of the power. The said practice cannot be accepted by this Court. **[M/s. North End Food Marketing Pvt. Ltd. vs. State of U.P. and others, 2021(8) ADJ 214]**

U.P. GOVERNMENT SERVANT (DISCIPLINE & APPEAL) RULES 1999

Rule 4

On perusal of the aforesaid provisions, it is evident that the disciplinary authority would record reasons and satisfaction in the suspension order against an employee.

On examination of the ratio laid down in para 15, it is evident that mere recommendation cannot be made a ground in passing the order. The competent authority who hasw been empowered to pass the order would apply its own mind. **[Ashok Kumar Singh vs. State of U.P. and another, 2021(7) ADJ 182(LB)]**

U.P. IMPOSITION OF CEILING ON LAND HOLDINGS ACT 1960

Sec. 5

Section 5(1) of the Act provides that on and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure-holder shall be entitled to hold in the aggregate throughout Uttar Pradesh, any land in excess of the ceiling area applicable to him. Explanation of Section 5(1) provides that in determining the ceiling area applicable to a tenure holder, all land held by him in his own right, whether in his own name, or ostensibly in the name of any other person, shall be taken into account. Therefore, merely because the land has been mutated in the name of the petitioners on the basis of Will, which could not have been executed to defeat the purpose of the Act, it cannot be said that the land cannot be treated of Laxman Singh. **[Satbir Singh and another vs. Additional Commissioner and others, 2021(7) ADJ 224(LB)]**

U.P. LAND REVENUE ACT, 1901

Section 219(2)- Second revision – Maintainability- Held, since first revision dismissed as withdrawn without granting liberty to file fresh revision- Therefore, second revision not maintainable- Impugned order of Board of Revenue admitting second revision for hearing- Set aside- Petition allowed accordingly.

A perusal of the withdrawal application filed by the contesting respondent Nos. 2 and 3 in Revision No. 765 of 2018-19 shows that through the aforesaid application, the contesting respondent Nos. 2 and 3 had prayed that the revision be dismissed as withdrawn with liberty to file a fresh revision after removing the defects. However, a reading of the order dated 24.2.2020 passed by the Additional Commissioner (Judicial), Agra Division, Agra (hereinafter referred to as, 'Additional Commissioner') shows that through the aforesaid order, the revision was dismissed as not pressed, but there is no recital in the said order granting liberty to the contesting respondent Nos. 2 and 3 to file a fresh revision. Thus, no liberty was granted to the respondents to file a fresh revision against the order dated 2.6.2017 passed by the Tehsildar, Tehsil-Sadar, District-Agra.

In view of the law laid down by this Court in Smt. Umman Bibi (Supra), the second revision was not maintainable by virtue of Section 219(2) of the Act, 1901. The observations of the Court in the case of Smt. Umman Bibi (Supra) are reproduced below:-

> "So far as the contention of learned counsel for the petitioner that the second revision preferred by the petitioner had come up for admission before the Board of Revenue on 21.2.2015 and at that time no revision was pending, as such, it cannot be treated to be a second revision and Board of Revenue has wrongly come to conclusion that it was not maintainable is concerned, suffice is to observe that the provision under Section 219 (2) of Land Revenue Act are very much clear. It is specifically provided that if an application for revision has been preferred before any of the authorities given, no further application by the same person shall be entertained, meaning thereby that once first revision was preferred by the petitioner which was dismissed as withdrawn without seeking any liberty to file revision again, the second revision was not maintainable. Even in the application for withdrawal the petitioner had not disclosed that he has preferred another revision before the Board of Revenue and do not want to pursue this revision. The application for withdrawal was filed simply on the ground that petitioner does not want to pursue the revision and it may be dismissed as withdrawn. The petitioner had not sought any liberty to file fresh revision, the first revision was, as such, dismissed as withdrawn without providing any liberty to file another revision. It is immaterial whether the second revision preferred by the petitioner had come up for admission on 21.2.2015 i.e., at the time when the first revision was already dismissed as withdrawn. Since no liberty was sought or given while withdrawing the first revision, as such, I am of the considered opinion that the second revision preferred by the petitioner was not maintainable. The larger Bench of the Board of Revenue by the impugned judgment and

order has rightly come to conclusion that the second revision by the petitioner before Board of Revenue was not maintainable. The larger Bench was also right in dismissing the revision preferred by the petitioner as there was no question of remanding or sending the matter back to the authority who had made the reference to the larger Bench, once the larger Bench of the Board of Revenue had come to conclusion that the second revision was not maintainable."

For the aforesaid reasons, the order dated 12.1.2021 passed by the Board of Revenue is contrary to law and liable to be set aside and the proceedings before the Board of Revenue in Revision No. 2546/2019 are without jurisdiction.

The order dated 12.1.2021 passed by the Board of Revenue, U.P. at Lucknow in Revision No. 2546/2019 and entire proceedings in the said case are hereby quashed. The Board of Revenue, U.P. at Lucknow shall not hold any further hearing in Revision No. 2546 of 2019. **[Mahavir Prasad and others vs. Board of Revenue and others, 2021 (152) RD 725 (Allahabad)]**

U.P. PANCHAYATI RAJ ACT 1947

Sec. 12H

28. Section 12-H of the Act, 1947, clearly provided that if a vacancy in the office of the Pradhan arises by reason of his death, removal, resignation, voidance of his election or refusal to take oath of office, it shall be filed before the expiration of six months from the date of such vacancy, for the remainder of the term of the Gram Panchayat, provided that, if on the date of occurrence of such vacancy the residue of the term of Gram Panchayat is less than six months, the vacancy shall not be filled. In view of this provision, if vacancy is caused due to voidance of election of a Pradhan the same shall be filled for the residue of the term of the Gram Panchayat, if it is not less than six months on the date of occurrence of vacancy. **[Usha vs. State Election Commissioner Panchayat U.P. Lucknow and others, 2021(6) ADJ 26(LB)]**

Sec. 28C

It is well-settled that Section 28-C has been inserted with an object to protect the property of Gram Panchayat so that persons who are in a position to influence settlement of interest in Gram Panchayat property do not utilize their position to gain unethical advantage for themselves. However, what is important is that clause (a) of the proviso to sub-section (1) of Section 28-C saves those interests that were acquired by a person before he became a member or office bearer. When a person inherits the estate, it is by operation of law; the person steps into the shoes of his or her predecessor by devolution of interest which takes place immediately on the death of the processor though such devolution may be recognized later. Recognition of such devolution may be by way of mutation or substitution in the records but such mutation or substitution by itself does not create any right though it may amount to a recognition of the right. Thus, where the right devolves upon a person by operation of law on occurrence of an event over which a person does not have control, no occasion arises to seek for permission before such devolution. The legislature therefore to serve the legislative object of controlling acquisition of interest in Gram Panchayat property, in its wisdom, qualified the phrase "acquire or attempt to require any share or interest …….in any loicense, lease, sale, exchange, contract or employment with, by, or on behalf of the Samiti concerned" with the word "knowingly". **[Sheetal vs. State of U.P. and others, 2021(6) ADJ 216(DB)]**

U.P. POLICE CONSTABLE AND HEAD CONSTABLE SERVICE RULES 2015

Rules 15(b), 15(c), 15(e)

The law is well settled that once a person takes part in the process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection.

The Apex Court in Shankarshan Dash vs. Union of India (Constitution Bench) (supra) held that it is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed, which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that

the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. **[Ajay Prakash Mishra and others vs. State of U.P. and others, 2021(6) ADJ 54]**

U.P. PUBLIC SERVICES (TRIBUNALS) ACT 1976

Secs. 4 & 5

From the aforesaid, it is well-settled that in order to raise the plea that the claim petition is within the period of limitation and not barred by it, it must be shown that the remedy been followed or availed of was a statutory remedy i.e. provided by the relevant service rules, regulations or the contract relating to public servant and such remedy was availed at within the period of limitation prescribed, if any. **[Devendra Kumar Mishra vs. State of U.P. and others, 2021(8) ADJ 608(LB)(DB)]**

U.P. RECRUITMENT OF DEPENDANTS OF GOVERNMENT SERVANTS DYING IN HARNESS RULES 1974

Compassionate Appointment – Determination

Smt. Vimla Srivastava vs. State of U.P. and another, 2016(1) ADJ 21 and Smt. Neha Srivastava vs. State of U.P. and another, Special Appeal (Defective) No. 863 of 2015, decided on 23.12.2015, Manjul Srivastava vs. State of U.P. and others, 2021(1) ADJ 433, in the definition of family a married daughter of the deceased be included in the same manner as a married son. [Smt. Seema Rani vs. State of U.P. and another, 2021(6) ADJ 341]

U.P. Recruitment of Dependants of Government Servants (Dying in Harness) Rules 1974 – Rule 2(c)

In conclusion, we hold that the exclusion of married daughters from the ambit of the expression “family” in Rule 2(c) of the Dying-in-Harness rules is illegal and unconstitutional, being violative Articles 14 and 15 of the Constitution.

We, accordingly, strike down the word ‘unmarried’ in Rule 2 (c) (iii) of the Dying-in-Harness Rules. **[Shilpi Singh (Smt.) vs. State of U.P. and others, 2021(7) ADJ 430(LB)]**

U.P. RETIREMENT BENEFIT RULES 1961

Rule 3(8), Validating Act (U.P. Act No. 01 of 2021), Civil Services Regulations - 370

203 in light of the aforesaid discussion the Court comes to the conclusion that the expression “qualifying service” would now have to be interpreted in accordance with the provisions made in the Validating Act notwithstanding anything to the contrary that may be contained in any other act, rule or regulation. The Validating Act introduces provisions with retrospective effect from 1 April 1961. Consequently, the provisions of the 1961 Rules which came to be promulgated from that date would have to be construed accordingly.

The right to claim pensionary benefits is now and by virtue of the provisions introduced retroactively by the Validating Act made dependent upon it being found that the employee was appointed in accordance with the applicable service rules and held a permanent or temporary post. Since the legislative enactment bids us to proceed on the basis that the aforesaid definition of qualifying service existed and held the field since 1 April 1961, all claims would have to be necessarily evaluated and examined accordingly. This conclusion would necessarily be subject to any challenge that may be laid to the provisions of the Validating Act.

While the Validating Act fundamentally alters the concept of qualifying service, the right to claim addition of service rendered in a temporary or *ad hoc* basis is one which is till available to be asserted in light of the proviso to Rule 3(8) of the 1961 Rules. While Regulation 370 of the CSR may have been annulled by virtue of the declaration in *Prem Singh,* the proviso to the aforesaid rule enshrines measures which are akin to those which were contemplated in Regulation 370 when it existed. Regard must also be had to the fact that while the provisions of the aforesaid rule directly fell for consideration in *Prem Singh,* it was the Note to that rule alone which was read down. The proviso remained untouched and continues to exist in the statute whole, unmutilated and effective. In fact and was noticed hereinabove, the Supreme Court in *Prem Singh,* appears to have consciously left the proviso standing since once it had struck down Regulation 370, that was the only statutory provision which reinforced the central beam of *Prem Singh*, of service discharged for decades together was liable to be taken notice of for the

purposes of pension once it be found that the attachment of an officer or employee in a work charged establishment was a mere ruse and camouflage to deny benefits.

From the above recordal of the statutory scheme which now remains in place, it is manifest that the right of an employee to seek addition of continuous, temporary or officiating service followed by confirmation or regulalrisation would remain preserved notwithstanding the deletion of Regulation 370. Additionally, and as was explained bythe Division Benches in *Mahendra Singh, Bhanu Pratap Sharma and Narayan Singh Sharma,* the right as inhering in a Government servant to seek inclusion of services rendered on a temporary or officiating basis provided the appointment was ultimately regularized has not been impacted bythe Validating Act. The three decisions afore noted unambiguously hold that the period prior to regularization cannot be ignored as long as it is established that it was service rendered against a particular post be it temporary or permanent. This aspect was highlighted with the Court holding that the only fetter which now remains in place for the purposes of computing qualifying service is of the service rendered being shown to have been discharged against a permanent or temporary post and the appointment having been made in accordance with the service rules. It was in the aforesaid background that it was held that there was no imperative to assail the validity of the U.P. Act No. 01 of 2021 in such situations. **[Dr. Sushma Chandel vs. State of U.P. and others, 2021(8) ADJ 191]**

U.P. REVENUE CODE 2006

Sec. 61, U.P. Revenue Code Rules 2016 – Rule 57(12)

Considering the Scheme of the Code, 2006 in granting fishery lease, it is the date of approval by the Sub-Divisional Officer which is of utmost importance and relevance as the Sub-Divisional Officer has to satisfy himself about the resolution of the samiti to let out the tank to be in accordance with the provisions of Rules as on the date of consideration to accord approval or not. The relevance of the date of approval is also fortified by the fact that rule 59 which provides for appeal to the Collector, prescribes thirty days period for filing appeal from the date or approval by the Sub-Divisional Officer.

In our considered view, the registration of a document cannot affect nor change, the terms and conditions of the document registered which had the approval of the Sub-Divisional Officer,

and therefore the date of registration cannot be the relevant date to determine the period of lease. The registration of lease deed in R.C. Form 15 evidence letting out of tank, in question in favour of the person concerned and subject to the terms and conditions mentioned in R.C. Form 15. It is an action which is merely consequential to the approval by the Sub Divisional Magistrate.

Most importantly, sub-Rule (12) of Rule 57 as substituted, is prospective w.e.f. 20.10.2016 and therefore it shall apply to leases granted after the date of commencement of substituted Sub Rule (12) i.e. w.e.f. 20.10.2016. The applicability of substituted Rule has not been made dependent upon the date of registration of lease deed. It has come into effect from a particular date i.e. 20.10.2016. The substituted sub-Rule (12) does not provide that it shall apply to all the existing leases neither it extends the period of existing lease from five years to ten years nor confers any power on the authorities to extend the period of lease from five years to ten years. **[Popai vs State of U.P. and others, 2021(8) ADJ 515(LB)(DB)]**

Sec. 63 & 67

Section 67(a) of the Code confers rights on certain people3 who have encroached upon public land. The perequisite conditions for invoking the protection of Section 67(a) of the Code are these. The person against whom proceedings are taken out has built his house on any land referred to in Section 63 of the Code, the person who seeks protection of Section 67(a) of the Code should be in the category of persons referred to in Section 63 of theCode. The land should not be reserved for any public purpose. The date of the construction of the house should be prior to 29 November, 2012. The house of such persons should be existing in the disputed paroels of land on or before 29 November, 2012.

In many instances, as indeed in the present case, the notice under Section 67 of the Code may invoke the protection of Section 67(a) of the Code to resist the proceedings under Section 67 of the Code.

The authority/Court having jurisdiction to decide the proceedings taken out under Section 67 of the Code or Section 67(a) of the Code is the same. When the defence of Section 67(a) of the Code is taken in proceedings of Section 67 of the Code, the same issues will be directly and substantially in issue in both the proceedings. Usually in such matters pleadings, defence, pleadings and evidence of the parties are same in both the proceedings. In case proceedings under Section 67 and 67(a) of the Code are conducted separately and in isolation to one another,

it would lead to multiplicity of litigation and inconsistent judgments. There will also be an avoidable delay in decision of the controversy and may even result in miscarriage of justice.

In fact proceedings under Section 67(a) of the Code should be registered immediately after a defence in that regard is made in proceedings under Section 67 of the Code.

The proceedings under Sections 67 and 67(a) of the Code, should be consolidated and heard together by the same Court. Such procedure would faithfully implement the legislative intent and also serve the interest of justice.

The Courts in proceedings under Section 67 Code are under obligation of law to decide the eligibility of the notice for protection under Section 67(a) Code, in case such defence is tendered by the notice. The said proceedings shall be registered separately. But both cases will be consolidated and heard and decided together. **[Asgar vs. State of U.P. and others, 2021(8) ADJ 313]**

Sec. 67

The short point for consideration is whether an appeal filed against the order of Tehsildar/ Assistant Collector, under Section 67(4) of the U.P. Revenue Code, 2006, is maintainable at the instance of a person if he is not a party in the proceedings, but is aggrieved.

It is evident from sub-section (5) of Section 67 of the Code, 2006 that if any person is aggrieved by an order of the Assistant Collector under sub-section (3) or sub-section (4), he may within thirty days from the d ate of the order, prefer an appeal before the Collector. This uses the expression, ‘any person aggrieved’, and not ‘any party aggrieved’. A bare reading of sub-section (5) shows that any ‘person’ may be the ‘party’ or may not be a party can maintain an appeal if he is aggrieved from the order of the Assistant Collector under sub-section (3) or sub-section (4), Sub-section (5), therefore, is not confined to party aggrieved from the order passed under sub-section (3) or sub-section (4) of Section 67, but also includes a non-party to the proceedings if he can show that he is a ‘person aggrieved’ from the order passed under sub-section (3) or sub-section (4). **[Ghanshyam Verma and others vs. State of U.P. and others, 2021(7) ADJ 67(LB)]**

Sec. 67 & 67A

Section 67(A) of the Code confers rights on certain people who have encroached upon public land. The prerequisite conditions for invoking the protection of Section 67(A) of the Code are these. The person against whom proceedings are taken out has built his house on any land referred to in Section 63 of the Code, the person who seeks protection of Section 67(A) of the Code should be in the category of persons referred to in Section 63 of the Code. The land should not be reserved for any public purpose. The date of the construction of the house should be prior to 29 November, 2012. The house of such persons should be existing in the disputed parcels of land on or before 29 November, 2012.

In many instances, as indeed in the present case, the notice under Section 67 of the Code may invoke the protection of Section 67(A) of the Code to resist the proceedings under Section 67 of the Code.

The authority /Court having jurisdiction to decide the proceedings taken out under Section 67 of the Code or Section 67(A) of the Code is the same. When the defence of Section 67(A) of the Code is taken in proceedings of Section 67 of the Code, the same issues will be directly and substantially in issue in both the proceedings.

Usually in such maters pleadings, defence, and evidence of the parties are same in both the proceedings. In case proceedings under Section 67 and 67(A) of the Code are conducted separately and in isolation to one another, it would lead to multiplicity of litigation and inconsistent judgments. There will also be an avoidable delay in decision of the controversy and may even result in miscarriage of justice.

The Courts in proceedings under section 67 of the Code are under obligation of law to decide the eligibility of the notice for protection under Section 67(A) of the Code. In case defence under Section 67(A) of the Code is taken by the notice, the said proceedings shall be registered separately. But both cases will be consolidated and heard and decided together.

This procedure would faithfully implement the legislative intent and also serve the interest of justice. **[Baburam vs. State of U.P. and others, 2021(8) ADJ 100]**

U.P. SUSPENSION OF SENTENCE OF PRISONERS RULES, 2007

Rule 3

This writ petition has been filed praying for the following relief:

"A- Issue a writ, order or direction in the nature of mandamus commanding the respondents to grant parole . . . for at least for one month, so that the petitioner may get medically examined to his old aged, ail mother, who is suffering from heart disease and is confined to bed."

As per the Rules, 2007, the Government of Uttar Pradesh may suspend the sentences of a prisoners up to one month on grounds, namely, (a) illness of prisoner's parents, husband or wife, son, daughter, brother or sister, or (b) death of any one of the relative mentioned in sub-clause (a), or (c) marriage of son, daughter, brother or sister; (d) for sowing or harvesting of agricultural crops on his own land provided no other alternative arrangement for the same is available; (e) for the essential repair of his house provided no other alternative arrangement for the same is available.

Sub-Rule (2) further provides that the Government may in special circumstances extend the period of suspension of sentence referred to in sub-rule (1) for the period not exceeding one month. To meet with the emergent situations in the event of death of mother, father, husband or wife, son, daughter, brother or sister; or marriage of son, daughter, brother or sister, the District Magistrate of the district to which prisoner belongs may suspend the sentence of a prisoner upto 72 hours. Thus, parole may be granted by the Government on the grounds enumerated in sub-rule (1) of Rule 3 for one month. Extension of parole may be granted for another period not exceeding one month under sub-rule (2). To meet the emergent situations in the interest of justice, the District Magistrate of the District to which the prisoner belongs has been empowered to suspend the sentence of a prisoner upto 72 hours on the grounds mentioned in Clauses (a) and (b) of sub-rule (3) of Rule 3.

Extension of the period of suspension after two months is provided in Rule 4. Procedure for suspension of sentence is provided in Rule 5 which requires submission of an application in prescribed Form-I by the prisoner himself or by a member of the family or a close relative of the prisoner in duplicate through the Superintendents of the Jail concerned, who shall forward one copy of it along with his comments and Jail reports in Form II to the Government and other copy to the District Magistrate concerned.

The Government may call for a report from the District Magistrate and the Superintendent of Police concerned on the desirability of the suspensions of the sentence of the prisoner, who after conducting such enquiry as deemed necessary shall submit their report in

Form III within 30 days to the Government. In appropriate cases the Government may call for opinion under sub-section (2) of section 432 of the Code of Criminal Procedure, 1973. After complying with the procedure as provided in sub-rules (1), (2) and (3) of Rule 5 of the Rules 2007 a Prisoner may be released on parole on suspension of sentence provided he furnishes security along-with personal bond to the satisfaction of the District Magistrate to the effect that he shall surrender in Jail concerned on expiry of the period of suspension of sentence and shall maintain peace and good conduct during the period of suspension of sentence. Condition of suspension of sentence is provided in Rule 6 of the Rules 2007 for suspension of sentence by the competent authority. Therefore, writ petition under Article 226 of the Constitution of India is not the proper remedy for aforesaid purpose. **[Rinku @ Brijendra vs. State of U.P. and others, 2021(116) ACC 76]**

U.P. URBAN BUILDINGS (REGULATION OF LETTING, RENT AND EVICTION) ACT, 1972

Eviction—Whether bonafide need – Determination of

It has further been held by the courts below that the landlord cannot be forced to or judicially advised by the tenant or the court too, to purchase another accommodation, as advised by the petitioner/tenant, to start a business for himself particularly when he himself, has an available accommodation within the local area, from where his family member can be accommodated, to use the same for the personal need. The learned Prescribed Authority, also held that it is exclusively the choice of the landlord, and the tenant under any circumstances, cannot advise the landlord to use his residential accommodation, which he is otherwise comfortably enjoying for residential purposes, to be utilised to meet out the business needs, the need which was expressed for the purposes of engaging his daughter. **[Raju Sharma vs. Rohit Sethi, 2021 AIR CC 2196 (UTR)]**

Secs. 21(1)(a)—Bonafide need—Release of building

Plea of tenants that landlord was not landlord but was agent, who was acting on behalf of landlord, for purposes of collection of rent. Landlord judicially held as owner of property, which was admitted by tenants themselves in written statement. Person authorized to collect rent by landlord or where it is admitted that applicant to release was accepting rent, it would be deemed that there exited

relationship of landlord and tenant between parties. Plea barred by principle of constructive res judicata.

Amendment in the proceedings under Section 21(1)(a), since was not put to challenge by the landlord/respondent, hence it would be ex facie taken to be correct and true, is not acceptable by this Court, because I am of the view that an amendment if allowed and permitted to be incorporated, even it is not challenged; it would always be a subject-matter of judicial test in a proceedings depending upon the overwhelming facts and other collateral and unrebutted evidences on record, even if it has not been challenged by the party to the proceedings against whom it was allowed. Amendment allowed, will only be acceptable in evidence when it is proved and tested by other evidence, it cannot be acceptable merely because it was not challenged. **[Manmohan Singh vs. Najakat Ali Khan, 2021 AIR CC 2481 (UTR)]**

U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972- Jurisdiction

It was the duty of the Prescribed Authority even if the issue of jurisdiction was not raised and no objection was taken before him, to have considered the question of jurisdiction as it is always the duty of the Court below/ authority concerned to decide the question of jurisdiction and that of limitation *suo moto* even if it is not raised by any of the parties to the dispute. **[Mohammad Aamir vs. District Judge Lucknow and others, 2021(7) ADJ 90(LB)]**

U.P. Urban Building (Regulation of Letting, Rent & Eviction) Act, 1972- Sec. 34, 38

It may be relevant to note that the consequence of abatement does not follow as a result of death of the landlord or a tenant in the proceedings instituted under the Rent Control Act. Therefore, the overriding effect of the Act by virtue of Section 38 to the extent of inconsistency with CPC makes the application of Section 34(4) of the Act as indispensable, therefore, bringing on record the legal representatives or the legal heirs of the deceased party for continuity of the proceeding becomes a pre-requisite. **[Hamidullah and others vs. Laxmi Prasad and others, 2021(7) ADJ 330(LB)]**

U.P. ZAMINDARI ABOLITION AND LAND REFORMS ACT, 1950

Sec. 171

The question for consideration arises as to whether a Hindu widow, who remarried after death of her husband, can inherit the agricultural property of her son through first marriage under

Section 171 of U.P. Zamindari Abolidation and Land Reforms Act, 1950 (in brevity 'U.P. Z.A. & L.R. Act').

Being remarried mother, she has no claim over the agricultural property of her son who was born out of wedlock with the previous husband. **[Smt. Lalwati vs. Smt. Chhoti and others, 2021(8) ADJ 525]**

Sec. 171 & 172

Therefore, the first question for consideration is as to whether a widow, who got the land from her husband which was coming from his ancestors can transfer it to anybody or not. Section 171 and 172 of the Act of 1950 provides the general order of succession. Since a bhumidhar with transferable rights can transfer his agricultural land subject to the restrictions contained in Chapter VIII of the Act of 1950, therefore, a widow, acquiring the bhumidhari rights from her husband, can also transfer the land during her life time in accordance with law. A Full Bench of this Court, in the case of Ramji Dixit and another vs. Bhrigunath and others; AIR 1965 Allahabd 1 (V 52 C 1), has held that a female, who inherits the bhumidhari rights from the family of her husband, can transfer such holdings, which shall be valid and effective even beyond her life time.

This Court is of the considered view that the transfer of an agricultural land cannot be made by a mode, except as provided under law, which may be by way of sale, gift etc. It is also apparent from reference made in various Sections of Act of 1950. Such as Section 154 provides that no bhumidhar shall have the right to transfer by sale of gift, Section 155 provides that no bhumidhar shall have the right to mortgage any land belonging to him as such where possession of the mortgaged land is transferred or is agreed to be transferred in future to the morgtagee as security for the money advanced or to be advanced. Similarly in Section 157-A and 157-AA, the transfer of the land by way of sale, gift, mortgage or lease has been referred. The alleged mode by which the name of opposite party No. 3 was recorded is not provided anywhere. Therefore the transfer of an agricultural land, being an immovable property, can be made by a bhumidhar with transferable rights only in accordance with the Transfer of Property Act and Indian Registration Act and not otherwise. **[Ram Sunder and another vs. Joint Director of Consolidation Sultanpur and others, 2021(6) ADJ 141(LB)]**

U.P.Zamindari Abolition and Land Reforms Act, 1950- Sections 171 and 172- Order of succession- A widow acquiring the bhumidhari right from her husband can also transfer the land during her life time in accordance with law – "M" inheriting bhumidhari rights as widow from the family of her husband- Can transfer such holding- Such transfer shall be valid and effective even beyond her lifetime.

U.P. Zamindari Abolition and Land Reforms Act, 1950- Section 152- Scope of –A bhumidhar with transferable rights can transfer his/her interest in the land subject to conditions in the Act, 1950 but it can be only in accordance with law i.e. Transfer of Property Act, 1882 and Registration Act, 1908- Any transfer made in contravention of the provisions of the Act, 1950 shall be void- Transfer not made in accordance with law –No person can get the name of anybody recorded without executing any deed of transfer- Name recorded only on the basis of thumb impression in the remark column- Not to be construed as consent- Order of Tehsildar is not signed and there is no case number and parties name- Such transfer is alien to law –Unsustainable in the eye of law- Any transfer property cannot be made which is not covered by any statute or law.

It is not in dispute that the land in dispute had come to Smt. Maina as widow from her husband Shital after his death. Therefore, the first question for consideration is as to whether a widow, who got the land from her husband which was coming from his ancestors can transfer it to anybody or not. Sections 171 and 172 of the Act of 1950 provides the general order of succession. Since a bhumidhar with transferable rights can transfer his agricultural land subject to the restrictions contained in Chapter VIII of theAct of 1950, therefore, a widow, acquiring the bhumidhari rights from her husband, can also transfer the land during her life time in accordance with law. A Full Bench of this Court in the case of Ramji Dixit and another v. Bhrigunath and others, 1964 RD 10, has held that a female, who inherits the bhumidhari rights from the family of her husband, can transfer such holdings, which shall be valid and effective even beyond her life time. In view of above Smt. Maina could have transferred the land in dispute but in accordance with law.

However the question arises as to whether Smt. Maina could have got the land in dispute recorded with her consent in the name of opposite party No. 3 who is alleged to be the son of her daughter without transferring in accordance with law because the alleged transfer was neither by any mode of transfer nor succession. It has also been alleged that the thumb impression of Smt.

Maina in the remark column is not way of consent and the order of Tehsildar is also not signed and there is no case number and parties name. Section 152 of the Act of 1950 provides that the interest of a bhumidhar with transferable rights shall, subject to the conditions hereinafter contained, be transferable. Therefore a bhumidhar with transferable rights can transfer his/her interest in the land subject to conditions in the Act of 1950, but it can be only in accordance with law i.e. the Transfer of Property Act and the Indian Registration Act. No. other mode of transfer has been provided in the Act of 1950. Section 166 of the Act of 1950 provides that any transfer made in contravention of the provision of this Act, shall be void. In the present case the alleged transfer has not been made in accordance with any of the mode or procedure prescribed under law because it is no where provided that a person can get the name of anybody recorded without executing any deed of transfer. Therefore the alleged transfer made by Smt. Maina during her life time to the opposite party No. 3 is alien to law, as such not sustainable in the eyes of law. Any transfer of property cannot be made which is not covered by any statue of law. **[Ram Sunder and another vs. Joint Director of Consolidation, Sultanpur and others, 2021 (152) RD 351 (Allahabad Lucknow Bench)]**

Sec. 331—Purpose of

The provisions contained under Section 331-A U.P. Zamindari Abolition and Land Reforms Act; has been incorporated by the legislature in a special statute in order to deal with such type of contingency; where there is a doubt at all, but when on the simple reading of the plaint arises a controversy to determine the nature of land and its ultimate consequences and impact on maintainability of a suit it is where the court feels that in a peculiar facts and circumstances, in a given case is not in a position to decide, as to whether the suit would lie before the civil court or the revenue court, the provisions contained under Section 331-A U.P. Zamindari Abolition and Land Reforms Act; takes the shape of an enabling provision for the court to come to a conclusion because it contemplates a return of finding therein by the Assistant Collector, after determining the question of the nature of land and the maintainability of proceedings. **[Shalini Sharma vs. Premlata Sharma, 2021 AIR CC 2359 (UTR)]**