JUDICIAL TRAINING & RESEARCH INSTITUTE, U.P., LUCKNOW

Quarterly Digest

CONSTITUTIONAL, CIVIL, CRIMINAL & REVENUE LAWS

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

April - June, 2019

Volume: XXIV **Issue No.: 2**

EDITOR-IN-CHIEF

SAROJ YADAV

Director

EDITOR-IN-CHARGE

Santosh Rai,

Addl. Director (Research)

EDITORS

Ram Nagina Yadav, Addl. Director (Trg.)
Rajiv Maheshwaram, Addl. Director (Admin.)
Kushal Pal, Additional Director
Mohinder Kumar, A.D.J. Lucknow attached to JTRI
Amit Kumar Yadav – I, Civil Judge (SD) Chandauli
Attached to JTRI
Ms. Priti Chaudhari, Secretary, DLSA Ramabadi Nagar attached to JTRI
Ranvijay Singh, Civil Judge (SD) Azamgarh
Attached to JTRI
Smt. Twishi Srivastava, ACJM, Varanasi
Attached to JTRI

FINANCIAL ADVISOR

Smt. Sunita Aditya, Addl. Director (Finance)

ASSOCIATE

MS Sabiha Akhtar, Research Officer

ASSISTANCE

Waqar Hasan
Girish Kumar Singh

SUBJECT INDEX
(Supreme Court)

Sl. No.	Name of Act
1.	Advocate Act
2.	Arms Act
3.	Civil Procedure Code
4.	Constitution of India
5.	Contract Act
6.	Consumer Protection Act
7.	Criminal Law
8.	Criminal Procedure Code
9.	Criminal Trial
10.	Evidence Act
11.	Family and Personal Laws
12.	Hindu Minority & Guardianship Act
13.	Hindu Succession Act
14.	Identification of Prisoners Act
15.	Indian Penal Code
16.	Industrial Disputes Act
17.	Interpretation of Statutes
18.	Juvenile Justice Act
19.	Motor Vehicles Act
20.	Narcotic Drugs and Psychotropic Substances Act (NDPS Act)
21.	Negotiable Instrument Act
22.	Service Law
23.	Protection of Child from Sexual offences Act (POCSO)
24.	Specific Relief Act
25.	Transfer of Property Act
26.	U.P. Consolidation of Holdings Act
27.	Wakf Act
28.	Words and Phrases

SUBJECT INDEX

(High Court)

Sl. No.	Name of Act
1.	Aadhaar
2.	Civil Procedure Code
3.	Constitution of India
4.	Contempt of Court
5.	Court Fees Act
6.	Criminal Jurisprudence
7.	Criminal Procedure Code
8.	Criminal Trial
9.	Evidence Act
10.	Hindu Marriage Act
11.	Hindu Undivided Family
12.	Indian Penal Code
13.	Motor Vehicles Act
14.	Negotiable Instrument Act
15.	U.P. Consolidation of Holdings Act
16.	U.P. Zamindari Abolition and Land Reforms Act

NOTE: **This journal is meant only for reference and guidance. For authentic detailed information, readers are advised to consult referred Journal(s).**

LIST OF THE CASES COVERED IN THIS ISSUE
(SUPREME COURT)

Sl. No. Name of the Case & Citation

1. **Abdul Wahab K. V. State of Kerala and Othrs , (2019) 3 SCCC (Cri) 181`**
2. **Accused 'X' vs. State of Maharashtra, (2019) 3 SCC (Cri) 10**
3. **Ajit Kaur @ Surjit Kaur V. Darshan Singh (D) through Lrs. 2019 (4) Supreme 156**
4. **Anand Kumar Sharma v. Bar Council of India, AIR 2019 SC 1258**
5. **ANSS Rajashekar v. Augustus Jeba Ananth, 2019 (107) ACC 722 (SC)**
6. **Anurag Soni v. State of Chhattisgarh, AIR 2019 SC 1857**
7. **Asharfi Devi (Dead) Through Legal Representatives V. State of U.P., (2019) 5 SCC 86**
8. **Ashish Jain vs. Makrand Singh, (2019) 3 SCC 770**
9. **Ashok Kumar Mehra v. State of Punjab, AIR 2019 SC 1903**
10. **Asif Khan v. State of Maharashtra, AIR 2019 SC 1286**
11. **Asim Shariff V. National Investigation Agency, (2019) 3 SCC (Cri) 40**
12. **Atma Ram and others v. State of Rajasthan, 2019 Cri.LJ 2758**
13. **Bhagwat V. State of Maharashtra 2019 (2) Supreme 761**
14. **Bhagyan Das V. State of Uttarakhand, (2019) 4 SCC 354**
15. **Bhivchandra Shankar More V. Balu Gangaram More and others, 2019(2) ARC 342(SC)**
16. **Bikash Ranjan Rout v. State, AIR 2019 SC 2002 : 2019 Cri.LJ 2787**
17. **Bir Singh V. Mukesh Kumar 2019 (3) Supreme 129: (2019) 4 SCC 197**
18. **Branch Manager, National Insurance Co. Ltd. v. Smt. Mousumi Bhattacharjee, AIR 2019 SC 1570.**
19. **C.B.I. New Delhi V. B.B. Agarwal and others 2019 (2)**

Supreme 689

20. **Cement Workers' Mandal v. Global Cements Ltd. , AIR 2019 SC 1163**
21. **Commissioner, Mysore Urban Development Authority V. S.S. Sarvesh, (2019) 3 SCC 144**
22. **Deep Narayan Chourasia v. State of Bihar, AIR 2019 SC 1148**
23. **Dev Wati V. State of Haryana, (2019) 4 SCC 329**
24. **Devendra Prasad Singh V. State of Bihar, (2019) 4 SCC 351**
25. **Digamber Vaishnav V. State of Chhattisgarh 2019 (3) Supreme 41, (2019) 4 SCC 522**
26. **Dilip Mani Dubey v. M/s Siel Ltd., AIR 2019 SC 1632**
27. **Gagan Kumar V. State of Punjab 2019 (3) Supreme 680:(2019) 5 SCC 154**
28. **Gangaram V. State of Madhya Pradesh, (2019) 2 SCC (Cri) 773**
29. **H.K. Sharma V. Ram Lal, (2019) 4 SCC 153**
30. **Hammadahmed V. Abdul Majeed and others 2019 (3) Supreme 612**
31. **Hansraj vs. Mewalal, (2019) 3 SCC 682**
32. **Himanshu V. B. Shivamurthy, (2019) 3 SCC 797**
33. **Hirabai (D) Thr. L.Rs. and others V. Ramniwas Bansilal Lakhotiya (D) by L.Rs. and others, 2019(2) ARC 379(SC)**
34. **Jagjit Singh (D) Thr. L.Rs. V. Amarjit Singh, 2019(143) RD 859 (SC)**
35. **Joseph Easwaran Wapshare V. Shirley Katheleen Wheeler, (2019) 5 SCC 58**
36. **Kamal Kumar vs. Premlata Joshi and others, 2019(143) RD 598 (SC)**
37. **Khushwinder Singh vs. State of Punjab, (2019) 4 SCC 415**
38. **Kumar Ghimirey V. State of Sikkim, (2019) 2 SCC (Cri) 758.**
39. **M. Revanna vs. Anjanamma (Dead) By Legal Representatives, (2019) 4 SCC 332**
40. **M/s Achal Industries V. State of Karnataka 2019 (3) Supreme 33 : AIR 2019 SC 1653**
41. **Mahanagar Telephone Nigam V. Tata Communication Limited 2019 (3) Supreme 712 : AIR 2019 SC 1233**

42. Mahendran v. State of T.N., (2019) 5 SCC 67

43. Mala Singh vs. State of Haryana, (2019) 5 SCC 127
44. Md. Rojali Ali v. State of Assam, AIR 2019 SC 1128
45. Mehboob-Ur-Rahman v. Ahsanul Ghani, AIR 2019 SC 1178
46. Mohammed Salim (D) Through LRs and others V. Shamsudeen (D) Through LRs. and others, 2019(1) ARC 865 (S.C.)
47. Murti Bhawani Mata Mandir V. Ramesh, (2019) 3 SCC 707
48. Murugan and others V. Kesava Gounder (Dead) thr. L.Rs. and others 2019 (2) Supreme 745
49. National Investigation Agency vs. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1
50. Palakom Abdul Rahiman v. Station House Officer Badiadka P.S. Kerala, AIR 2019 SC 1891
51. Parminder Singh vs. New India Assurance Company Limited and others, (2019) 3 SCC (Cri) 50
52. Pawan Kumar V. Babulal Since Deceased through LRs 2019 (4) Supreme 83: (2019) 4 SCC 367: 2019(2) ARC 1(SC)
53. Pioneer Urban Land and Infrastructure Ltd. V. Govindan Raghvavan 2019 (4) Supreme 174
54. Poonam Bai vs. State of Chhattisgarh, (2019) 2 SCC (Cri) 754
55. Puttu Rajan vs. State of Tamil Nadu, (2019) 4 SCC 771
56. R. Dhanasundari @ R. Rajeswari V. A.N. Umakanth 2019 (3) Supreme 682
57. Rajendra Tiwari v. Kedar Nath(Deceased) Thr. L.Rs., AIR 2019 SC 1659:2019 (3) Supreme 39
58. Raju v. State of Haryana, AIR 2019 SC 1136
59. Rama Avatar Soni vs. Mahanta Laxmidhar Das and others, 2019(143) RD 79 (SC)
60. Regional Transport Officer vs. K. Jayachandra, (2019) 3 SCC 722
61. Ripudaman Singh Balkrishna, AIR 2019 SC 1625: (2019) 4 SCC 767
62. Rohitbhai Jivanlal Patel V. State of Gujarat 2019 (3) Supreme 662

63. **Rupali Devi V. State of Uttar Pradesh 2019 (4) Supreme 225**
64. **S. Subramanian V. S. Ramasamy Etc., 2019(2) ARC 366(SC)**
65. **Sachin Kumar Singhraha V. The State Of Madhya Pradesh 2019 (3) Supreme 643**
66. **Samir Ahmed Rafiq Ahmad Ansari v. State of Gujarat, 2019 (107) ACC 715 (SC)**
67. **Sampat Babso Kale V. State of Maharashtra, (2019) 4 SCC 739: AIR 2019 SC 1852**
68. **Sasikala Pushpa and others v. State of Tamil Nadu, 2019 Cr.LJ 2896**
69. **Sham Singh v. State of Haryana, 2019 (107) ACC 27 (SC)**
70. **Shanker V. State of Madhya Pradesh, (2019) 2 SCC (Cri) 868**
71. **Shivaji Balaram Haibatti v. Avinash Maruthi Pawar. 2019 (107) ACC 368 (SC)**
72. **Smt. Kajal Shivam Kumar and another v. State of U.P. and others, 2019 Cr.LJ 2997**
73. **Sneh Lata Goel vs. Pushplata, (2019) 3 SCC 594**
74. **Sonvir V. Somvir v. State of Delhi, 2019 (107) ACC 1 (SC)**
75. **Sr. Tessy Jose and Others vs. State of Kerala, (2019) 3 SCC (Cri) 164**
76. **State of H.P. V. Shashi Kumar, (2019) 3 SCC 653**
77. **State of Jharkhand vs. Surendra Kumar Srivastava, (2019) 4 SCC 214**
78. **State of Kerala V. Mohammed Basheer, (2019) 4 SCC 260**
79. **State of M.P. V. Kalyan Singh, (2019) 4 SCC 268**
80. **State of M.P. V. Vikram Das, (2019) 4 SCC 125**
81. **State of Madhya Pradesh v. Dhruv Gurjar, AIR 2019 SC 1106**
82. **State of Madhya Pradesh v. Harjeet Singh, AIR 2019 SC 1120**
83. **State of Maharashtra V. Shankar Ganapati Rahatol 2019 (3) Supreme 174**
84. **State of Orissa V. Mahimananda Mishra, 2019 (107) ACC 37 (SC)**

85. **State of Punjab v. Gurbaran Singh, AIR 2019 SC 1650**
86. **State of Rajasthan V. Mst. Ganwara, 2019 (107) ACC 24 (SC)**
87. **State of Uttar Pradesh V. Wasif Haider Etc. 2019 (2) Supreme 596**
88. **State V. J. Doraiswamy, (2019) 4 SCC 149**
89. **Sugreev Kumar V. State of Punjab 2019 (3) Supreme 722**
90. **Sukumaran v. State Rep. by the Inspector of Police, AIR 2019 SC 1389:2019 (3) Supreme 163**
91. **Sunil Kumar Gupta V. State of U.P., (2019) 4 SCC 556: AIR 2019 SC 1174**
92. **Sureshchandra Bagmal Doshi And Another V. New India Assurance Company Limited and Others, (2019) 2 SCC (Cri) 899**
93. **Tanu Ram Bora V. Promod Ch. Das (Dead) Through Legal Representatives, (2019) SCC 173**
94. **Tek Singh V. Shashi Verma and another, 2019 (3) Supreme 137**
95. **The State of Madhya Pradesh V. Laxmi Narayan 2019 (3) Supreme 1**
96. **Uppala Bixam v. State of A.P., 2019 (107) ACC 364 (SC)**
97. **V. Ravi Kumar v. State, 2019 (107) ACC 47 (SC)**
98. **Varinder Kumar v. State of H.P., 2019 (107) ACC 40 (SC)**
99. **Varun Pahwa v. Renu Chaudhary, AIR 2019 SC 1186**
100. **Yogendra v. State of M.P., 2019 (107) ACC 734 (SC)**

LIST OF THE CASES COVERED IN THIS ISSUE
(HIGH COURT)

Sl. No.	Particulars
1.	Ahsan V. State of U.P., 2019 (107) ACC 68 (Alld.)
2.	Ajay Kumar Singh v. Ranjeet Singh, 2019 (20 ALJ 785
3.	Anil Jaiswal and others V. Rakesh Jaiswal and others, 2019(143) RD 105 (Alld.-L.B.)
4.	Apple Grove School v. Union of India, 2019 (2) ALJ 769
5.	Chandar Kali v. State of U.P., 2019 (3) ALJ 442
6.	Deepak Kumar vs. Upendra Kumar and 4 others, 2019(2) ARC 143(Alld.)
7.	Divyanand V. S.D.O., Sandeela and another, 2019(143) RD 167 (Alld.-L.B.)
8.	Dukkhu V. Deputy Director of Consolidation, Varanasi and others, 2019(143) RD 514 (Alld.)
9.	Gaya Prasad V. Nathu Singh and others, 2019(2) ARC 100 (Alld.) : 2019 (3) ALJ 658
10.	Gopal and others vs. Amar Jeet Singh and others, 2019(143) RD 724(Alld.)
11.	Heera v. State of U.P. 2019(2)ALJ 743
12.	Jagdish vs. Smt. Munni Devi and 20 others, 2019(2) ARC 203 (Alld.)
13.	Jhhau v. State, 2019 (107) ACC 416 (Alld.)
14.	L.I.C. V. Smt. Shakuntla Devi, 2019(2) ARC 216 (Alld.)
15.	Lalji Gupta v. State of U.P. 2019(2)ALJ 628
16.	Manik Chandra v. State of U.P., 2019 (107) ACC 402 (Alld.)
17.	Manoj Kumar Jauhari v. State of U.P., 2019 (107) ACC 411 (Alld)
18.	Mehboob-Ur-Rehman (Dead) through Lrs. v. Ahsanul Ghani, 2019 (3) ALJ 52
19.	Oriental Insurance Co. Ltd. v. Hausla Prasad, 2019 (3) ALJ438
20.	Parvati Kumar v. State of U.P., 2019 (3) ALJ 518
21.	Pradeep Kumar Jha v. Pratibha Jha, 2019 (3) ALJ 250

22. **Rajeshwar Prasad Bhardwaj V. State of U.P., 2019 (107) ACC 79 (Alld.)**

23. **Ram Babu v. State of U.P., 2019 (107) ACC 801 (Alld)**

24. **Ram Prakash Yadav and another V. Sitaram, 2019(1) ARC 900 (Alld.- L.B.)**

25. **Ram Shanker Pandey v. State of U.P., 2019 (107) ACC 789 (Alld.)**

26. **Ram Subhag v. State of U.P., 2019 (107) ACC 393 (Alld)**

27. **Ramdhari v. State of U.P., 2019 (2) ALJ 779**

28. **Ran Vijay Singh v. State of U.P., 2019 (107) ACC 783 (Alld.)**

29. **Santosh Kumari V. Prem Narain Verma and others, 2019(2) ARC 420 : 2019 (2) ALJ 623 (Alld.- L.B.)**

30. **Sarswati and others vs. Board of Revenue and others, 2019(143) RD 234(Alld.)**

31. **Shivani Verma v. State of U.P., 2019 (107) ACC 820 (Alld)**

32. **Siyaram v. Ashok Kumar, 2019 (3) ALJ 234**

33. **Smt. Saroj vs. State of U.P. and others, 2019(143) RD 577 (Alld.)]**

34. **State of U.P. v. Ratan Chauhan and others 2019(3)ALJ 397**

35. **State of U.P. v. Ratan Chauhan and others 2019(3)ALJ 397**

36. **Sunil Kumar Gupta and Others v. State of Uttar Pradesh and Others with Khusbu Gupta v. State of Uttar Pradesh and Others 2019(3)ALJ 48**

37. **Surendra Kumar Gupta V. Kailash Chandra Singhal, 2019(1) ARC 886 : 2019(143) RD 155 (Alld.)**

38. **Tulsi Ram Chaudhary V. Vinod Bajoria, 2019(1)ARC 907(Alld.)**

39. **U.P. Power Corporation Ltd. v. Rajendra Kumar Srivastava, 2019 (2) ALJ 178**

40. **Vikram Singh v. State of U.P., 2019 (2) ALJ 31**

41. **Vishala Devi Uchchttar Madhyamik Vidyalaya Thru. Adhyakshya V. State of U.P. Thru. Secy., Deptt. Of Revenue, Civil Sectt. And others,**

2019(143) RD 550 (Alld.-L.B.)

42. **Wasid Ali v. State of U.P., 2019 (107) ACC 375 (Alld.)**
43. **Wasid Ali v. State of U.P., 2019 (107) ACC 375 (Alld.)**
44. **Yogesh Kumar v. State of U.P., 2019 (107) ACC 384 (Alld)**

PART –I (SUPREME COURT)

Advocate Act :

Sec. 24A – Cancellation of Environment

Sec. 26 of the Advocates Act, 1961confers power on the Bar Council of India to remove the name of a person who entered on the Roll of Advocates by misrepresentation. It is in exercise of this power that the enrollment of the Appellant was cancelled. The first order that was passed by the Bar Council cancelling his enrolment as an advocate was confirmed by this Court. The repeated attempts made by the Appellant later amount to an abuse of process. Anand Kumar Sharma v. Bar Council of India, AIR 2019 SC 1258.

Arms Act:

Sec. 3 (1) – Scope of

Held – Sec. 3 deals with licence for acquisition and possession of firearms and ammunition. As per Section 3(1) no person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds a licence issued in accordance with the provisions of the Arms Act and the Rules made there under. Contravention of Section 3 is punishable under Section 25 (1B) (a) with imprisonment for a term which shall not be less than one year but which may extend to three years and also be liable to fine. Both the Courts recorded concurrent findings that the appellant was found in possession of country made pistol loaded with live cartridges and in possession of two other live cartridges which act is clearly in violation of Section 3 of the Act. Samir Ahmed Rafiq Ahmad Ansari v. State of Gujarat, 2019 (107) ACC 715 (SC)

Civil Procedure Code:

Scope of

As per Section 100 CPC, the appeal would lie to the High Court from the decree passed in appeal by any Court subordinate only if the High Court is satisfied that the case involves a substantial question of law; such question is required to be stated in the Memorandum of Appeal; the High Court is required to formulate the question on being satisfied that the same is involved in the case; the appeal is to be heard on the question so formulated; and at the time of hearing, the respondent could urge that the case does not involve such a question.

The proviso to sub-section (5) of Section100 CPC is not intended to annul the other requirements of Section 100 and it cannot be laid down as a matter of rule that irrespective of the question/s formulated, hearing of the second appeal is open for any other substantial question of law, even if not formulated earlier. The said proviso, by its very nature, could come into operation only in exceptional cases and for strong and convincing reasons, to be specifically recorded by the High Court. Mehboob-Ur-Rahman v. Ahsanul Ghani, AIR 2019 SC 1178.

Sec.96(2) and O. 9, R.13 – Suit for partition- Decreed ex parte- Application for setting aside ex parte decree- Application dismissed- Appeal against withdrawn on same date and Regular appeal against the decree along with delay condonation application filed- Delay condonation application allowed ex parte, decree set aside –Writ petition against allowed holding time spent in pursuing remedy under O.9, R.13, CPC cannot be excluded for calculating the limitation- Sustainability of- If no appeal had been preferred against the preliminary decree, the suit filed by respondents/ plaintiffs being a suit for partition, the appellant would be deprived of the opportunity in challenging the decree on merits- In interest of justice the appellant and respondents are to be given an opportunity to challenge the ex parte decree on merits- Time spent in pursuing the application under O.IX, R.13, CPC is taken as “sufficient cause” for condoning the delay in filing the first appeal- Impugned order set aside.

Indian Limitation Act, 1963, Sec.5- Civil Procedure Code, 1909, S.96(2), 97 and O.9, R.13- “Sufficient cause”- Meaning –When time spent in proceedings taken to set aside ex parte decree so as to condone the delay in preferring an appeal against the ex parte decree on merits- Consideration of – An appeal under S.96, CPC is a statutory right- Generally, delay in preferring appeals are required to be condone in the interest of justice, where there is no gross negligence or deliberate in action or lack of bona fide is imputable to the party seeking condonation of delay- “Sufficient cause” should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of to bona fide could be imputable to the appellant.

It is pertinent to note that as per Sec. 97 CPC where any party aggrieved by a preliminary decree does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree. The object is that the questions decided by the Court at the stage of passing preliminary decree cannot be challenged at the time of final decree. If no appeal had been preferred against the preliminary decree, the suit filed by the respondents-plaintiffs being a suit for partition, the appellant would be deprived of the opportunity in challenging the decree on merits.

It is a fairly well settled law that “sufficient cause” should be given liberal construction so as to advance sustainable justice when there is no inaction, neither negligence nor want of *bonafide* could be imputable to the appellant. Bhivchandra Shankar More V. Balu Gangaram More and others, 2019(2) ARC 342(SC)

Sec.100- Suit to restrain defendant from alienating or encumbering or creating any kind of plaintiff’s common one-third share of suit properties till partition also suit for partition filed thereafter –Suit dismissed by trial as well as by First Appellate Court-Second appeal against allowed directing First appellate Court to draw the preliminary decree for partition allotting half share each in favour of plaintiff and defendant- Sustainability of-Both the Courts below came to conclusion that there was no blending or treating of the suit property as a joint family property, despite the above, the High Court while passing the impugned common judgment and order, has re-appreciated the entire evidence on record including the documentary evidence which as such were considered by both the Courts below and has upset the findings of facts recorded by both the Courts below on the blending of suit property as a joint family property and has given its own findings which in exercise of its powers under S.100 CPC is wholly impermissible-Second appeal would be maintainable only on substantial question of law-Impugned orders quashed-Dismissal of suit proper.

S. Subramanian V. S. Ramasamy Etc., 2019(2) ARC 366(SC)

Sec. 100 - Second Appeal

Sec. 100 of the Code deals with second appeals. Sub-section (4) says that where the High Court is satisfied that a substantial question of law is involved in the case, it shall formulate that question. Sub-section (5) says that the appeal shall be heard on the question “so formulated". It further provides that the respondent is allowed to raise an objection at the time of hearing of the appeal that the question which has been framed does not involve in the case or in other words, is not a “substantial question of law" and, therefore, the appeal is liable to be dismissed as involving no substantial question of law within the meaning of Section 100 of the Code.

The proviso to sub-section (5), however, recognizes the power of the High Court to frame any other substantial question of law which was not initially framed but in the opinion of the Court

does arise in the case. The Court can frame such question by assigning reasons. Shivaji Balaram Haibatti v. Avinash Maruthi Pawar. 2019 (107) ACC 368 (SC)

Sec. 115

It is well settled that the revisional jurisdiction under Sec. 115 C.P.C. is to be exercised to correct jurisdictional errors only.

The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case.

It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand.

The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with.

The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question.

Sec. 115 reads as follows:

"115. Revision-

(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-
   (a) to have exercised a jurisdiction not vested in it by law, or
   (b) to have failed to exercise a jurisdiction so vested, or
   (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

   Provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

XXXX

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court. A reading of this proviso will show that, after 1999, revision petitions filed under Section 115 CPC are not maintainable against interlocutory orders." Tek Singh V. Shashi Verma and another, 2019 (3) Supreme 137

Sec. 144—Restitution application—Variation or reversal of decree or order, essential condition for allowing

Section 144 applies to a situation where a decree or an order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. In that situation, the Court which has passed the decree may cause restitution to be made, on an application of any party entitled, so as to place the parties in the position which they would have occupied but for the decree or order or such part thereof as has been varied, reversed, set aside or modified. The court is empowered to pass orders which are consequential in nature to the decree or order being varied or reversed.

where the interim order of the Trial court did not require the defendant to hand over the possession to the plaintiffand there was no decree or order of the Trial court by virtue of which the appellant was given possession of the property, nor did any decree or order mandate that the respondent hand over possession to the appellant. In these circumstances, the provisions of Section 144 CPC were not attracted there being no variation or reversal of a decree or order as contemplated by Section 144. **Murti Bhawani Mata Mandir V. Ramesh, (2019) 3 SCC 707**

O. 22 R. 4(2)—Impleadment of all legal heirs of the deceased defendant in appeal—When not necessary—Held, if out of all the legal representatives, majority of them are already on record and they contest the case on merits, it is not necessary to bring other legal representatives on record for the reason that the estate and the interest of the deceased devolved on the legal representatives is sufficiently represented by those who are already on record.
Ss. 47 and 21—Objection to territorial jurisdiction of court—Objection raised before executing court under S. 47 as to validity of decree sought to be executed on ground of lack of territorial jurisdiction of court which passed decree—Held, executing court has no jurisdiction to entertain such objection

Objection regarding want of territorial jurisdiction of civil court does not relate to subject-matter of suit and court's inherent jurisdiction. It must, therefore, be raised before court which passed decree at earliest possible opportunity and if rejected, it must be raised before competent court in appeal, but it can be entertained by such court only where there is consequent failure of justice.

Section 21 CPC makes it clear that an objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit. Hence, it has to be raised before the court of first instance at the earliest opportunity, and in all cases where issues are settled, on or before such settlement. Moreover, it is only where there is a consequent failure of justice that an objection as to the place of suing can be entertained. Both these conditions have to be satisfied.

A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under Section 11 of the Suits Valuation Act, objection to the jurisdiction of the Court to make the decree may be raised; where it is necessary to investigate facts in order to determine whether the Court which had passed the decree had no jurisdiction to entertain and try the suit, the objection cannot be raised in the execution proceeding." **Sneh Lata Goel vs. Pushplata, (2019) 3 SCC 594**

O. 6, R. 17

O. 6, R. 17 provides for amendment of pleadings. It says that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. The rule of conduct of the court in such a case is that, however negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs; but, if the amendment will put them into such a position that they must be injured, it ought not to be made.

Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:

(i) Where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;
(ii) Where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;
(iii) Where the non-compliance or violation is proved to be deliberate or mischievous;
(iv) Where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;
(v) In case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant."

Varun Pahwa v. Renu Chaudhary, AIR 2019 SC 1186

O. 6 R. 17 Proviso—Amendment of pleadings after commencement of trial—

Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order 6 Rule 17 of the CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment

after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money. M. Revanna vs. Anjanamma (Dead) By Legal Representatives, (2019) 4 SCC 332

O. 7, R. 11

In the present case, the controversy has arisen in an application under O. 7 R. 11 CPC. Whether the matter comes within the purview of Section 4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. Going by the averments in the Plaint, the question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject matter of assessment at the stage when application under Order VII Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the parties. It cannot be said that the plea of the appellant as raised on the face of it, was barred under the Act. The approach must be to proceed on a demurrer and see whether accepting the averments in the plaint the suit is barred by any law or not. We may quote the following observations of this Court in Popat and Kotecha Property vs. State Bank of India Staff Association (2005) 7 SCC510: (2005) 6 Supreme 7 in the plaint the suit is barred by any law or not.

Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force. Pawan Kumar V. Babulal Since Deceased through LRs 2019 (4) Supreme 83: (2019) 4 SCC 367

O. 7, R.11 – Benami Transaction (Prohibition) Act, 1988, S.4 – Application for rejection of plaint – On ground the suit barred by S.4 of Act, 1988 – Application allowed, plaint rejected by Courts below – The transaction completely saved from mischief of S.4 of the Act by reason of same falling under sub-section (3)(b) and that suit not barred by the Act – Whether the matter comes within purview of S.4(3) of the Act is an aspect which must be gone into on the strength of evidence on record – Matter required fuller and final consideration

after the evidence was led by the parties – Approach must be to proceed on a demurrer and see whether accepting the averments in plaint the suit is barred by any law or not – Rejection of plaint improper.

In the present case, the controversy has arisen in an application under Order VII Rule 11 CPC. Whether the matter comes within the purview of Section 4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. Going by the averments in the Plaint, the question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject matter of assessment at the stage when application under Order VII Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the parties. It cannot be said that the plea of the appellant as raised on the face of it, was barred under the Act. The approach must be to proceed on a demurrer and see whether accepting the averments in the plaint the suit is barred by any law or not. Pawan Kumar V. Babulal since deceased through LRs and others, 2019(2) ARC 1(SC)

O. 8, R.1 –

Held: So, the short question, which arises for consideration in these appeals, is whether the High Court was justified in allowing the defendant’s second appeal and was, therefore, justified in dismissing the plaintiff’s (appellant’s herein) suit. Rajinder Tiwari V. Kedar Nath (Deceased) Thr. L.Rs. 2019 (3) Supreme 39

O. 20, R.18 - Suit for partition and possession of $14/16^{th}$ share in plaint Schedule ‘A’ property and half rights over Plaint Schedule ‘B’ property-Suit decreed by Trial Court as well as by Second Appellate Court - Though plaintiff was born out of a fasid (irregular) Marriage, he cannot be termed as an illegitimate son of ‘X’, he is entitled to inherit the shares claimed in estate of his father-High Court correctly concluded that marriage of defendant No. 9 with ‘X’ cannot be held to be a batil Marriage but only a fasid marriage-Any child born out of wedlock (fasid marriage) is entitled to claim a share in his father’s property-Since Hindu are idol worshippers, which includes worship of physical images/statues through offering of flowers, adornments, etc., it is clear that a marriage of Hindu female with a Muslim male is not a regular or valid (Sahin) marriage, but merely an irregular (fasid) marriage-Plaintiff being legitimate son entitled to his share in the property as per law - Decreetal of suit proper.

Muslim law clearly distinguishes between a valid marriage (sahih), void marriage (batil), and invalid/irregular marriage (fasid). Thus, it cannot be

stated that a batil (void) marriage and a fasid (invalid/ irregular) marriage are one and the same. The effect of a batil (void) marriage is that it is void ab initio and does not create any civil right or obligations between the parties. So also, the offspring of a void marriage are illegitimate.

The marriage of a Muslim man with an iclolater or fireworshipper is neither a valid (sahih) nor a void (batil) marriage, but is merely an irregular (fasid) marriage. Any child born out of such wedlock (fasid marriage) is entitled to claim a share in his father's property. It would not be out of place to emphasise at this juncture that since Hindus are idol worshippers, which includes worship of physical images/ statues through offering of flowers, adornment, etc., it is clear that the marriage of a Hindu female with a Muslim male is not a regular or valid (sahih) marriage, but merely an irregular (fasid) marriage. Mohammed Salim (D) Through LRs and others V. Shamsudeen (D) Through LRs. and others, 2019(1) ARC 865 (S.C.)

O. 23, R.1-A r/w O. 1, R. 10

The law of procedure relating to the parties to a civil suit is essentially contained in Order I of the Code of Civil Procedure, dealing with various aspects concerning joinder, non-joinder and mis-joinder of parties. Rule 10 of Order I specifically provides for addition, deletion and substitution of parties; and the proposition for transposition of a party from one status to another, by its very nature, inheres in sub-rule (2) of Rule 10 of Order I CPC that reads as under:-

"(2) Court may strike out or add parties. - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appeared to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who or to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added."

8.1. On the other hand, the law of procedure in relation to withdrawal and adjustment of suits is contained in Order XXIII of Code of Civil Procedure. As per Rule 1 thereof, a plaintiff may seek permission for withdrawal of suit or 8 abandonment of a part of claim. Rule 1-A thereof1 deals with an eventuality where the plaintiff withdraws his suit or abandons his claim but a pro forma defendant has a substantial question to be decided against the co-defendant. This Rule 1-A of Order XXIII CPC reads as under:-

"R.1-A. When transposition of defendants as plaintiff may be permitted.- Where a suit is withdrawn or abandoned by a plaintiff under Rule 1, and a defendant applies to be transposed as a plaintiff under Rule 10 of Order 1, the

Court, shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants."

It remains trite that the object of Rule 10 of Order I CPC is essentially to bring on record all the persons who are parties to the dispute relating to the subject matter of the suit so that the dispute may be determined in their presence and the multiplicity of proceedings could be avoided.

The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings. R. Dhanasundari @ R. Rajeswari V. A.N. Umakanth 2019 (3) Supreme 682

O. 26, R. 10-A – Expert opinion – Application to send Will in question to handwriting expert for comparison with admitted signatures of execution of Will – Allowed by District Judge- Set aside by High Court saying that appellant/ plaintiff challenged only genuineness of Will and nowhere made allegations with regard to genuineness of signature of execution of Will-Sustainability of-To challenge genuineness of Will *inter alia* indicates challenge to genuineness of signatures of executor of Will-Therefore, High Court not right in saying that there is no allegation disputing genuineness of signature of executants of alleged Will-Further, in earlier writ petition when High Court observed consideration of application at a later stage-Then, High Court not right in setting aside order of District Judge- Impugned order of high Court set aside-Appeals allowed.

Rama Avatar Soni vs. Mahanta Laxmidhar Das and others, 2019(143) RD 79 (SC)

O. 39, Rr. 1 and 2—Temporary injunction—Dismissal of application—When justified.

Respondents seeking temporary injunction to restrain State Electricity Board from interfering with their alleged possession over suit land, for construction of electricity sub-station thereon by Board. Respondents failed to make out prima facie case to justify grant of interim injunction. Respondents also failed to specify area in their alleged possession on which Board proceeded to set up sub-station. Balance of comparative convenience and hardship and public interest inclined in favour of Board for construction of power sub-station over land. In case respondents succeed in establishing their title and possession over any part of land

utilized by sub-station they would be entitled to compensation under S. 67(3) of Electricity Act, 2003 or any other statutory provisions. Held, temporary injunction rightly declined by court. **State of Jharkhand vs. Surendra Kumar Srivastava, (2019) 4 SCC 214**

O. 41 R. 19 and O. 43 R. 1(t)—Readmission of appeal dismissed or default

The first appeal (R.A. No.370/2012) filed by the appellantAuthority suffered dismissal in default on 25.04.2014 because on that day none appeared for them when the appeal was called on for hearing. Such dismissal attracted the provisions of Order 41 Rule 19 of the Code and, therefore, the appeal could be readmitted for hearing at the instance of the appellant Authority only by taking recourse to the provisions of Order 41 Rule 19 and subject to their making out a sufficient cause which prevented them from appearing on 25.04.2014 when the appeal was called on for hearing.

An order of refusal to readmit the appeal passed by the Appellate Court under Order 41 Rule 19 of the Code is made expressly appealable under Order 43 Rule 1(t) of the Code to the High Court.

This Court in Sangram Singh vs. Election Tribunal, AIR 1955 SC 425.

Vivian Bose J., speaking for the Bench, in his distinctive style of writing made the following observations while dealing with the case arising out of Order 9 and reminded the Courts of their duty while deciding the case. The observations are apt and read as under:

"16…..a code of procedure must be regarded as such. It is procedure something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

17. ……our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them.

In Court's view, the courts below should have seen that the first appeal is a valuable right of the appellant and, therefore, the appellant Authority was entitled for an opportunity to prosecute their appeal on merits. If the appellant's advocate did not appear may be for myriad reasons, the Court could have imposed some cost

on them for restoration of their appeal to compensate the respondent(plaintiff) instead of depriving them of their valuable right to prosecute the appeal on merits. **Commissioner, Mysore Urban Development Authority V. S.S. Sarvesh, (2019) 3 SCC 144**

O. 47 R.1—Review—Exercise of review jurisdiction

It is settled law that every error whether factual or legal cannot be made subject-matter of review under Order 47 Rule 1 of the Code though it can be made subject-matter of appeal arising out of such order. In other words, in order to attract the provisions of Order 47 Rule 1 of the Code, the error/mistake must be apparet on the face of the record of the case. **Asharfi Devi (Dead) Through Legal Representatives V. State of U.P., (2019) 5 SCC 86**

Constitution of India:

Art. 136

An order, which is based entirely on wrong factual premise once held illegal by a superior Court at the instance of one accused, cannot be allowed to stand against other non- appealing accused persons also.

It is a fundamental principle of law that an illegality committed by a Court cannot be allowed to be perpetuated against a person to a Lis merely because he did not bring such illegality to the notice of the Court and instead other person similarly placed in the Lis brought such illegality to the Court's notice and succeed in his challenge.

It will be a travesty of justice delivery system where an accused, who is convicted of a lesser offence (Section 27 of the Arms Act alone) and was acquitted of a graver offence (Section 302/149 IPC) is made to suffer conviction for commission of a graver offence (Section 302/149 IPC) without affording him of any opportunity to defend such charge at any stage of the appellate proceedings. Deep Narayan Chourasia v. State of Bihar, AIR 2019 SC 1148.

Art.136 –

It is a settled law that all the contesting parties to the suit must get fair opportunity to contest the suit on merits in accordance with law. A decision rendered by the Courts in an unsatisfactory conducting of the trial of the suit is not legally sustainable. It is regardless of the fact that in whose favour the decision in the trial may go. Rajendra Tiwari v. Kedar Nath, AIR 2019 SC 1659.

Art. 226 – Scope of

Art. 226(2) of the Constitution, in clear terms, empowers the High Court (let us say "A" High Court) to entertain the writ petition if the cause of action of file such writ petition against the respondents of the said writ petition has arisen wholly or in part within the territorial jurisdiction of "A" High Court.

Clause (2) further empowers a High Court to issue any order, directions or writ as provided in clause (1) of Article 226 of the Constitution in such writ petition notwithstanding that seat of such Government or the Authority or the residence of such person against whom the writ petition is filed does not fall within the territories of the "A" High Court but falls in the territories of the "B" High Court.

The part of the cause of action as contemplated in Article 226 (2) of the Constitution has arisen within the territorial jurisdiction of the Gujarat High Court for filing the petition (SCA) to claim appropriate reliefs in relation to such dispute.

The expression "the cause of action, wholly or in part, arises" occurring in Article 226(2) of the Constitution has to be read in the context of Section 20(c) of CPC which deals with filing of the suit within the local limits of the jurisdiction of the Civil Courts. Cement Workers' Mandal v. Global Cements Ltd. , AIR 2019 SC 1163.

Art. 309 –Pension after Resignation

In case of resignation from service or a post, unless the matter was covered under Sub-Rule 2 of Rule 26 of CCS Rules, it would entail forfeiture of past service. Since the past service would stand forfeited, the same would be excluded from the period of qualifying service, and as such for deciding the question of entitlement to pension, the employee would not have the qualifying period of service. State of Punjab v. Gurbaran Singh, AIR 2019 SC 1650

Contract Act:

Sec. 73

Sec. 73 reads as follows:

"73. Compensation for loss or damage caused by breach of contract.—When a contract has been broken, the party who suffers by such breach is

entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract. Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account."

Section 73 makes it clear that damages arising out of a breach of contract is treated separately from damages resulting from obligations resembling those created by contract. When a contract has been broken, damages are recoverable under paragraph 1 of Section73. When, however, a claim for damages arises from obligations resembling those created by contract, this would be covered by paragraph 3 of Section 73. Mahanagar Telephone Nigam V. Tata Communication Limited 2019 (3) Supreme 712 : AIR 2019 SC 1233

Sec. 74 – Scope

Sec. 74 states that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.—When any person enters into any bail- bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of any condition of any such instrument, to pay the whole sum mentioned therein. Explanation.—A

person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested."

On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:

43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.

43.2. Reasonable compensation will be fixed on well- known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.
43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.
43.4. The section applies whether a person is a plaintiff or a defendant in a suit.
43.5. The sum spoken of may already be paid or be payable in future.
43.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded." **Mahanagar Telephone Nigam V. Tata Communication Limited 2019 (3) Suporeme 712**

Consumer Protection Act :

Sec. 2(r) - Unfair trade practice

"'Unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice…..", and includes any of the practices enumerated therein. The provision is illustrative, and not exhaustive.

Our judges are bound by their oath to ‘uphold the Constitution and the laws’. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and equal protection of the laws. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give

an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the

contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them.

It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. Pioneer Urban Land and Infrastructure Ltd. V. Govindan Raghvavan 2019 (4) Supreme 174

Criminal Law:

Proof—Falsus in uno, falsus in omnibus-- Inapplicability

Even if a major portion of the 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. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno, falsus in omnibus" has no application in India and the witnesses cannot be branded as liars. The maxim

"falsus in uno, falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See Nisar Alli v. State of U.P., AIR 1957 SC 366) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See Gurcharan Singh v. State of Punjab, AIR 1956 SC 460). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well.

The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P., (1972) 3 SCC 751 and Ugar Ahir v. State of Bihar, AIR 1965 SC 277.)

As observed by this Court in State of Rajasthan v. Kalki, (1981) 2 SCC 752 normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi v. State of Bihar. (2002) 6 SCC 81. Mahendran v. State of T.N., (2019) 5 SCC 67

Criminal Procedure Code:

Sec. 31 –

In our considered opinion, it was necessary for the Magistrate to have ensured compliance of Section 31 of the Code when she convicted and sentenced the appellant for two offences in a trial and inflicted two punishments for each offence, namely, Section 279 and Section 304A IPC.

In such a situation, it was necessary for the Magistrate to have specified in the order by taking recourse to Section 31 of the Code as to whether the punishment of sentence of imprisonment so awarded by her for each offence would run concurrently or consecutively. Gagan Kumar V. State of Punjab 2019 (3) Supreme 680

Sec. 173(8) – Further Investigation

The powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code.

The Magistrate has no power to direct "reinvestigation" or "fresh investigation" (de novo) in the case initiated on the basis of a police report.

A Magistrate has the power to direct "further investigation" after filing of a police report in terms of Section 173(6) of the Code.

The view expressed in Sub para 40.2 above is inconformity with the principle of law stated in Bhagwant Singh case [Bhagwant Singh v. Commr. of Police, (1985)2 SCC 537: 1985 SCC (Cri) 267] by a three Judge Bench and thus in conformity with the doctrine ofprecedent.40.4.Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own.

After the investigation is concluded and the report is forwarded by the police to the Magistrate under Section 173(2)(i) of the CrPC, the learned Magistrate may either(1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceedings, or (3) may direct further investigation under Section156(3) and

require the police to make a further report. If the Magistrate disagrees with the report and drops the proceedings, the informant is required to be given an opportunity to submit the protest application and thereafter, after giving an opportunity to the informant, the Magistrate may take a further decision whether to drop the proceedings against the accused or not. If the learned Magistrate accepts the objections, in that case, he may issue process and/or even frame the charges against the accused. As observed hereinabove, having not satisfied with the investigation on considering the report forwarded by the police under Section 173(2)(i) of the CrPC, the Magistrate may, at that stage, direct further investigation and require the police to make a further report. However, it is required to be noted that all the aforesaid is required to be done at the pre cognizance stage. Once the learned Magistrate takes the cognizance and, considering the materials on record submitted along with the report forwarded by the police under Section 173(2)(i) of the CrPC, learned Magistrate in exercise of the powers under Section227 of the CrPC discharges the accused, thereafter, it will not be open for the Magistrate to suo moto order for further investigation and direct the investigating officer to submit the report. Such an order after discharging the accused can be said to be made at the post cognizance stage. There is a distinction and/or difference between the pre cognizance stage and post cognizance stage and the powers to be exercised by the Magistrate for further investigation at the pre cognizance stage and post cognizance stage. The power to order further investigation which may be available to the Magistrate at the pre cognizance stage may not be available to the Magistrate at the post cognizance stage, more particularly, when the accused is discharged by him. As observed hereinabove, if the Magistrate was not satisfied with the investigation carried out by the investigating officer and the report submitted by the investigating officer under Section 173(2)(i) of the CrPC, as observed by this Court in catena of decisions and as observed hereinabove, it was always open/permissible for the Magistrate to direct the investigating agency for further investigation and may postpone even the framing of the charge and/or taking any final decision on the report at that stage. However, once the learned Magistrate, on the basis of the report and the materials placed along with the report, discharges the accused, we are afraid that thereafter the Magistrate can suo moto order the further investigation by the investigating agency. Once the order of discharge is passed, thereafter the Magistrate has no jurisdiction to suo moto direct the investigating officer for further investigation and submit the report. In such a situation, only two remedies are available: (i) a revision application can be filed against the discharge or (ii) the Court has to wait till the stage of Section 319 of the CrPC. However, at the same time, considering the provisions of Section 173(8) of the CrPC, it is always open for the investigating agency to file an application for further investigation and thereafter to submit the fresh report and the Court may, on the application submitted by the investigating agency, permit further investigation and permit the investigating officer to file a fresh report and the same may be considered by the learned

Magistrate thereafter in accordance with law. The Magistrate cannot suo moto direct for further investigation under Section 173(8) of the CrPC or direct the reinvestigation into a case at the post cognizance stage, more particularly when, in exercise of powers under Section 227 of the CrPC, the Magistrate discharges the accused. However, Section173(8) of the CrPC confers power upon the officer incharge of the police station to further investigate and submit evidence, oral or documentary, after forwarding the report under sub-section (2)of Section 173 of the CrPC. Therefore, it is always open for the investigating officer to apply for further investigation, even after forwarding the report under subsection (2) of Section 173 and even after the discharge of the accused. However, the aforesaid shall be at the instance of the investigating officer/police officer incharge and the Magistrate has no jurisdiction to suo moto pass an order for further investigation/reinvestigation after he discharges the accused.

In the instant case, the investigating authority did not apply for further investigation and that the learned Magistrate suo moto passed an order for further investigation and directed the investigating officer to further investigate and submit the report, which is impermissible under the law. Such a course of action is beyond the jurisdictional competence of the Magistrate. Therefore, that part of the order passed by the learned Magistrate ordering further investigation after he discharges the accused, cannot be sustained and the same deserves to be quashed and set aside. Consequently, the impugned judgment and order passed by the High Court confirming such an order passed by the learned Magistrate also deserves to be quashed and set aside. At the same time, it will always be open for the investigating officer to file an appropriate application for further investigation and undertake further investigation and submit a further report in exercise of powers under Section 173(8) of the CrPC. Bikash Ranjan Rout v. State, AIR 2019 SC 2002 : 2019 Cri.LJ 2787

Ss. 173(8) and 154—Further investigation or Fresh investigation—Incidents/transactions/offences in question whether formed part of the same transaction/were in continuation of each other warranting only further investigation, or, were independent of each other warranting fresh investigation—Principles explained—Two independent offences arising out of the same motive

There cannot be any dispute that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but also violates Article 21 of the Constitution. In T.T. Antony v. State of Kerala, (2001) 6 SCC 181, this Court has categorically held that the registration of a second FIR (which is not a counter case) is violative of Article 21

of the Constitution. It is relevant to note following paragraphs of the said decision in that regard:

> "19. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of subsection (8) of Section 173 CrPC.
>
> From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC. **Puttu Rajan vs. State of Tamil Nadu, (2019) 4 SCC 771**

Sec. 197—Prosecution of government servant—Sanction for

In Court's view, in order to attract the rigor of Section 197 CrPC, it is necessary that the offence alleged against a government officer must have some nexus or/and relation with the discharge of his official duties as a government officer. In this case, Court does not find it to be so. **Devendra Prasad Singh V. State of Bihar, (2019) 4 SCC 351**

Sec. 227

Discharge

For the exercise of powers u/s 227 CrPC, with respect to discharge of an accused, the Hon'ble Court has held that a Judge while considering the question of framing charge under S. 227 CrPC in sessions cases (which is akin to S. 239 CrPC pertaining t warrant cases) has the undoubted power to sift and weight the evidence for limited purpose of finding out whether or not a prima facie case against accused has been made out – Where the material placed before the court discloses grave suspicion against accused which has not been properly explained, court will be fully justified in framing the charge – If two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against accused, trial Judge will be justified in discharging him – It is expected from trial Judge to exercise his judicial mind to determine as to whether case for trial has been made out or not – It is true that in such proceedings, court is not supposed to hold a mini trial by marshalling the evidence on record. Asim Shariff V. National Investigation Agency, (2019) 3 SCC (Cri) 40.

Ss. 227, 245, 397 and 399—Discharge application—Manner in which to be considered and test to be applied at stage of—Revision against discharge application allowed by trial court—Proper mode of disposal—Appreciation of evidence at stage of discharge, held, impermissible—Trial court and High Court in revision, erred in doing so—Discharge applications, rejected in present case

Held, while considering petition for discharge, courts cannot act as appellate court and start appreciating evidence by finding out inconsistencies in statements of witnesses—Consideration of record for discharge purpose is different from consideration of record while deciding appeal. On facts, High Court acted as appellate court while exercising revisionary jurisdiction. Hence, discharge order set aside. In present case, there is no prima facie case made out for discharge of respondents at this state of the trial. They, therefore, have to stand for trial on merits in the light of the documents and contents of charge-sheet. Special Court (CJM) should have, therefore, allowed the State to adduce the evidence on merits in support of the charge-sheet to prove the charges. Trial court directed to complete trial uninfluenced by observations made by High Court or Supreme Court. **State V. J. Doraiswamy, (2019) 4 SCC 149**

Sec. 320—Offence compoundable with permission of court—Discretion of court in such cases

Matters to be considered in exercise of such discretion, effect of offence on society at large, on facts of each case, as important determinant for exercise of such discretion, compromise, effect of, reduction of sentence, as relief when there is a compromise, but court refuses to compound case. Bhagyan Das V. State of Uttarakhand, (2019) 4 SCC 354

Sec.321 - Withdrawal from Prosecution

Sec. 321 CrPC confers authority on the Public Prosecutor to withdraw from the prosecution of any person accused of an offence, both when no evidence is taken and even if the entire evidence has been taken. The outer limit for exercising the said power is guided by the expression “at any time before the judgment is pronounced”.

The Public Prosecutor or an Assistant Public Prosecutor, as the case may be, has an important role under the statutory scheme and is expected to act as an independent person. He/she has to apply his/her own mind and consider the effect of withdrawal on the society in the event such permission is granted.

Though there are frivolous litigations but that does not mean that there are no innocent sufferers who eagerly wait for justice to be done. That apart, certain criminal offences destroy the social fabric. Every citizen gets involved in a way to respond to it, and that is why the power is conferred on the Public Prosecutor and the real duty is cast on him/her. He/she has to act with responsibility. He/she is not to be totally guided by the instructions of the Government but is required to assist the Court; and the Court is duty bound to see the precedents and pass appropriate orders. Abdul Wahab K. V. State of Kerala and Othrs , (2019) 3 SCCC (Cri) 181.

Ss. 235(2) & 465

Pre-Sentence Hearing & Effect of Post Conviction Mental Illness on Sentence

Pre-sentence hearing – Dwelling on the question of pre-sentence hearing the Hon’ble Court held – Section 235(2) CrPC implies that once the judgment of conviction is pronounced, the Court will hear the accused on the question of sentence. However, in case the minimum sentence is proposed to be imposed upon the accused, the question of providing an opportunity under section 235(2) would not arise.

Section 235(2) CrPC mandates pre-sentence hearing for the accused and imbibes a cardinal principle that the sentence should be based on “reliable, comprehensive information relevant to what the court seeks to do”.

The term “hearing” occurring under Section 235(2) requires the accused and prosecution at their option, to be given a meaningful opportunity at the stage of hearing on sentence, generally, the accused argues based on the mitigating circumstances in his favour for imposition of lesser sentence. On the other hand, the State, the complainant would argue based on the aggravating circumstances against the accused to support the contention relating to imposition of higher sentence. At the stage of pre-sentence hearing, the accused can bring on record material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, may have a bearing on the choice of sentence.

The object of Section 235(2) CrPC is to provide an opportunity for the accused to adduce mitigating circumstances. This does not mean, however, that the trial court can fulfill the requirements of Section 235(2) CrPC only by adjourning the matter for one or two days to hear the parties on sentence. If the accused is ready to submit his arguments on this aspect on the very day of pronouncement of the judgment of conviction, it is open for the trial court to hear the parties on sentence on the same day after passing the judgment of conviction. In a given case, based on facts and circumstances, the trial court may choose to hear the parties on the next day or after two days as well.

Meaningful hearing under Section 235 (2) of CrPC, in the usual course, is not conditional upon time or number of days granted for the same. It is to be measured qualitatively and not quantitatively. As long as the spirit and purpose of Section 235(2) is met, inasmuch as the accused is afforded a real and effective opportunity to plead his case with respect to sentencing, whether simply by way of oral submissions or by also bringing pertinent material on record, there is no bar on the pre-sentencing hearing taking place on the same day. Depending on the facts and circumstances, a separate date may be required for hearing on sentence, but it is equally permissible to argue on the question of sentence on the same day if the parties wish to do so. The trial court needs to comply with the mandate of Section 235(2) CrPC with best efforts.

Even assuming that a procedural irregularity is committed by the Trial Court to a certain extent on the question of hearing on sentence, the violation can be remedied by the appellate Court by providing sufficient opportunity of being heard on sentence. It must be kept in mind that S. 465 of the CrPC inter alia mandates that sentence passed by Court cannot not be altered by the appellate court unless irregularity results in a failure of justice. Such non-compliance can be remedied by the appellate court by balancing various considerations and either afford an opportunity before itself or remand back to the trial court, in appropriate case, for fresh consideration.

Post-Conviction Mental Illness – Sentence of death carries with it a sense of deterrence – If mental illness of convict impaired his cognitive faculty of understanding implications of his criminal action and consequence it entails, purpose of imposition of sentence loses its efficacy – Broader concept of human dignity inherent in Art. 21 of the Constitution as also international consensus tend against execution of convict who has developed post-conviction mental illness –Plea of post-conviction mental illness is based on appreciation of punishment and right to dignity – Post-conviction mental illness is distinguishable from insanity under S. 84 IPC – Constitution of India – Arts. 21 and 20 – Penal Code, 1860 – S.84 – Words and Phrases – “Insanity”, “mental illness”.

Having regard to facts and circumstances of the case, death sentence converted into imprisonment for remainder of life without remission – Taking notice of fact that convicts languishing in jail become more prone to increased mental illness. State Government directed to consider case of accused under appropriate provisions of Mental Healthcare Act, 2017 and if found entitled, provide for his rights thereunder – Parens patriae obligation of State in this regard, delineated – Mental Healthcare Act, 2017 – Human and Civil Rights – Role of State/State Aid/Duty of the State-Parens Patriae Doctrine/State or Court as a Guardian.

In Shatrughan Chauhan case the Court observed that “insanity” is a relevant supervening factor for consideration by the Court. Insanity recognized under IPC and the mental illness under consideration in the present case arise at a different stage and time. Section 84 IPC relates to the mens rea at the time of commission of the crime, whereas the plea of post-conviction mental illness is based on appreciation of punishment and right to dignity. The different normative standards underpinning the above consequently mean different threshold standards as well. Accused ‘X’ vs. State of Maharashtra, (2019) 3 SCC (Cri) 10.

Sec. 235

It is also well-settled principle that in criminal cases, if two views are possible on evidence adduced in the case, one binding to the guilt of the accused in the case, one binding to the guilt of the accused and the other is to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt the accused is sought to be established by circumstantial evidence. Digamber Vaishnav V. State of Chhattisgarh 2019 (3) Supreme 41

Sec. 319—Addition of accused not named in FIR/charge-sheet during course of trial—Basis for—In-laws not named in dying declaration, FIR or charge-sheet, held, cannot be added under S. 319 CrPC to face trial under Ss. 498-A, 304-B/302 IPC and Ss. 3 and 4 of DP Act, 1961 on basis of vague and non-specific allegations—High Court affirming order of trial court adding accused under S. 319 CrPC, on facts, held, unsustainable

Sec. 319(1) Cr.P.C. empowers the Court to proceed against any person not shown as an accused if it appears from the evidence that such person has committed any offence for which such person could be tried together along with the accused. It is fairly well settled that before the court exercises its jurisdiction in terms of Section 319 Cr.P.C., it must arrive at satisfaction that the evidence adduced by the prosecution, if unrebutted, would lead to conviction of the persons sought to be added as the accused in the case.

In Hardeep Singh vs. State of Punjab, (2014) 3 SCC 92, the Constitution Bench held as under:-

> "105. Power under Section 319 Cr.P.C is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.
>
> 106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."

Under Section 319 Cr.P.C., a person can be added as an accused invoking the provisions not only for the same offence for which the accused is tried but for "any offence"; but that offence shall be such that in respect of which all the accused could be tried together. **Sunil Kumar Gupta V. State of U.P., (2019) 4 SCC 556: AIR 2019 SC 1174**

Sec. 319

It remains trite that the provisions contained in Section 319 CrPC are to achieve the objective that the real culprit should not get away unpunished. By virtue of these provisions, the Court is empowered to proceed against any person not shown as an accused, if it appears from evidence that such person has committed any offence for which, he could be tried together with the other accused persons. In *Hardeep Singh* (supra), the Constitution Bench of this Court has explained the purpose behind this provision, inter alia, in the following:

Sec. 319 Code of Criminal Procedure springs out of the doctrine judex damnatur cum nocens absolvitur (judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Code of Criminal Procedure.

It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should 7 the court exercise its power as contemplated in Section 319 CrPC?

The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

As regards the degree of satisfaction required for invoking the powers under Section 319 CrPC, the Constitution Bench has laid down the principles as follows:

At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in Vikas v. State of Rajasthan, held that on the objective satisfaction of the court

a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

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

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

Thus, the provisions contained in Section 319 Cr.P.C. sanction the summoning of any person on the basis of any relevant evidence as available on record. However, it being a discretionary power and an extraordinary one, is to be exercised sparingly and only when cogent evidence is available. The prime facie opinion which is to be formed for exercise of this power requires stronger evidence than mere probability of complicity of a person. The test to be applied is the one which is more than a prime facie case as examined at the time of framing charge but not of satisfaction to the extent that the evidence, if goes uncontroverted, would lead to the conviction of the accused. Sugreev Kumar V. State of Punjab 2019 (3) Supreme 722

Sec. 319—Power to proceed against other persons appearing to be guilty of offence—When exercisable—Principles clarified

Section 319 (1) Cr.P.C. empowers the Court to proceed against other persons who "appear" to be guilty of an offence, though not accused before the Court. A Constitution Bench of this Court in Hardeep Singh v. State of Punjab,

(2014) 3 SCC 92 has ruled that the word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved", and imparts a lesser degree of probability than proof. Though only a prima facie case is to be established from the evidence led before the Court, it requires much stronger evidence than a mere probability of the complicity of the persons against whom the deponent has deposed. The test that has to be applied is of a degree of satisfaction which is more than that of a prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, may lead to conviction of the proposed accused. In the absence of such satisfaction, the Court should refrain from exercising the power under Section 319 of the Cr.P.C. In our considered opinion, the impugned judgment has been passed by the High Court keeping the aforementioned principle in mind, though said judgment has not been cited before the High Court. **Dev Wati V. State of Haryana, (2019) 4 SCC 329**

Sec. 378 – Scope of

The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law.

The Appellate Court will not be upsetting the judgment of acquittal, if the view taken by Trial Court is one of the possible views of matter and unless the Appellate Court arrives at a clear finding that the judgment of the Trial Court is perverse, i.e., not supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law. Such general restrictions are essentially to remind the Appellate Court that an accused is presumed to be innocent unless proved guilty beyond reasonable doubt and a judgment of acquittal further strengthens such presumption in favour of the accused. However, such restrictions need to be visualized in the context of the particular matter before the Appellate Court and the nature of inquiry therein. The same rule with same rigour cannot be applied in a matter relating to the offence under Section 138 of the NI Act, particularly where a presumption is drawn that the holder has received the cheque for the 12 discharge, wholly or in part, of any debt or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that preponderance of probabilities are in favour of his defence but while examining if the accused has brought about a probable defence so as to rebut the presumption, the Appellate Court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans

in favour of the accused. Rohitbhai Jivanlal Patel V. State of Gujarat 2019 (3) Supreme 662

Sec. 378 – Appeal against acquittal-

With regard to the powers of an appellate court in an appeal against acquittal, the law is well established that the presumption of innocence which is attached to every accused person gets strengthened when such an accused is acquitted by the trial court and the High Court should not lightly interfere with the decision of the trial court which has recorded the evidence and observed the demeanour of witnesses.

An appellate court has full power to review, re appreciate and reconsider the evidence upon which the order of acquittal is founded.

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

Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

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

If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.” Sampat Babso Kale v. State of Maharashtra, AIR 2019 SC 1852.

Sec. 378 (3)

Held: in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would be set aside.

It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be "perverse" and, hence, no leave should be granted. **State of Maharashtra V. Shankar Ganapati Rahatol 2019 (3) Supreme 174**

S. 439 – Legality of bail application

Held - It is by now well settled that at the time of considering an application for bail, the Court must taken to account certain factors such as the existence of a prima facie case against accused, the gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering with the witnesses and obstructing the Courts as well as the criminal antecedents of the accused. It is also well settled that the Court must not go into deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of a prima facie case against the accused. State of Orissa V. Mahimananda Mishra, 2019 (107) ACC 37 (SC)

Sec. 461- Irregularities vitiating proceedings- Harmless error- Remedial approach- Infringement or irregularity would not vitiate proceedings unless, great prejudice had occasioned to accused due to such infringement or irregularity

The emphasis was laid by Dr. Manish Singhvi, learned Senior Advocate for the State on the articles relied upon by him to submit that the theory of “harmless error” which has been recognized in criminal jurisprudence and that there must be a remedial approach. Again, we need not go into these broader concepts as the provisions of the Code, in our considered view, are clearly indicative and lay down

with clarity as to which infringements per se, would result in vitiation of proceedings. Chapter XXXV of the Code deals with "Irregular Proceedings", and Section 461 stipulates certain infringements or irregularities which vitiate proceedings. Barring those stipulated in Section 461, the thrust of the Chapter is that any infringement or irregularity would not vitiate the proceedings unless, as a result of such infringement or irregularity, great prejudice had occasioned to the accused. Shri Hegde, learned Senior Advocate was quick to rely on the passages in Jayendra Vishnu Thakur to submit that the prejudice in such cases would be inherent or per se. Paragraphs 57 and 58 of said decision were as under:-
CRIMINAL APPEAL NOS.656-657 of 2019 (@SLP (CRL) Nos.809-810 of 2019 ATMA RAM & ORS. VS. STATE OF RAJASTHAN "57. Mr. Naphade would submit that the appellant did not suffer any prejudice. We do not agree.

Infringement of such a valuable right itself causes prejudice. In S.L. Kapoor v. Jagmohan this Court clearly held: (SCC p. 395, para 24) "24. … In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It will comes from a person who has denied justice that the person who has been denied justice is not prejudiced."

In A.R. Antulay vs. R.S. Nayak a seven-Judge Bench of this Court has also held that when an order has been passed in violation of a fundamental right or in breach of the principles of natural justice, the same would be a nullity. (See also State of Haryana vs. State of Punjab and Rajasthan SRTC vs. Zakir Hussain."
Atma Ram and others v. State of Rajasthan, 2019 Cri.LJ 2758

Sec. 439 Cr.P.C.—Bail—Generally—Accusations whether prima facie true—Matters to be considered generally by court

Before we proceed to analyse the rival submissions, it is apposite to restate the settled legal position about matters to be considered for deciding an application for bail, to writ:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
(i) nature and gravity of the charge;
(ii) severity of the punishment in the event of conviction;
(iii) danger of the accused absconding or fleeing, if released on bail;
(iv) character, behavior, means, position and standing of the accused;
(v) likelihood of the offence being repeated;

(vi) reasonable apprehension of the witnesses being tampered with; and
(vii) danger, of course, of justice being thwarted by grant of bail. (State of U.P. vs. Amarmani Tripathi, (2005) 8 SCC 21, para 18)

When it comes to offence punishable under special enactments, such as the 1967 Act, something more is required to be kept in mind in view of the special provisions contained in Section 43-D of the 1967 Act. **National Investigation Agency vs. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1**

Sec. 482

Held: The Court's principal duty, while exercising the powers under Section 482 Cr.P.C. to quash the criminal proceedings, should be to scan the entire facts to find out the thrust of the allegations and the crux of the settlement. As observed, it is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. In the case at hand, the High Court has not at all taken pains to scrutinize the entire conspectus of facts in proper perspective and has quashed the criminal proceedings mechanically. Even, the quashing of the FIR by the High Court in the present case for the offences under Sections 307 10 and 34 of the IPC, and that too in exercise of powers under Section 482 of the Cr.P.C. is just contrary to the law laid down by this Court in a catena of decisions.

The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having

overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim.

In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding." The State of Madhya Pradesh V. Laxmi Narayan 2019 (3) Supreme 1

Sec. 482

Held: That notwithstanding settlement of the civil suits by the parties, the criminal case out of which these appeals arise has to be brought to its logical end one way or the other on merits and the High Court was, therefore, not right in quashing the charge-sheet at its threshold under Sec. 482 of the Cr.P.C. C.B.I. New Delhi V. B.B. Agarwal and others 2019 (2) Supreme 689

Sec. 482

Exercise of the inherent power of the High Court under Section 482 of the Criminal Procedure Code would depend on the facts and circumstances of each case. It is neither proper nor permissible for the Court to lay down any straitjacket formula for regulating the inherent power of the High Court under Section 482 of the Cr.P.C.

Power under Section 482 Cr.P.C. might be exercised to prevent abuse of the process of law, but only when, the allegations, even if true, would not constitute an offence and/or

were frivolous and vexatious on their face. V. Ravi Kumar v. State, 2019 (107) ACC 47 (SC)

Sec. 482– Exercising inherent power under the said Section

The Court's principal duty, while exercising the powers under Section 482 Cr.P.C. to quash the criminal proceedings, should be to scan the entire facts to find out the thrust of the allegations and the crux of the settlement. As observed, it is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence.

Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or
(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal

cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be aground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

Section 482 Cr.P.C. Considering a catena of decisions of this Court on the point, this Court summarised the following propositions:

Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 CrPC. The power to quash under Section 482 is attracted even if the offence is noncompoundable.

In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High

Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulate.

In the exercise of the power under Section 482and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice.

The Supreme Court hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the

process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked. State of Madhya Pradesh v. Dhruv Gurjar, AIR 2019 SC 1106

Ss. 482, 195 –Quashing of proceedings- Prosecution for giving or fabricating false evidence- Accused allegedly filing forged vakalatnama by mentioning wrong date and place-Affidavit not making out case of forgery- Nothing on record to whow wrongful gain of appellant by playing fraud- Since appellant admitted their signatures in Vakalatnama, opinion of handwriting expert that signature not found to be of appellant does not stand on higher footing _mere incorrect statement in vakalatnama does not amount to create a forged document- Directions of High Court to lodge criminal complaint against appellant, unsustainable- FIR and charge sheet liable to be quashed

A vakalatnama is only a document which authorizes an advocate to appear on behalf of the party and by and large, it has no bearing on the merits of the case. We find force in the contention of the learned senior counsel for the appellants that there is no reason as to why a party would deliberately furnish a false date and place in the vakalatnama. Appellant No.1 left for Singapore from New Delhi on the night of 17.08.2016 and appellant No.3 left for Singapore from Bengaluru on the morning of 18.08.2016 at 09.30 AM which fact admitted by both the parties. In the affidavit filed before the High Court, the first appellant clearly stated that she and her son appellant No.2 signed the vakalatnama on 16.08.2016 and the same was sent to her husband-appellant No.3 who was in Bengaluru who in turn handed over the same to the advocate at Madurai. The appellants have admitted their signatures in the vakalatnama. The sequence of events as stated in the affidavit of the appellants, in our view, do not make out a case of forgery. The High Court has not recorded any finding as to why it rejected the plea of the appellants made in the affidavit which has also been reiterated by them in their explanation before the court when they personally appeared before the court.

There could be no two views about the proposition that even if forgery is committed outside the precincts of the court and long before its production in the court, it would also be treated as one affecting the administration of justice. But in the present case, the vakalatnama filed by the appellants in Crl.O.P.(MD) No.15370/2016 seeking anticipatory bail in Crime No.5/2016 cannot be said to be a forged document. As pointed out earlier, the appellants have admitted their signatures in the vakalatnama. They only allege that it

was mistakenly recorded that it has been signed on 18.08.2016 at Madurai in the presence of the advocate. Of course, the version in the vakalatnama is an incorrect statement. In our opinion, the High Court was not justified in terming the said mistake or error as fraud. Fraud implies intentionally deception aimed or achieving some wrongful gain or causing wrongful loss or injury to another. Intention being the mens rea is the essential ingredient to hold that a fraud has been played upon the court. The learned counsel for the State has submitted that upon examination of the signature in the vakalatnama, the hand-writing expert has opined that it is not the signature of the appellants and therefore, the intention of the appellants to create a forged document has been clearly made out. We do not find any merit in the submission as the appellants themselves admitted their signatures in the vakalatnama. In the light of the statement of the appellants admitting their signatures in the vakalatnama, we do not think that the opinion of the hand- writing expert would stand on any higher footing. There is nothing on record to suggest that the appellants gained anything by playing fraud or practising deception. In the absence of any material to substantiate the allegations, in our view, the High Court was not justified in accusing the appellants fraud.

Even assuming that the version in the vakalatnama is wrong, mere incorrect statement in the vakalatnama would not amount to create a forged document and it cannot be the reason for exercising the jurisdiction under Section 340 Cr.P.C. for issuance of direction to lodge the criminal complaint against the appellants.

Applying the ratio of the above decisions, in our view, there is no prima facie evidence to show that the appellants had intended to cause damage or injury or any other acts. Since the disputed version in the vakalatnama appears to be an inadvertent mistake with no intention to make misrepresentation, in our view, the direction of the High Court to lodge a criminal complaint against the appellants cannot be sustained and the same is liable to be set aside.

In the facts and circumstances of the present case, in our view, no useful purpose would be served by proceeding with the criminal prosecution against the appellants. Without further going into the merits of the case, we quash the FIR in Crime No.1331/2016 and also quash the charge sheet pending before the concerned Magistrate. The FIR and the charge sheet are quashed only in the facts and circumstances of the present case and to meet the ends of justice. It is made clear that taking advantage of quashing of the case, the appellants shall not resort to any further consequential proceedings. Sasikala Pushpa and others v. State of Tamil Nadu, 2019 Cr.LJ 2896

Ss. 482 and 320—

Punishment of criminal proceedings faced by accused persons under Ss. 307 and 294 r/w S. 34 IPC, which are non-compoundable offences, solely on ground of settlement of dispute between complainant and accused, held, gravely erroneous—Allegations in complaint for offences under Ss. 307 and 294 r/w S. 34 IPC are very serious. **State of M.P. V. Kalyan Singh, (2019) 4 SCC 268**

Criminal Trial:

Circumstantial Evidence—

In order to sustain the conviction on the basis of circumstantial evidence, the following three conditions must be satisfied:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established:

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused. **Digamber Vaishnav V. State of Chhattisgarh, (2019) 4 SCC 522**

Circumstantial Evidence—

It is worth recalling that while it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is necessary that such proof should be perfect, and someone who is guilty cannot get away with impunity only because the truth may develop some infirmity when projected through human processes. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Justice cannot be made sterile by exaggerated adherence to the rule of proof, inasmuch as benefit of doubt must always be reasonable and not fanciful. **Puttu Rajan vs. State of Tamil Nadu, (2019) 4 SCC 771**

Sentence—Minimum sentence/Minimum statutory sentence—Minimum sentence without discretion—Awarding sentence less than the minimum sentence—Impermissibility

Trial court convicted the respondent for offence under S. 3(1)(xi) of SCs & STs Act and sentenced him to undergo rigorous imprisonment for six months with

fine of Rs 500. High Court reduced the sentence of respondent to the sentence already undergone of eleven days, but enhancing the fine from Rs. 500 to Rs. 3000. The conviction has not been disputed by respondent before the High Court, quantum of punishment alone was disputed. S. 3(1) of the Act provides for a punishment for a term which shall not be less than six months, which may extend to five years and with fine. Held, where minimum sentence is provided for, the court cannot impose less than the minimum sentence. Provisions of Art. 142 of the Constitution also cannot be resorted to impose sentence less than the minimum sentence. High Court could not award sentence less than the minimum sentence contemplated by the statute. Order passed by the High Court set aside. Respondent shall undergo remaining sentence imposed by trial court. SCs, STs, OBCs and Minorities, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, S. 3(1)(xi).Constitution of India, Art. 142.**State of M.P. V. Vikram Das, (2019) 4 SCC 125**

Held: A TIP has to be conducted timely, if not, then the delay has to be explained and such delay should not cause exposure of the accused. However, in the case at hand, not only there was a delay in conducting the TIP, but no explanation for the same has been forthcoming from the prosecution. This creates a considerable doubt about the genuineness of the TIP. State of Uttar Pradesh V. Wasif Haider Etc. 2019 (2) Supreme 596

Proof—Generally- Fundamental principles—Held, one of the principles is, that burden of proof squarely rests on prosecution and that general burden never shifts—There can be no conviction on basis of surmises and conjectures or suspicion howsoever grave it may be—Strong suspicion, strong coincidences and grave doubt cannot take place of legal proof

Onus of prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculpate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by defence at best, be considered as additional circumstance, if other circumstances unfailingly point to the guilt. Held, strong suspicion, strong coincidences and grave doubt cannot take place of legal proof. **Digamber Vaishnav vs. State of Chhattisgarh, (2019) 4 SCC 522**

Held: It is well settled principle that a suspicion, however grave it may be cannot take place of proof, i.e., there is a long distance between “may be”

and “must be”, which must be traversed by the prosecution to prove its case beyond reasonable doubt.

The prosecution, it is axiomatic, must establish its case against the accused by leading evidence that is accepted by the standards that are known to criminal jurisprudence regaqrdless whether the crime is committed in the course of communal disturbances or otherwise. In short, there can only be one set of rules and standards when it comes to trials and judgment in criminal cases unless statute provides for anything specially applicable to a particular case or class of cases…” State of Uttar Pradesh V. Wasif Haider Etc. 2019 (2) Supreme 596

Held - Law has to cater to wide variety of situations as appear in society. Law being dynamic, the certainty of the legislation appears rigid at times whenever a circumstance (set of facts) appears which is not catered for explicitly. Expediency then dictates that the higher judiciary, while interpreting the law, considers such exception(s) as are called for without disturbing the pith and substance and the original intention of the legislature. This is required primarily for the reason to help strike a balance between competing forces - justice being the end - and also because the process of fresh legislation could take a long time, which would mean failure of justice, and with it erosion of public confidence and trust in the justice delivery system.

The principle of fair trial now informs and energises many areas of the law. It is a constant, ongoing, evolutionary process continually adapting itself to changing circumstances, and endeavouring to meet the exigencies of the situation - peculiar at times - and related to the nature of crime, persons involved, directly or operating from behind, and so many other powerful factors which may come in the way of administration of criminal justice, wherefore the endeavour of the higher courts, while interpreting the law, is to strike the right balance.

Prospective declaration of law is a device innovated by this Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law, prior to the date of the

declaration are validated. This is done in larger public interest. Therefore, the subordinate forums which are bound to apply law declared by this Court are also duty bound to apply such dictum to cases which would arise in future. Since it is indisputable that a court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation.

The criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it unidirectional exercise. A proper administration of the criminal justice delivery system, therefore requires balancing the rights of the accused and the prosecution. Varinder Kumar v. State of H.P., 2019 (107) ACC 40 (SC)

Evidence Act:

S. 3 – Circumstantial Evidence

Held - It is well settled that when a case rests on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. Uppala Bixam v. State of A.P., 2019 (107) ACC 364 (SC)

Sec. 4—Conclusive proof—Meaning of—Held, when Act enjoins that any evidence would be treated as conclusive proof of certain factual situations or legal hypothesis, law would forbid other evidence to be adduced for purpose of contradicting or varying such conclusiveness—Words and Phrases —“Conclusive proof”

It is well settled that when the enactment enjoins that any evidence would be treated as a conclusive proof of certain factual situation or legal hypothesis, the law

would forbid other evidence to be adduced for the purpose of contradicting or varying the aforesaid conclusiveness. This is the principle embodied in Section 4 of the Evidence Act, 1872 when it defines "conclusive proof" (see *Cheeranthoodika Ahmmedkutty V. Parambut Mariakutty Umma, (2000) 2 SCC 417*). **State of Kerala V. Mohammed Basheer, (2019) 4 SCC 260**

Sec. 27

The circumstances from which the conclusion of guilt is to be drawn must or "should be" and not merely "may be" fully established. The facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explicable through any other hypothesis except that the accused was guilty. Moreover, the circumstances should be conclusive in nature. There must be a chain of evidence so complete so as to not leave any reasonable ground for a conclusion consistent with the innocence of the accused, and must show that in all human probability, the offence was committed by the accused. Sachin Kumar Singhraha V. The State Of Madhya Pradesh 2019 (3) Supreme 643

Sec. 32- Dying Declaration

Held – In case of three dying declarations, one before police without any certificate by the doctor, second oral statement given top relatives and third recorded by a special Judicial Magistrate with the doctor certifying fitness: the third one though acceptable will be corroborative material. Bhagwat V. State of Maharashtra 2019 (2) Supreme 761

S.32(1) – Dying declaration – When may be sole basis for conviction - Principles summarized

A dying declaration can be the sole basis for convicting the accused – However, such a dying declaration should be trustworthy, voluntary, blemishless and reliable – In case the person recording dying declaration is satisfied that declarant is in a fit medical condition to make the statement and if there are no suspicious circumstances, dying declaration may not be invalided solely on the ground that it was not certified by the doctor. Poonam Bai vs. State of Chhattisgarh, (2019) 2 SCC (Cri) 754.

S. 32 – Dying declaration

It is well settled and needs no reiteration at our hands that dying declaration can form the sole basis for conviction. At the

same time, it is not the plurality of the dying declarations that adds weight to the prosecution case, but their qualitative worth is what matters. The settled legal principle is that dying declaration should be free from slightest of doubt and shall be of such nature as to inspire full confidence of the Court in its truthfulness and correctness. The Court must exercise great caution while considering the weight to be given to a dying declaration, particularly when there are more than one dying declaration.

The intrinsic worth and reliability of dying declaration can generally be judged from its tenor and contents themselves. Here in the case on hand, the so called dying declarations recorded at the behest of the deceased create huge doubt on their veracity inasmuch as there was contradictory variance as to the facts of presence of the accused at the scene of offence at the time of incident, bringing the victim to the hospital and impact of the presence and provocation of relatives and advocate at the time of recording of statement of the deceased. State of Rajasthan V. Mst. Ganwara, 2019 (107) ACC 24 (SC)

Sec.114 A-

In the present case prosecution has been successful in proving the case that from the very beginning the accused never intended to marry the prosecutrix. He gave false promises/promise to the prosecutrix to marry her and on such false promise he had a physical relation with the prosecutrix; the prosecutrix initially resisted, however, gave the consent relying upon the false promise of the accused that he will marry her and, therefore, her consent can be said to be a consent on misconception of fact as per Section 90 of the IPC and such a consent shall not excuse the accused from the charge of rape and offence under Section 375 of the IPC. In the deposition, the prosecutrix specifically stated that initially she did not give her consent for physical relationship, however on the appellant’s promise that he would marry her and relying upon such promise she consented for physical relationship with the appellant accused. Even considering S. 114-A of the Indian Evidence Act, which has been inserted subsequently, there is a presumption and the court shall presume that she gave the consent for the physical relationship with the accused relying upon the promise by the accused that he will marry her. From the very beginning there was no intention of the accused to marry the prosecutrix as his marriage with another was already fixed long back and, despite the same, he continued to give promise/false promise and alluded the prosecutrix to give her consent for the physical relationship. Both the Courts

below have rightly convicted the accused for the offence under S. 276 of the IPC.

If it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 of the IPC and can be convicted for the offence under Section 376 of the IPC. Anurag Soni v. State of Chhattisgarh, AIR 2019 SC 1857

Sec. 118 – Credibility of related witness

It is by now well settled that a related witness cannot be said to be an 'interested' witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused.

"Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be "interested"..."

In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested.

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person..."

In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently

reliable, probable, cogent and consistent. Md. Rojali Ali v. State of Assam, AIR 2019 SC 1128.

Sec. 118 – Evidence of Child witness.

It is a settled principle of law that a child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The court in such circumstances can safely rely upon the statement of a child witness and it can form the basis for conviction as well. Further, the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and that there exists no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand but as a rule of prudence the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable.

Sec. 118 of the Evidence Act governs competence of the persons to testify which also includes a child witness. Evidence of the child witness and its credibility could depend upon the facts and circumstances of each case. There is no rule of practice that in every case the evidence of a child witness has to be corroborated by other evidence before a conviction can be allowed to stand but as a prudence, the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that witness must be a reliable one. Digamber Vaishnav V. State of Chhattisgarh 2019 (3) Supreme 41

<u>Family and Personal Laws</u>:

Succession Act, 1925, Ss.25, 33(a), 372 and 383—Revocation of succession certificate—Requirements for

A succession certificate can be granted in an application in which necessary particulars are set out as mentioned in Section 372. There is no dispute that the application made by the appellant had set out the aforesaid particulars. The certificate so granted cannot be revoked unless any one of sub-sections (a) to (e) of Section 383 is satisfied, which is not the case on facts in this appeal. It is clear therefore, that on this ground alone, the Sub-Judge was justified in refusing to revoke the succession certificate so granted. Section 33(a) makes it clear that the

intestate's property goes only to his widow and his lineal descendants**. Joseph Easwaran Wapshare V. Shirley Katheleen Wheeler, (2019) 5 SCC 58**

Hindu Minority & Guardianship Act:

Sec. 8 –

Held: setting aside of a sale which is voidable under Section 8(3) is necessary for avoiding a registered sale deed. We may, however, not to be understood that we are holding that in all cases where minor has to avoid disposal of immovable property, it is necessary to bring a suit. There may be creation of charge or lease of immovable property which may not be by registered document. It may depend on facts of each case as to whether it is necessary to bring a suit for avoiding disposal of the immovable property or it can be done in any other manner. We in the present case are concerned with disposal of immovable property by natural guardian of minor by a registered sale deed, hence, we are confining our consideration and discussion only with respect to transfer of immovable property by a registered deed by a natural guardian of minor. Murugan and others V. Kesava Gounder (Dead) thr. L.Rs. and others 2019 (2) Supreme 745

Hindu Succession Act:

Sec. 14

It is settled position of law that the mutation of a property in the revenue records are fiscal proceedings and does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation has been ordered, to pay the land revenue. At the same time, the effect of a declaratory decree to restore the property alienated to the estate of the alien or and until and unless the alienees are able to convince the court that they have no subsisting interest in the property, the heirs of the alienees would be entitled to the benefit of the property as per the law of succession.

Sec. 14 states as follows:

"(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognized and enjoined by pure Shastric Hindu law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal

obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a preexisting right so that any transfer declaring or recognizing such a right does not confer any new title but merely endorses or confirms the preexisting rights.

(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socioeconomic ends sought to be achieved by this long needed legislation.

(3) Subsection (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Subsection (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognize preexisting rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognizes a preexisting right, such as a claim to maintenance or partition or share to which the female is entitled, the subsection has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of subsection (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like 'property acquired by a female Hindu at a partition', 'or in lieu of maintenance', 'or arrears of maintenance', etc. in the Explanation to Section 14(1) clearly makes subsection 18 (2) inapplicable to these categories which have been expressly excepted from the operation of subsection (2).

(6) The words 'possessed by' used by the Legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same.

Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.

(7) That the words 'restricted estate' used in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee." Ajit Kaur @ Surjit Kaur V. Darshan Singh (D) through Lrs. 2019 (4) Supreme 156

Identification of Prisoners Act:

The purpose and object of empowering Police Officer to take fingerprints in an offence punishable with rigorous imprisonment for a term of one year or upwards is; for offences of trivial nature where rigorous imprisonment is less than one year Police officer is not empowered to take fingerprints. The use of words "rigorous imprisonment for a term of one year or upwards" does not negate the punishment of life imprisonment or death.

The object of the Section was not to empower the Police Officer to take fingerprints in trivial offences where imprisonment is less than one year but the provision cannot be read to mean that Police Officer does not have such power if imprisonment is for life or capital punishment. The reading of Section 4 in the manner suggested by Full Bench will negate the very purpose of empowerment of Police Officer to take the fingerprints. **Sonvir V. Somvir v. State of Delhi, 2019 (107) ACC 1 (SC)**

Fingerprint samples of accused obtained by police officer without Magisterial order—If illegal

Sec. 5 provides for taking of such samples upon an order of a Magistrate, if Magistrate is satisfied as to its expediency. However, reiterated, S. 5 is not mandatory but is directory, and affirms bona fides of sample-taking and eliminates possibility of fabrication of evidence. Although S. 4 mentions that police officer is competent to take measurements of accused, but to dispel doubts as to its bona fides and to rule out fabrication of evidence, it is eminently desirable that they were

taken before or under order of a Magistrate. However, it cannot be held to mean that under S. 4, police officers are not entitled to take fingerprints until order is taken from a Magistrate. Thus, there cannot be any hard-and-fast rule that in every case, there should be a Magisterial order for lifting fingerprints of accused. **Ashish Jain vs. Makrand Singh, (2019) 3 SCC 770**

Indian Penal Code:

Recoveries at instance of accused and motive—

Merely because, earlier there might have been search at the house of the accused and nothing was found at that time, cannot be a ground to discard the recoveries made subsequently which, as such, were made at the instance of the accused himself. The accused is the best person to know where he kept the ornaments/cash which he had taken from the house of the victims. There is no reason to doubt the recoveries. **Khushwinder Singh vs. State of Punjab, (2019) 4 SCC 415**

Sec. 31—Sentencing—Concurrent or consecutive running of sentences

Magistrate while awarding sentence erred in not specifically mentioning as to whether two punishments awarded to appellant under S. 279 and S. 304-A IPC would run concurrently or consecutively, which is mandatory and a legal requirement under s. 31 CrPC, when accused is convicted for more than one offence in a trial. **Gagan Kumar V. State of Punjab, (2019) 5 SCC 154**

Sec. 34 – Common Intention

A common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all. There must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan.

The essential constituent of the vicarious criminal liability prescribed by Section 34 is the existence of common intention. If the common intention in question animates the accused persons and if the said common intention leads to the commission of the criminal offence charged, each of the persons sharing the common intention is constructively liable for the criminal act done

by one of them. Just as the combination of persons sharing the same common object is one of the features of an unlawful assembly, so the existence of a combination of persons sharing the same common intention is one of the features of Section 34. In some ways the two sections are similar and in some cases they may overlap. But, nevertheless, the common intention which is the basis of Section 34 is different from the common object which is the basis of the composition of an unlawful assembly. Common intention denotes action-in-concert and necessarily postulates the existence of a prearranged plan and that must mean a prior meeting of minds. It would be noticed that cases to which Section 34 can be applied disclose an element of participation in action on the part of all the accused persons. The acts may be different; may vary in their character, but they are all actuated by the same common intention. It is now well-settled that the common intention required by Section 34 is different from the same intention or similar intention.

Within the meaning of Section 34 implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan and that the inference of common intention should never be reached unless it is a necessary inference educible from the circumstances of the case. Asif Khan v. State of Maharashtra, AIR 2019 SC 1286.

Sec. 34

The true purport of Section 34 IPC is that if two or more persons intentionally do an act jointly, the position of law is just the same as if each of them have done it individually. The process of law is intended to meet a situation in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention.

The application of principles enunciated in Section 34 IPC, when an accused is convicted under Section 302 read with Section 34 IPC, in law means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone.

Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of

common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it prearranged or on the spur of the moment; but it must necessarily be before the commission of the crime. The true concept of the section is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in Ashok Kumar v. State of Punjab (1977) 1SCC 746, the existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision. Palakom Abdul Rahiman v. Station House Officer Badiadka P.S. Kerala, AIR 2019 SC 1891.

Sec. 96 - Deal with

Ss. 96 to 106 of IPC deal with right of private defence of a person involved in commission of offences under the IPC. Sec. 96 of IPC says that nothing is an offence, which is done in the exercise of the right of private defence.

Section 97 of IPC provides that a right of private defence extends not only to the defence of one’s own body against any offence affecting the human body but also to defend the body of any other person. The right also embraces the protection of property, whether one’s own or another person’s, against certain specified offences, namely, theft, robbery, mischief and criminal trespass. The limitations on this right and its scope are set out in the sections which follow. For one thing, the right does not arise if there is time to have recourse to the protection of the public authorities, and for another, it does not extend to the infliction of more harm than is necessary for the purpose of defence. Another limitation is that when death is caused, the person exercising the right must be under reasonable apprehension of death, or grievous hurt, to himself or to those whom he is protecting; and in the case of property, the danger to it must be of the kinds specified in Section 103. The scope of the right is further explained in Sections 102 and 105 of the IPC.

Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognise the right of private defence within certain reasonable limits.

The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.

It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

It is well settled that even if the accused does not plead self defence, it is open to consider such a plea if the same arises from the material on record.

The accused need not prove the existence of the right of private defence beyond reasonable doubt.

The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened." Sukumaran v. State Rep. by the Inspector of Police, AIR 2019 SC 1389.

Sec. 97 –

Held: Ss. 96 to 106 of IPC deal with right of private defence of a person involved in commission 14 of offences under the IPC. Section 96 of IPC says that nothing is an offence, which is done in the exercise of the right of private defence.

Sec. 97 of I.P.C. provides that a right of private defence extends not only to the defence of one's own body against any offence affecting the human body but also to defend the body of any other person. The right also embraces the protection of property, whether one's own or another person's, against certain specified

offences, namely, theft, robbery, mischief and criminal trespass. The limitations on this right and its scope are set out in the sections which follow. For one thing, the right does not arise if there is time to have recourse to the protection of the public authorities, and for another, it does not extend to the infliction of more harm than is necessary for the purpose of defence. Another limitation is that when death is caused, the person exercising the right must be under reasonable apprehension of death, or grievous hurt, to himself or to those whom he is protecting; and in the case of property, the danger to it must be of the kinds specified in Sec. 103.

i. Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.
ii. (ii) The right of private defence is available only to one who is suddenly confronted with 16 the necessity of averting an impending danger and not of self creation.
iii. A mere reasonable apprehension is enough to put the right of self-defense into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.
iv. The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.
v. It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.
vi. In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.
vii. It is well settled that even if the accused does not plead selfdefence, it is open to consider such a plea if the same arises from the material on record.
viii. The accused need not prove the existence of the right of private defence beyond reasonable doubt.
ix. The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.
x. A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.

Sukumaran V. State Represented by the Inspector of Police, 2019 (3) Supreme 163

Alteration of charge from S. 149 to S. 34

Sec. 34 as well as Sec. 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the sections deal with combinations of persons who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between common intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a prearranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or preconcert. Though there is substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under section 149 overlaps the ground covered by section 34. Thus, if several persons numbering five or more, do an act and intend to do it, 28 both sections 34 and section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of section 34 for section 149 might result in prejudice to the accused and ought not, therefore, to be permitted. But if it does involve a common intention then the substitution of section 34 for section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non applicability of section 149 is, therefore, no bar in convicting the appellants under section 302 read with section 34 IPC, if the evidence discloses commission of an offence in furtherance of the common intention of them all. **Mala Singh vs. State of Haryana, (2019) 5 SCC 127**

Sec. 302 r/w S. 149- Common object to murder—Determination of—Out of 24 persons charged—Conviction of appellants for murder with aid of S. 149, confirmed

> What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was the one which the members knew to be likely to be committed. Once the court finds that the ingredients of Section 149 IPC are fulfilled, every person who at the time of committing that offence was a member of the assembly has to be held guilty of that offence. After such a finding, it would not be open to the court to see as to who actually did the offensive act nor would it be open to the court to require the prosecution to prove which of the members did which of the above two ingredients. Before recording the conviction under

Section 149 IPC, the essential ingredients of Section 141 IPC must be established."

The nature of weapons used by such members, the manner and sequence of attack made by those members on the deceased and the circumstances under which the occurrence took place are the factors to decide as to whether, the accused had common object. It is an inference to be deduced from the facts and circumstances of each case. **Mahendran vs. State of T.N., (2019) 5 SCC 67**

Sec. 302

Held: Before awarding conviction against accused for offence under S. 302 IPC, courts should be mindful of fact that there should be no room to suspect evidence of key prosecution witnesses based on whose evidence conviction is being awarded – As a general rule, while appreciating evidence in a criminal case, court should bear in mind, that it is not quantity, but quality of evidence that is material – It is the duty of court to consider the trustworthiness of witness and evidence adduced on record and to assess the same in a prudent manner, whether the same inspires confidence, so as to accept and act upon, before convicting accused. Shanker V. State of Madhya Pradesh, (2019) 2 SCC (Cri) 868.

Sec. 302—Murder—Dying declaration—Dying declarations recorded by doctor and Magistrate—Evidentiary value—Corroboration when necessary—Doubt as to whether victim was in a fit state of mind to make the statement

No doubt, a dying declaration is an extremely important piece of evidence and where the Court is satisfied that the dying declaration is truthful, voluntary and not a result of any extraneous influence, the Court can convict the accused only on the basis of a dying declaration. We need not refer to the entire law but it would be apposite to refer to the judgment of this Court in the case of *Sham Shankar Kankaria v. State of Maharashtra,* (2006) 13 SCC 165, held as follows:

“11. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of deceased was not as a result of either tutoring or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant.

Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. **Sampat Babso Kale V. State of Maharashtra, (2019) 4 SCC 739**

Sec. 302/ 301(II)

Life imprisonment is the rule to which the death penalty is the exception. The death sentence must be imposed only when life imprisonment appears to be an altogether inappropriate punishment, having regard to the relevant facts and circumstances of the crime. sentencing is a difficult task and often vexes the mind of the Court, but where the option is between life imprisonment and a death sentence, if the Court itself feels some difficulty in awarding one or the other, it is only appropriate that the lesser punishment be awarded. Sachin Kumar Singhraha V. The State Of Madhya Pradesh 2019 (3) Supreme 643

Sec. 302/236-A – Rarest of the rare case

Held - There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and Figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency - a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section

354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception.

A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed." Yogendra v. State of M.P., 2019 (107) ACC 734 (SC)

Sec. 307 IPC

Sec. 307 uses the term "hurt" which has been explained in Section 319, I.P.C.; and not "grievous hurt" within the meaning of Section 320I.P.C.

If a person causes hurt with the intention or knowledge that he may cause death, it would attract Section 307.

Supreme Court in R. Prakash v. State ofKarnataka, (2004) 9 SCC 27, held that :

"...The first blow was on a vital part, that is on the temporal region. Even though other blows were on non vital parts, that does not take away the rigor of Section 307IPC.......

It is sufficient to justify a conviction under Section 307if there is present an intent coupled with some overt actin execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Sections makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section."

If the assailant acts with the intention or knowledge that such action might cause death, and hurt is caused, then the provisions of Section307 I.P.C. would be applicable. There is no requirement for the injury to be on a "vital part" of the body, merely causing 'hurt' is sufficient to attract S. 307 I.P.C. State of Madhya Pradesh v. Mohan, (2013) 14 SCC 116

This Court in Jage Ram v. State of Haryana, (2015) 11 SCC 366 held that:

"12. For the purpose of conviction under Section 307IPC, prosecution has to establish (i) the intention to commit murder and (ii) the act done by the

accused. The burden is on the prosecution that accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given etc.” State of Madhya Pradesh v. Harjeet Singh, AIR 2019 SC 1120.

Ss. 376(2), 342 & 506

The courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars.

If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults.

The court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.

The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.

It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration." Sham Singh v. State of Haryana, 2019 (107) ACC 27 (SC)

Sec. 498-A

Held: Section 498A of the Indian Penal Code was introduced by the Criminal Law (second amendment) Act, 1983. In addition to the aforesaid amendment in the Indian Penal Code, the provisions of Sections 174 and 176 of the Code of Criminal Procedure, 1973 relating to inquiries by police in case of death by suicides and inquiries by magistrates into cause of such deaths were also amended. Section 198A was also inserted in the Code of Criminal Procedure with regard to prosecution of offences under Section 498A.

Further by an amendment in the first schedule to the Cr.PC the offence under Section 498A was made cognizable and non-bailable. of considerable significance is the introduction of Section 113A in the Indian Evidence Act by the Criminal Law (second amendment) Act, 1983 providing for presumption as to abetment of suicide by a married woman to be drawn if such suicide had

been committed within a period of seven years from the date of marriage of the married woman and she had been subjected to cruelty.

"Cruelty" which is the crux of the offence under Section 498A IPC is defined in Black's Law Dictionary to mean "The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (Abuse, inhuman treatment, indignity)". Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being illtreated are aspects that cannot be ignored while understanding the meaning of the expression "cruelty" appearing in Section 498A of the Indian Penal Code.

The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress cause by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place. Rupali Devi V. State of Uttar Pradesh 2019 (4) Supreme 225

<u>Industrial Disputes Act</u>:

Sec. 17 B-

The proceedings under Section 17B of ID Act are independent proceedings in nature and are not dependent upon the final order passed in the main proceedings. Dilip Mani Dubey v. M/s Siel Ltd., AIR 2019 SC 1632.

<u>Interpretation of Statutes</u>:

Penal Statutes and Taxing Statutes

It is trite law which the Court would ordinary take recourse to golen rule of strict interpretation.

In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation and this is what has been considered by this

Court in Commissioner of Customs(Import), Mumbai V. Dilip Kumar and Company and Others 2018(9) SCC 1 in para 24 and 34 as under: “24. In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocents might become victims of discretionary decision making. Insofar as taxation statutes are concerned, Article 265 of the Constitution prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature.

In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency;

Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly.” M/s Achal Industries V. State of Karnataka 2019 (3) Supreme 33

Held: The well-known principle of interpretation of document is that one line cannot be taken out of context. It is a cumulative reading of entire document which would lead to one conclusion or the other. Some of the judgments relevant for determining as to the principle of interpretation of documents are delineated hereinafter. One of the judgments relating to the interpretation of documents is *Delhi Development Authority v. Durga Chand Kaushish (1973)2 SCC 825*. It was held that the meaning of the document or of a particular part of it is to be sought for in the document itself. The Court held as under:-

“19. Both sides have relied upon certain passages in Odgers’ “Construction of Deeds and Statutes” (5th ed. 1967). There (at pages 28-29), the First General Rule of Interpretation formulated 13 (1973) 2 SCC 825 is: “The meaning of the document or of a particular part of it is therefore to be sought for in the document itself”. That is, undoubtedly, the primary rule of construction to which Sections 90 to 94 of the Indian Evidence Act give statutory recognition and effect, with certain exceptions contained in Sections

95 to 98 of the Act. Of course, “the document” means “the document” read as a whole and not piecemeal.

20. The rule stated above follows logically from the Literal Rule of Construction which, unless its application produces absurd results, must be resorted to first. This is clear from the following passages cited in Odgers' short book under the First Rule of Interpretation set out above:

Lord Wensleydale, in Monypenny v. Monypenny14 said:

“the question is not what the parties to a deed may have intended to do by entering into that deed, but what is the meaning of the words used in that deed: a most important distinction in all cases of construction and the disregard of which often leads to erroneous conclusions.” Brett, L.J., in Re Meredith, ex. p. Chick15 observed:

“I am disposed to follow the rule of construction which was laid down by Lord Denman and Baron Parke…………….They said that in construing instruments you must have regard, not to the presumed intention of the parties, but to the meaning of the words which they have used.”

21. Another rule which seems to us to be applicable here was thus stated by this Court in *Radha Sunder Dutta v. Mohd. Jahadur Rahim and Others AIR 1959 SC 24*:

“Now, it is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render 14 (1861) 9 HLC 114, 146 15 (1879) 11 Ch D 731, 739 16 AIR 1959 SC 24, 29 one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim ‘ut res magis valeat quam pereat’.” Hammadahmed V. Abdul Majeed and others 2019 (3) Supreme 612

Word – Total Turnover Strict Interpretation-

The expression “total turnover” + “turnover” which has been used under Section 6B has the same meaning as defined under Section 2(1)(u2) and 2(v) of the Act. It may be further noticed that under Section 6B, reference is made on ‘total turnover’ and not the ‘turnover’ as defined under Section 2(v) of the KST Act and taking note of the exemption provided under first proviso clause(iii), exclusion has been made in reference to use of sale or purchase of goods in the course of interstate trade or commerce. It clearly indicates that the expression ‘total turnover’ which has been incorporated as referred to under Section 6B(1) is for the purpose of identification of the dealers and for prescribing different rates/slabs. The first proviso to Section 6-B(1) provides an exhaustive list of deductions which are to be made in

computation of such turnover with a further stipulation as referred to in second proviso that except for the manner provided for in Section 6B(1), no other deduction shall be made from the total turnover of a dealer.

In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation and this is what has been considered by this Court in Commissioner of Customs(Import), Mumbai V. Dilip Kumar and Company and Others 2018(9) SCC 1 in para 24 and 34 as under:“24.In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocents might become victims of discretionary decision making. Insofar as taxation statutes are concerned, Article 265 of the Constitution prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature. M/s Achal Industries V. State of Karnataka, AIR 2019 SC 1653.

Juvenile Justice Act:

Sec. 2 (K)

In light of Sections 2(k), 2(l),7A read with Section 20 of the 2000 Act as amended in 2006, a juvenile who had not completed eighteen years on the date of commission of the offence is entitled to the benefit of the 2000 Act. The claim of juvenility can be raised at any stage before any Court by an accused, including this Court, even after the final disposal of a case, in terms of Sec. 7A of the 2000 Act. Ashok Kumar Mehra v. State of Punjab, AIR 2019 SC 1903

Sec. 7A-

Seeing that the Registrar (Judicial) is a District Judge serving on deputation at the Supreme Court, recourse to his or her assistance in the form of collecting evidence and arriving at a finding regarding the claim of juvenility of the person concerned may be undertaken by this Court in order to save its judicial time. However, it must be stressed that the findings in an inquiry conducted by the Registrar (Judicial) would not per se prevail upon a contrary view taken by the High Court. Only after this Court applies its judicial mind to such report with due regard to the confines of the procedure stipulated in

Section 7A of the 2000Act and Rule 12 of the 2007 Rules, and only if it thereafter confirms the findings in such report would the same prevail upon a contrary view taken by the High Court which is not based upon any such inquiry. Raju v. State of Haryana, AIR 2019 SC 1136.

Sec. 94- Determination of age- Consideration of Medico Legal evidence- Medico Legal evidence cannot be considered where birth or matriculation or equivalent certificate is available- It can only be considered where documents stated in S. 94 Are not available

It may be further appreciated that a victim of offence under section 363, 366-A, 366 or 376 I.P.C. could not be falling in the category of an accused and as such no court could be authorised under any provisions of law to authorise the detention of such a lady even into protective custody if the lady objects to such detention. In various decisions this Court opined that generally an order was passed sending the girl to Nari Niketan being ignorant of the constitutional provisions. Liberty being the most valuable fundamental right of a person. there is no age bar when it comes to valuing the liberty of a person be she a woman or be he a gent. Even a child has a right to avail of his or her liberties, of course within the caring custody of parents. No law could be upheld even in a case of a child if he is deprived of the right to life and valued the right to liberty. (order dated 8.5.2012 in Habeas Corpus Writ Petition No. - 19037 of 2011 Smt. Saroj versus State of U.P. And Others).

Apart from the above factors, the more important aspect is as to whether there is any authority for detention of the petitioner with any person in law. Though, it is said that she has been detained in the Nari Niketan under the directions of the Magistrate, the 8 first thing to be seen should be as to whether the Magistrate can direct the detention of a person in the situation in which the petitioner is. No Magistrate has an absolute right to detain any person at the place of his choice or even any other place unless it can be justified by some law and procedure. It is very clear that this petitioner would not be accused of the offence under Sections 363 and 366 I. P. C. We are taking the version because she could only be a victim of it. A victim may at best be a witness and there is no law at least now has been quoted before us whereunder the Magistrate may direct dentition of a witness simply because he does not like him to go to any particular place. In such circumstances, the direction of the Magistrate that she shall be detained at Nari Niketan is absolutely without jurisdiction and illegal. Even the Magistrate is not a natural guardian or duly appointed guardian of all minors." Smt. Kajal Shivam Kumar and another v. State of U.P. and others, 2019 Cr.LJ 2997

Motor Vehicles Act:

Sec. 52—Alteration of vehicle at variance with particulars contained in the certificate of registration—Imperssibility of—Alteration of vehicle—What is—Object and intent behind amendment of S. 52 i.e. as amended by way of Amendment Act 27 of 2000—Relevance of

No vehicle can be altered in a manner where particulars in the certificate of registration are at variance with those "originally specified by the manufacturer". Also, the rules cannot be so interpreted so as to permit the alteration as prohibited under S. 52(1) of the Act. Further, the provisions of Ss. 52(2), (3), (4) and (5) have to be read harmoniously and the Explanation to S. 52 says that "alteration" means a change in the structure of a vehicle which results in a change in its basic feature. Thus, alterations which do not change the basic features are outside the purview of alteration.

An alteration in the vehicle is not permissible which may be at variance with the particulars contained in the certificate of registration which contains vital particulars of the vehicle and the permissible changes or modifications and which do not result in change in the basic feature, need not be considered as alteration within the meaning of Section 52 of the amended Act. **Regional Transport Officer vs. K. Jayachandra, (2019) 3 SCC 722**

Ss. 166 and 168

Deceased working as an International Internal Sales Engineer at a monthly salary of Rs. 6273, had a BE (Civil) qualification – Tribunal, added approximately 100% towards future rise in income and considered prospective income at Rs. 12,000 p.m. and after deducting 1/3rd towards personal expenses, assessed loss of dependency at Rs. 8000 p.m. and applying a multiplier of 16 awarded Rs. 15,36,000 towards loss of dependency; Rs. 15,000 towards loss of estate; Rs. 15,000 towards loss of love and affection and Rs. 5000 towards funeral expenses totaling to Rs. 15,71,000 and interest @ 12% p.a. – High Court however allowed 50% towards future prospects, deducted 50% towards personal expenses and replaced multiplier of 16 with 18 replacing Rs. 50,000 under loss of estatate as well as loss of love and a ffection computed at Rs. 10,72,360 with same interest – Held, no doubt second certificate for future prospects is dt. 8.7.2005, after a lapse of 7 years from first certificate, but then that would be a more realistic estimate of what a person holding that post would be earning at that stage of time – In absence of rebuttal evidence led by Insurance Company, no reason to doubt these certificates – Assessment of Tribunal is based on evidence led in present case – Following Pranay Sethi, (2017) 16 SCC 680 and Hem Raj, (2018) 15 SCC 654, standardized percentage, held, capable of being varied if evidence is so led –

Looking into conspectus of aforesaid facts and legal position. Tribunal was justified in giving a 100% increase and taking future prospects at Rs. 12,000 p.m. Sureshchandra Bagmal Doshi And Another vs. New India Assurance Company Limited and Others, (2019) 2 SCC (Cri) 899.

Ss 166, 168 & 173 – Compensation on Permanent Diability

On the question of 'permanent disability', applying the concept of 'functional disability' as basis, for determination of compensation, the Hon'ble Court held, where victim of accident suffers permanent disability, adequate compensation should always be awarded not only for physical injury and treatment but also for loss of earning and inability to lead normal life and enjoy amenities – While computing compensation, approach of Tribunal or court has be broadbased.

While computing compensation incases of permanent disability, in first step Tribunal or court must ascertain what activities claimant court carry on in spite of permanent disability and what he could not do as a result of permanent disability – In second step it has to ascertain claimant's avocation profession and nature of work before accident and his age – Third step is to find out whether (i) claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of permanent disability, claimant could still effectively arry on activities and functions, which he was carrying on earlier of (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

In some cases where injured claimant is in service, he may not found to be suitable for job he was earlier doing and may be shifted to some other suitable but lesser post with lesser emoluments – Under such circumstance, there should be limited award under head of loss of future earning capacity, taking note of reduced earning capacity.

When compensation is awarded by treating los of future earning capacity as 100% or even more than 50%, awarding compensation separately under head of loss of amenities or loss of expectation of life may disappear – As a result, only token or nominal amount may have to be awarded under head of loss of amenities or loss of expectation of life otherwise there would be duplication of award of compensation. Parminder Singh vs. New India Assurance Company Limited and others, (2019) 3 SCC (Cri) 50.

Narcotic Drugs and Psychotropic Substances Act:

Narcotic substance was found to be 415 kg in weight – According to FSL report, seized materials were found to be pieces of poppy straw – The defence of appellant was that he was legally transporting goods of licensee contractor B who had a valid licence and breach of conditions of licence would result only in conviction under S. 8 r/w S. 26 NDPS Act and not under S. 15 NDPS Act-Trial court convicted appellant under S. 8 r/w S. 15(c) NDPC Act and sentenced him to 10 yrs/ RI and to pay a fine of Rs. 1 lakh – High Court affirmed conviction and sentence.

Held, S. 8 NDPS Act prohibits cultivation of opium poppy and also prohibits, inter alia, production, manufacture, possession, sale, purchase, and transport of any narcotic drug or psychotropic substance – Appellant admitted seizure of 10 bags of poppy straw from a truck which was stationed at Village Palasiya – The truck was standing on a road near Village Palasiya as it could not enter the villages from where goods were purchased due to rain- No effort was made by appellant to prove that there was any rain on that day-As they contravention of licence in relation to poppy straw has been dealt with in S. 15, thus S. 26 of the Act is not attracted and courts below were right in holding that appellant is liable for conviction under S. 8 r/w S. 15 NDPS Act – Sentence cannot be reduced to the period already undergone by appellant in view of mandatory minimum sentence provided for an offence under S. 15(c) NDPS Act being 10 yrs. Gangaram V. State of Madhya Pradesh, (2019) 2 SCC (Cri) 773.

Negotiable Instrument Act:

Sec. 138 – Scope of

The object of Sec. 138 of the Negotiable Instruments Act is to infuse credibility to negotiable instruments including cheques and to encourage and promote the use of negotiable instruments including cheques in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of the same.

Ss. 138 and 139 of the Negotiable Instruments Act are set out herein below for convenience:-

> "138 Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that

account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque,within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]

139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability." Bir Singh V. Mukesh Kumar 2019 (3) Supreme 129.

Sec. 138 -

In present case, cheques were issued under and in pursuance of the agreement to sell. Though it is well settled that an agreement to sell does not create any interest in immoveable property, it nonetheless constitutes a legally enforceable contract between the parties to it. A payment which is made in pursuance of such an agreement is hence a payment made in pursuance of a duly enforceable debt or liability for the purposes of Section 138. The question as to whether there was a dispute as contemplated in clause 4 of the Agreement to Sell which obviated the obligation of the purchaser to honor the cheque which was furnished in pursuance of the agreement to sell to the vendor, cannot be the subject matter of a proceeding under Section 482 and is a matter to be determined on the basis of the

evidence which may be adduced at the trial. Thus, finding of the High Court that the cheques were not issued for creating any liability or debt, but ‘only’ for the payment of balance consideration and that in consequence, there was no legally enforceable debt or other liability cannot be accepted. Hence, order of the High Court quashing complaint under S. 138 of Negotiable Instruments Act holding that accused did not owe any money to complainants was erroneous and unsustainable. Ripudaman Singh Balkrishna, AIR 2019 SC 1625: (2019) 4 SCC 767.

Sec. 138/139

Sec. 139 of the Act mandates that it shall be presumed, unless the contrary is proved, that the holder of a cheque received it, in discharge, in whole or in part, of a debt, or liability. The expression "unless the contrary is proved" indicates that the presumption under Section 139 of the Act is rebuttable. Terming this as an example of a “reverse onus clause” the three Judge Bench of this Court in Rangappa (supra) held that in determining whether the presumption has been rebutted, the test of proportionality must guide the determination. The standard of proof for rebuttal of the presumption under Section 139 of the Act is guided by a preponderance of probabilities. This Court held thus:

“28 In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of `preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.” ANSS Rajashekar v. Augustus Jeba Ananth, 2019 (107) ACC 722 (SC)

Sec. 139—Raises presumption of law that cheque duly drawn was in discharge of debt or liability—However, presumption is rebuttable and onus lies on

drawer to debut it by adducing cogent evidence to the contrary—This presumption is not in conflict with human right of presumption of innocence of accused which prosecution is required to dislodge by proving its case against accused beyond reasonable doubt.

A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability.

The fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Act. Further, it is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. **Bir Singh V. Mukesh Kumar, (2019) 4 SCC 197**

Ss. 138, 141—Necessary conditions to be complied with for constituting offence under s. 138 in general, and against company and its Directors/Officers—Summarized—Where necessary conditions under S. 138 not complied with, company cannot subsequently be arraigned as accused in proceedings under S. 138—Where cheque is issued by Director of company, prosecution under S. 138 not maintainable without arraigning company as accused

In order to make out offence under S. 138 necessary conditions to be fulfilled are (i) presentation of cheque to bank within six months from date on which it is drawn or within period of its validity, whichever is earlier; (ii) demand being made in writing by payee or holder of cheque in due course by issuance of notice in writing to drawer of cheque within thirty days of receipts of information from bank of return of cheques; and (iii) failure of drawer to make payment of amount of money to payee or holder in due course within fifteen days of receipt of notice. Only upon compliance with these conditions, offence under S. 138 can be said to have been committed by person issuing cheque.

Further held, commission of offence by company is express condition precedent to attract vicarious liability of others. When company can be prosecuted

then only persons mentioned in other categories could be vicariously liable for offence subject to pleadings and proof, while prosecuting Directors, company must be arraigned as accused. **Himanshu V. B. Shivamurthy, (2019) 3 SCC 797**

Service Law:

Appointment—Compassionate appointment—Claim to—Delay of more than seven years in approaching court

Sense of immediacy is evidently lost by delay on part of dependant in seeking compassionate appointment. Besides, respondent was a major at time of death of deceased and hence benefit of extension of time for filing application until attaining majority cannot be extended to him.

Compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. Dependants of a deceased employee of the State are made eligible by virtue of the policy on compassionate appointment. The basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. The terms on which such applications would be considered are subject to the policy which is framed by the State. In that sense, it is well-settled principle of law that there is no right to compassionate appointment. **State of H.P. V. Shashi Kumar, (2019) 3 SCC 653]**

POCSO Act:

Legal Liability of Doctors to Report under POCSO Act

With respect to legal obligation to inform relevant authorities by the gynecologist or pediatrician, who have attended to a young pregnant girl of 18 years and thereby with respect to imputation of criminal liability, the Hon'ble Court held – knowledge requirement foisted on appellants cannot be that they ought to have deduced from circumstances that an offence was committed – There is no evidence to implicate appellants – Evidence should be such which should at least indicate grave suspicion – Mere likelihood of suspicion cannot be the reason to charge a person for an offence – Accordingly, proceedings against appellants quashed. Sr. Tessy Jose and Others vs. State of Kerala, (2019) 3 SCC (Cri) 164.

Sentencing

Appellant-accused was convicted by trial court under Ss. 9/10, POCSO Act, 2012, and S. 341 IPC-Appellant was to undergo imprisonment for a period of 7 yrs. And to pay fine of Rs. 50,000 under Ss. 9/10, POCSO Act, and under S. 341 IPC he was sentenced to undergo imprisonment for a period of 1 month – However, High Court, while dismissing appellant's appeal, altered conviction under Ss. 9/10, POCSO Act to Ss. 5 (m)/6 POCSO Act, and enhanced sentence from 7 yrs' RI to RI of 10 yrs with fine of Rs. 5000.

On the question of validity of the order of the High Court, the Apex Court held, proviso to S. 386 CrPC provides that sentence shall not be enhanced unless accused had opportunity of showing cause against such enhancement – Herein, High Court enhanced sentence in appeal filed by appellant challenging his conviction – There can be no doubt with regard to power of High Court to enhance sentence in an appropriate case – However, it is permissible only after giving notice of enhancement – Herein, High Court insofar as it enhance sentence from 7 yers to 10 yrs. Is not in accordance with procedure prescribed – Hence, judgment of High Court to the extent it enhanced sentence from 7 yrs to 10 yrs, is set aside – Protection of Children from Sexual Offences Act, 2012 – Ss. 9/10 and 5(m)/6 – Penal Code, 1860, S. 341.

On the question of reduction of sentence, the Hon'ble Court held, trial court marshaled evidence – victim herself appeared as PW 1 – She was thoroughly cross-examined by accused – Evidence of victim proved the charge leveled against accused, which evidence was corroborated by evidence of PWs 6 and 7, who were also students studying in the same school and returning from school at the time when victim was returning from school – Medical evidence also fully corroborated charge on appellant – There is no ground to interfere with finding of conviction – Trial court after considering factors, imposed sentence of 7 yrs – Trial court rightly noted, that offence committed against minor girl child (7 yrs of age) cannot by viewed lightly – Considering serious nature of offence, conviction of 7 yrs' RI needs no interference. Kumar Ghimirey V. State of Sikkim, (2019) 2 SCC (Cri) 758.

Specific Relief Act:

Sec. 16

Though, with the amendment of the Specific Relief Act, 1963 by Act No. 18of 2018, the expression "who fails to aver and prove" is substituted by the expression "who fails to prove" and the expression "must aver" stands substituted by the expression "must prove" but then, the position on all the material aspects remains the same that, specific performance of a contract

cannot be enforced in favour to the person who fails to prove that he has already performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than the terms of which, the performance has been prevented or waived by the other party. As per the law applicable at the relevant time, it was incumbent for the plaintiff to take the specific averment to that effect in the plaint. Of course, it was made clear by this Court in several decisions3, that such requirement of taking the necessary averment was not a matter of form and no specific phraseology or language was required to take such a plea. However, and even when mechanical reproduction of the words of statue was not insisted upon, the requirement of such pleading being available in the plaint was neither waived nor even whittled down. In the case of *A. Kanthamani v. Nasreen Ahmed: (2017) 4 SCC 654*, even while approving the decree for specific performance of the agreement on facts, this Court pointed out that the requirement analogous to that contained in Section16(c) of the Specific Relief Act, 1963 was read in its forerunner i.e., the Specific Relief Act, 1877 even without specific provision to that effect. Having examined the scheme of the Act and the requirements of CPC, Supreme Court said,-

> Therefore, the plaint which seeks the relief of specific performance of the agreement/contract must contain all requirements of Section 16 (c) read with requirements contained in Forms 47 and 48 of Appendix 'A' CPC"

Such a requirement, of necessary averment in the plaint, that he has already performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him being on the plaintiff, mere want of objection by the defendant in the written statement is hardly of any effect or consequence. The essential question to be addressed to by the Court in such a matter has always been as to whether, by taking the pleading and the evidence on record as a whole, the plaintiff has established that he has performed his part of the contract or has always been ready and willing to do so. In this regard, suffice it would be to refer to the principles enunciated by this Court in the case of Umabai (supra) as under:-

> It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16 (c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the plaintiff-respondents must be judged having regard to the entirety of the pleadings as also the evidences brought on records.

The principle that the requirement of such averment had not been a matter of form, applied equally to the proposition for amendment at the late stage whereby, the plaintiff only attempted to somehow improve upon the form of the plaint and insert only the phraseology of his readiness and willingness. In such a suit for specific performance, the Court would be, and had always been, looking at the substance of the matter if the plaintiff, by his conduct, has established that he is unquestionably standing with the contract and is not wanting in preparedness as also willingness to perform everything required of him before he could be granted a relief whereby, the performance of other part of the contract could be enjoined upon the defendant. Mehboob-Ur-Rahman v. Ahsanul Ghani, AIR 2019 SC 1178.

Sec.16(C)- Readiness and willingness- Suit for specific performance- Dismissal of-Legality-Since plaintiff failed to plead and prove his willingness to perform his part of contract till filing of suit- A pure finding of fact based on evidence by law given by first Appellate Court-High Court while upsetting judgment of District Judge- Lost sight of provisions of Specific Relief Act and law in this regard –Appeal allowed-Impugned order of High Court set aside- Judgment and decree of first Appellate Court dismissing suit –Restored.

It is settled law that a plaintiff who seeks specific performance of contract is required to plead and prove that he was always ready and willing to perform his part of the contract. Section 16(c) of the Specific Relief Act mandates that the plaintiff should plead and prove his readiness and willingness as a condition precedent for obtaining relief of grant of specific performance. Jagjit Singh (D) Thr. L.Rs. V. Amarjit Singh, 2019(143) RD 859 (SC)

Ss. 16 (c), 20, 21, 22 and 23- Civil Procedure Code, 1908-Appendix A to C, Forms 47/48- Discretion of Court- Grant of relief of specific performance is a discretionary and equitable relief-Material questions required to be gone into for grant of relief of specific performance-First, whether there exists a valid and concluded contract between parties for sale/purchase of suit property-Second, whether plaintiff ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in contract- Third, whether plaintiff has, in fact, performed his part of contract and if so how and to what extent and in what manner he performed and whether such performance was in conformity with terms of contract-Fourth, whether it will be equitable to grant relief of specific performance to plaintiff against defendant in relation to suit property-Or it will cause any kind of hardship to defendant and, if so how and in what manner and extent if relief eventually granted to plaintiff-Lastly, whether plaintiff entitled for grant of any

other alternative relief-These requirements have to be properly pleaded by parties in their respective pleadings and proved with aid of evidence in accordance with law- Only then Court entitled to exercise its discretion-Accordingly grant or refusal of relief of specific performance depending upon case made out by parties on facts-Issue of readiness and willingness is most important issue-For considering grant of specific performance of contract – Since plaintiff failed to prove this issue-Thus, suit rightly dismissed-Appeal dismissed.

It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are *First,* whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property; *Second,* whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract; *Third,* whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract; *Fourth,* whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff; and lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds.

In our opinion, the aforementioned questions are part of the statutory requirements (See sections 16(c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and the forms 47/48 of Appendix A to C of the Code of Civil Procedure). These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts. Kamal Kumar vs. Premlata Joshi and others, 2019(143) RD 598 (SC)

Sec.34 –Suit for declaration- To declare a decree as well as a sale deed executed by defendant No. 3 in favour of defendant Nos. 1 and 2 not binding on plaintiffs- Defendant Nos. 1 and 2 purchasers of suit property contested the suit on ground sale of suit property made by *Karta* of the family i.e., defendant No. 3 for benefit of family and for legal necessity its binding on the plaintiffs, present suit collusive suit filed at instance of defendant No. 3 to avoid execution of the decree against him, etc. –Suit dismissed by all three Courts-Sustainability of- Findings impugned concurrent in nature hence binding on

High Court as well on this Court –Findings recorded on proper appreciation of facts and law- The suit in question collusive suit to avoid execution of a valid decree- Once the sale of suit property was made by karta and it was made for legal necessity and benefit of family, the same was binding on all the members of the family- Plaintiffs themselves admitted in their evidence that they filed a civil suit at instigation of defendant No. 3, this clearly indicates the suit was not filed for a bona fide cause but it was a collusive suit filed by the plaintiffs to overcome the valid decree obtained by defendant Nos. 1 and 2 against defendant No. 3 and to save defendant No. 3 from its execution etc. – Dismissal of suit proper.

Hirabai (D) Thr. L.Rs. and others V. Ramniwas Bansilal Lakhotiya (D) by L.Rs. and others, 2019(2) ARC 379(SC)

<u>Transfer of Property Act</u>:

Ss. 19 & 21 r/w Sec. 119 Indian Succession Act – Vested right and contingent right

Held: Vested right is the subject matter of Section 19 of the Transfer of Property Act whereas a contingent interest is dealt with Section 21 of the Transfer of Property Act. Since the life estate followed by an absolute right is created by a will, the relevant provision is Section 119 of the Indian Succession Act, 1925. Section 119 reads as follows:

"119. Date of vesting of legacy when payment or possession postponed:-Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the Will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested in interest.

Explanation:-An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person."

It is relevant that we notice illustration No.(iii) which reads as follows:

"(iii) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B." Murugan

and others V. Kesava Gounder (Dead) thr. L.Rs. and others 2019 (2) Supreme 745

Ss. 111(e), 111(f) and 105 to 117—Lessor-Lessee Relationship—Non-termination of, ipso facto on execution of an agreement to sell tenanted premises to tenant—Intention to surrender the existing lease/tenancy—Necessity of, for such termination—Terms/clauses of the agreement to sell—Relevance of, for inferring such intention

Respondent landlord had let out a portion of his house to the appellant as per the tenancy agreement dt. 22.7.1985. On 13.5.1993, the appellant tenant entered into an agreement to sell with the respondent for purchase of the suit house. Rejecting the contention of the appellant tenant, that upon execution of the agreement the landlord-tenant relationship between the parties came to an end and it stood converted into the buyer-seller relationship, held, mere entering into of such an agreement to sell does not determine the lease/tenancy. Rather, it is necessary to determine whether the parties intended to keep the lease subsisting notwithstanding the execution of such agreement. If the parties really intended to surrender their tenancy rights as contemplated in Ss. 111(e) or (f) of the TP Act while entering into an agreement to sell, it would have made necessary provision to that effect by providing a specific clause in the agreement. In the absence of such clause/clause akin thereto in the agreement or the conditions in the agreement which discerned the intention of the parties to surrender the tenancy either expressly or impliedly, held, the same did not result in determination of the tenancy. Thus, respondent (lessor) entitled to seek the appellant's eviction from the suit house after determining the tenancy in question. **H.K. Sharma V. Ram Lal, (2019) 4 SCC 153**

Sec. 43—Object—Embodies doctrines of estoppels and equity—Applicability—Transferee must act, or have acted, upon transferor's representation, fraudulent or erroneous—Transferee purchased for consideration immovable property on being misled by and acting upon representation, fraudulent or erroneous, made by transferor that he was authorized to transfer though property was declared as ceiling surplus land at that time, but later transferor acquired right, title and interest when property again declared ceiling free land—Held, S. 43 attracted—Hence at the option of transferee, transfer would be treated as valid—Thereafter vendor's suit for cancellation of sale would not be maintainable

Tanu Ram Bora V. Promod Ch. Das (Dead) Through Legal Representatives, (2019) SCC 173

U.P. Consolidation of Holdings Act:

Ss. 19, 21 & 2(1-A)—Proposal of chaks (parceling of the land, also in relation to irrigation channels) under consolidation schemes—Modification of, where there is no partition in holdings between co-sharers—Illegality of—All co-sharers entitled to equitable treatment

Prior to commencement of Act, every co-sharer entitled to get benefit of pitch road and chaks were accordingly carved out. Holdings in suit land were not partitioned by co-sharers. Till holding is divided as per S. 176 of U.P. Zamindari Abolition and Land Reforms Act, 1950, every co-sharer has right in holding. **Hansraj vs. Mewalal, (2019) 3 SCC 682**

Wakf Act:

Sec. 3(r) – Dawakhana wakf is not a wakf despite the use of term wakf

Held: Dawakhana Wakf is not a wakf within the meaning of the term, under the Wakf Act, despite the use of the term “wakf” (which appears to be misleading). It is settled law that nomenclature of a document or deed is not conclusive of what it seeks to achieve; the court to consider all parts of it, and arrive at a finding in regard to its true effect…….

The Dawakhana Wakf is not a wakf, on an application of all the relevant tests. Therefore, the question of the Nursing Home, the Institute of History of Medicines and Medical Research, Hamdard National Foundation, Indian Institute of Islamic Studies being wakfs just because their properties were purchased out of the income of the Dawakhana Wakf, would not arise. Some of them, are in fact independent juristic entities, being societies, capable of, and in fact holding properties. In the case of registered societies, by virtue of Section 5 of the Societies Registration Act, 1860 the property, movable and immovable, belonging to it, if not vested in trustees, would be deemed to be vested in its governing body. Hammadahmed V. Abdul Majeed and others 2019n (3) Supreme 612

Words & Phrases:

Accident

As the law of insurance has developed, there has been a nuanced understanding of the distinction between an accident and a disease which is contracted in the natural course of human events in determining whether a policy of accident insurance would cover a disease. At one end of the

spectrum is the theory that an accident postulates a mishap or an untoward happening, something which is unexpected and unforeseen. This understanding of what is an accident indicates that something which arises in the natural course of things is not an accident. This is the basis for holding that a disease may not fall for classification as an accident, when it is caused by a bodily infirmity or a condition. A person who suffers from flu or a viral fever cannot say that it is an accident. Of course, there is an element of chance or probability in contracting any illness. Even when viral disease has proliferated in an area, every individual may not suffer from it. Getting a bout of flu or a viral illness may be a matter of chance. But a person who gets the flu cannot be described as having suffered an accident: the flu was transmitted in the natural course of things. To be bitten by a mosquito and be imbued with a malarial parasite does involve an element of chance. But the disease which is caused as a result of the insect bite in the natural course of events cannot be regarded as an accident. Particularly, when the disease is caused in an area which is malaria prone. On the other hand, there may well be instances where a bodily condition from which an individual suffers may be the direct consequence of an accident. A motor car accident may, for instance, result in bodily injuries, the consequence of which is death or disability which may fall within the cover of a policy of accident insurance. Hence, it has been postulated that where a disease is caused or transmitted in the natural course of events, it would not be covered by the definition of an accident. However, in a given case or circumstance, the affliction or bodily condition may be regarded as an accident where its cause or course of transmission is unexpected and unforeseen.

In a policy of insurance which covers death due to accident, the peril insured against is an accident: an untoward happening or occurrence which is unforeseen and unexpected in the normal course of human events. The death of the insured in the present case was caused by encephalitis malaria. The claim under the policy is founded on the hypothesis that there is an element of uncertainty about whether or when a person would be the victim of a mosquito bite which is a carrier of a vector-borne disease. The submission is that being bitten by a mosquito is an unforeseen eventuality and should be regarded as an accident. We do not agree with this submission. The insured was based in Mozambique. According to the World Health Organization's World Malaria Report 2018, Mozambique, with a population of 29.6million people, accounts for 5% of cases of malaria globally. It is also on record that one out of three people in Mozambique is afflicted with malaria. In light of these statistics, the illness of encephalitis malaria through a mosquito bite cannot be considered as an accident. It was neither unexpected nor unforeseen. It was not a peril insured against in the policy of accident insurance. Branch Manager, National Insurance Co. Ltd. v. Smt. Mousumi Bhattacharjee, AIR 2019 SC 1570.

Continuing Offence

Held: A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or 6 complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed.

The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all. Rupali Devi V. State of Uttar Pradesh 2019 (4) Supreme 225

PART – 2 (HIGH COURT)

Aadhaar:

Aadhaar (Targeted Delivery of Financial and other subsidies, benefits and Service) Act (18 of 2016) S. 9 – Evidence Act (1 of 1978) S. 101 – Aadhaar card proof of date of birth is as same recorded therein on basis of self declaration given by card holder – In case of dispute regarding date of birth, burden of proof lies on card holder

Aadhaar card is a document providing conclusive connection between the photograph of the Aadhaar card hold, his fingerprints and iris scan details, with the Aadhaar Number. Other information namely name, date of birth, gender and address as entered in the Aadhaar Card, is furnished by the Aadhaar applicant at the time of authentication/enrollment. Although, the regulations provide for the applicant to rely on a set of documents for giving information in regard to name, address and proof of date of birth, however, because the said information is merely given by the applicant, and is not authenticated by UIDAI at the time of authentication, the Aadhaar Card cannot be conclusive proof in regard to those entries. It thus follows that in case of dispute regarding correctness of date of birth etc., burden of proof lies with the resident/applicant/Aadhaar Card holder. In case a person relies on entries in Aadhaar Card in regard to address, date of birth etc., on the basis of the Aadhaar Card under the entries in those regards are conclusive proof of those facts. If question I these regards arises, the source of giving date of birth etc., are required to be verified in the process of investigation in criminal cases. Parvati Kumar v. State of U.P., 2019 (3) ALJ 518

Civil Procedure Code:

Adverse Possession – Meaning – A permissive possession is not an adverse possession and, therefore, cannot mature into title after expiry of any length of period – Once a title of plaintiff is denied by defendant, plea of adverse possession against such plaintiff is impermissible –Explained.

Adverse Possession – Pleading in context thereto – The pleadings are of utmost importance and anything if found missing in pleadings, it may be fatal to such plea of adverse possession – Explained.

The above exposition of law leads no manner of doubt that a permissive possession is not an adverse possession and, therefore, cannot mature into title after expiry of any length of period. Further, once a title of plaintiff is denied by defendant, plea of adverse possession against such plaintiff is impermissible. Hence, question-1 is answered against defendant-respoinent-2

that his possession was permissive and hence it could not have matured in a title.

Where a plea of adverse possession is taken, the pleadings are of utmost importance and anything, if found missing in pleadings, it may be fatal to such plea of adverse possession. Since mere long possession cannot satisfy the requirement of adverse possession, the person claiming it must prove as to how and when adverse possession commenced and whether fact of adverse possession was known to real owner. *R.N. Dawar V. Ganga Saran Dhama, AIR 1993 Del. 19*. In *Parwatabai V. Sona Bai, 1996(10) SCC 266*, it was stressed upon the Court that to establish the claim of adverse possession, one has to establish the exact date from which adverse possession started. The claim based on adverse possession has to be proved affirmatively by cogent evidence and presumptions and probabilities cannot be substituted for evidence. The plea of adverse possession is not always a legal plea. It is always based on facts which must be asserted, pleaded and proved. A person pleading adverse possession has no equities in his favour since he is trying to defeat the right of the true owner and, therefore, he has to specifically plead with sufficient clarity when his possession became adverse and the nature of such possession. Gaya Prasad V. Nathu Singh and others, 2019(2) ARC 100 (Alld.)

Charagah Land –Held, no Bhumidhari right on charagah land can accrue to any person on basis of any sanad or lease patta.

Public Utility Land- Land reserved for public utility- Held, has to be used for purpose of benefit of common villagers.

Gaon Sabha Land –State Land- Claim of adverse possession - Held, no adverse possession can be claimed over Gaon Sabha land or State land.

So far as land of the Gaon Sabha is concerned, be it recorded as Parti or a Charagah, no bhumidhari rights can accrue to any person on the basis of any alleged Sanad or Lease or Patta. The land reserved for public utility, has to be used for the purpose of benefit of common Villagers as had been held by the Hon'ble Supreme Court in the case of Hinchlal Tiwari v. Kamala Devi [2001(92) RD 689 (SC)] and thereafter in the case of Jagpal Singh v. State of Punjab [2011(113) RD 329 (SC)]. There can be no adverse possession claimed over the Gaon Sabha land or any land belonging to the State. Divyanand V. S.D.O., Sandeela and another, 2019(143) RD 167 (Alld.-L.B.)

Execution of Decree-Assistance of police for execution of decree- Direction to petitioner/ decree holder for deposit of expenses for securing police help-

Legality of –Court has power to seek police help for enforcement of its decree or order-Therefore, in absence of any specific legal provision- Enabling police to raise a Bill on Court for supply of police help to enforce Courts decree or order- Requiring decree holder to sustain expenses for police help-Would not be appropriate-Impugned order or Executing Court set aside-Directions issued.

The Court has power to seek police help for enforcement of its decree or order. Therefore, in absence of any specific legal provision enabling the police to raise a Bill on the Court for supply of police help to enforce Court's decree or order, requiring the decree holder to sustain the expenses for police help would not be appropriate because if, for helping the Court to enforce its decree or order, money is demanded by the police then a situation may arrive where no poor person would ever by able to have the fruits of a decree or order passed in his favour. Such a situation may result in failure of judicial system. Gopal and others vs. Amar Jeet Singh and others, 2019(143) RD 724(Alld.)

Will- Cancellation of –Suit for- Suit for cancellation of Will filed during lifetime of executants of Will-Held, not maintainable.

The suit for cancellation of the Will executed by Nand Kishore was filed for Prabhakar son of Vidya Shankar Pandey one of the remaining two sons of Nand Kishore, who had not one of the beneficiaries of the Will by his father.

The person aggrieved by the Will alone was competent to challenge the same. The suit for cancellation of the Will could have been filed by Vidya Shanker Pandey or his brother, who were not beneficiaries under the Will. The suit by Prabhakar, the son of Vidhya Shanker Pandey during his lifetime, *prima acie,* was not maintainable. Sarswati and others vs. Board of Revenue and others, 2019(143) RD 234(Alld.)

Sec. 10 – Substantial question of law – Dismissal of suit on ground that plaintiff have not proved his title – it is finding of fact – No substantial question of law arises – Second appeal liable to be dismissed

A new substantial question of law with regard to the fact "whether plaintiff has proved its title over property in dispute or not may be framed and decided but at the stage of hearing of appeal, finally, such a question cannot be added as a substantial question of law. Moreso, when this is a question of fact, in absence of any issue raised with regard to perversity of the findings recorded by LAC on the question of title, this question cannot be said to be the substantial question of law. Gaya Prasad v. Nathu Singh, 2019 (3) ALJ 658

Sec. 11 – Resjudcata – subsequente claim for payment of wages not barred by principle of resjudicata

As regards the plea of res-judicata with respect this Court has gone through the decision dated 30.03.2007 passed in T.P.W-1/06 under the Timely Payment of Wages Act, 1978 and what it finds is that the claim based on untimely payment of wages to the workman was declined only on the ground that there was a dispute with regard to existence of master and servant relation ship which was an Industrial Dispute but there was no adjudication of this dispute therein. The claim was rejected only on account of existence of the dispute meaning thereby unless and until this dispute was agitated and adjudicated upon by the appropriate forum, the proceedings under the Act, 1978 were not maintainable, therefore, the plea of res-judicata is clearly misconceived. In fact it is consequent to the said decision that the proceedings were initiated by the workmen under the Act, 1936 clearly disclosing the earlier proceedings. This plea is also, therefore, liable rejected. U.P. Power Corporation Ltd. v. Rajendra Kumar Srivastava, 2019 (2) ALJ 178

Sec.47- Execution proceeding- For execution of decree passed in suit for possession- Objection against on ground Trial Court had no jurisdiction to entertain and decide the suit- Objection rejected- Issue No. 8 and 9 were framed in respect of jurisdiction of Trial Court, Appellate Court also framed one issue regarding jurisdiction of the Trial Court and both Courts held Trial Court had jurisdiction to entertain and decide the suit –The Executing Court does not sit in appeal over the findings recorded by Trial Court and Appellate Court as the case may be- The Executing Court is not expected to decide the same issue again while executing the decree in objection filed under S.47, CPC –Rejection of objection proper.

From the judgment and decree passed by the trial Court, it is clear that issues No. 8 and 9 were framed in respect of the jurisdiction of the trial Court. The appellate Court had also framed one issue regarding the jurisdiction of the trial Court. Both the Courts below have ruled against the defendant/ petitioner and had held that the trial Court had jurisdiction to entertain and decide the suit. The executing Court does not sit in appeal over the findings recorded by the trial Court or the appellate Court as the case may be. The executing Court cannot go behind the decree when the issue was specifically framed regarding the jurisdiction and it got decided against the defendant. The defendant cannot be permitted to take the very same ground in execution proceedings by filing an application under Section 47 C.P.C. to contend that the trial Court did not have jurisdiction to entertain the suit and, therefore, the decree passed by the trial Court was without jurisdiction and the same cannot be executed. After the issue was framed and the parties lead their evidence and argued the matter and got decided by the trial Court and the first appellate

Court, the executing Court is not expected to decide the same issue again while executing the decree in objection filed under Section 47 C.P.C. Santosh Kumari V. Prem Narain Verma and others, 2019(2) ARC 420 : 2019 (2) ALJ 623 (Alld.- L.B.)

Sec.100 – Suit for mandatory injunction directing Insurance Co. to pay sum due under Insurance policy on death of plaintiff's husband- Defendant took plea claim repudiated on ground cheque of first instalment of premium tendered by plaintiff's late husband returned/dishonoured by banker, hence no valid policy come into existence – Suit decreed by both Courts below – Sustainability of –Subsequent payment of premium does not make deficiency good arising on account of dishonouring of payment of first premium and, therefore, default on the part of Policy Holder writ large and subsequent acceptance of premium cannot remove the said defect – No amount can be claimed by legal representatives of deceased after death in respect to said policy – Decreetal of suit improper, hence set aside.

Even subsequent payment of premium does not make deficiency good arising on account of dishonouring of payment of first premium and therefore, default on the part of Policy Holder is writ large and subsequent acceptance of premium, cannot remove the said defect. L.I.C. V. Smt. Shakuntla Devi, 2019(2) ARC 216 (Alld.)

O.1, R.3 – Houses and Rents – Impleadment application – On behalf of third party to be impeaded as defendant in suit stating they are exclusive owner and landlord of the shop on basis of registered sale-deed – Impleadement allowed – In case third parties are permitted to be brought on record, then the Judge small cause would be called upon to decide title dispute between plaintiff and third parties, which would be wholly beyond its jurisdiction – Impleadment improper, hence set aside.

The third parties claimed that plaintiff has no title to the suit property nor is landlord nor has any right to maintain the suit. It is their specific case that on basis of previous litigation, Prabhat Kumar was exclusive owner of the suit property and accordingly, on basis of sale deed obtained from him, they claim to be sole owner and landlord of the shop in dispute. They don't admit the plaintiff to be co-owner and co-landlord. In case the third parties are permitted to be brought on record, then the Judge Small Causes would be called upon to decide title dispute between the plaintiff and third parties, which would be wholly beyond its jurisdiction.

In such view of the matter, this Court is of the considered opinion that the impugned order suffers from manifest error of law. The trial Court has

acted with material irregularity in exercise of its jurisdiction in permitting impleadment of third parties claiming title hostile to the plaintiff, in a suit filed before Judge Small Causes Court, based on relationship of landlord and tenant. Accordingly, the impugned order is set aside. The petition is allowed. However, it is left open to the third parties to take such other legal proceedings to protect their interest, as may be advised. Deepak Kumar vs. Upendra Kumar and 4 others, 2019(2) ARC 143(Alld.)

O. 6, R. 17 – Amendment in pleadings – At belated stage – rejection – rejection of application seeking amendment at such belated stage proper.

As noticed, the averment and proof on readiness and willingness to perform his part of the contract has been the threshold requirement for a plaintiff who seeks the relief of specific performance. The principle that the requirement of such averment had not been a matter of form, applied equally to the proposition for amendment at the late stage whereby, the plaintiff only attempted to somehow improve upon the form of the plaint and insert only the phraseology of his readiness and willingness. In the present case, the plaintiff-appellant had failed to aver and prove his readiness and willingness to perform his part of the contract. The Trial Court made a rather assumptive observation that he had proved such readiness and willingness. Thereafter, the plaintiff sought leave to amend the plaint only when the ground to that effect was taken in the first appeal by the defendant. In the facts and circumstances of the present case, in our view, it was too late in the day for the plaintiff to fill up such a lacuna in his case only at the appellate stage. In other words, the late attempt to improve upon the pleadings of the plaint at the appellate stage was only an exercise in futility in the present case. Mehboob-Ur-Rehman (Dead) through Lrs. v. Ahsanul Ghani, 2019 (3) ALJ 52

O. 7, R. 11 –Rejection of plaint-Application for –Dismissed-Affirmed on revision- Legality of- Cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose the material facts are required to be stated but not the evidence except in certain cases- Exceptions enumerated- So long as the plaint discloses some cause of action which requires determination by the Court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint- As per finding of the Revisional Court plaintiff has got cause of action- Finding of Revisional Court warrants no interference- Petitions dismissed.

Yudhishthir Singh V. District Judge, Meerut,2019(143) RD 149(Alld.)

O. 9, R.13-Application for setting aside ex parte decree-Application rejected-holding summons in the suit personally served upon the revisionist/tenant, but he did not appear to contest the proceeding-Justification of-Restoration application contains only a vague assertion to effect that plaintiff/opposite party succeeded in obtaining an ex parte decree surreptitiously without the revisionist coming to know of the proceedings-It does not specifically states that the signatures over the summons were not of the revisionist-It was burden of revisionist to lead positive evidence to prove that the summon does not bear his signature like, producing report handwriting expert comparing signature on the summon with his admitted signature-Rejection of application proper.

Surendra Kumar Gupta V. Kailash Chandra Singhal, 2019(1) ARC 886 : 2019(143) RD 155 (Alld.)

O. 22, R. 2 and 5- Deletion of name of plaintiff No. 2-On her death-Application for-Application opposed by defendant/petitioner on ground the Will set up by plaintiff No. 1 forged document and after death of plaintiff No. 2 her two daughters liable to be substituted in her place-Application allowed-Son of deceased plaintiff No. 2 already on record as plaintiff No. 1-Even in absence of Will, being the natural heir, he sufficiently represented her estate-No necessary to examine validity of the Will as it will have no effect on merit of the suit-Deletion rightly allowed.

Tulsi Ram Chaudhary V. Vinod Bajoria, 2019(1)ARC 907(Alld.)

O.22, R.10 – Application for transposing as plaintiff – By transferees of original plaintiff who executed sale-deed in favour of transferees – Application allowed – Transfer of interest of plaintiff in suit property though may be hit by S. 52 of T.P. Act, but it would not make the transfer of alleged plaintiff in the suit property as void – Object of O. XXII, R. 10, CPC to avoid any complications on account of absence of the plaintiff/ transferor and further to avoid multiplicity of the proceeding – Allowing of application of transferee to be substituted as representative of original plaintiff proper.

There is no doubt about the fact that the Court has always a discretion to make a transferee pendent lite a party in the suit, in case, it finds that he or she is necessary or proper party in the suit i.e. his presence is required for effective disposal of the suit. There is no doubt about the legal position that the transferee pendent *lite* is only a representative of the transferor from whom he has acquired interest in the suit property. The object of Order 22 Rule 10 CPC to avoid any complications on account of absence of the plaintiff/transferer and further to avoid multiplicity of the proceeding. The

words used in Order 22 Rule 10 CPC i.e. “with the leave of Court” can conveniently be construed to mean that in case, the Court finds the transferee a proper party to the suit, it can proceed to allow the application under Order 22 Rule 10 for substitution of the applicant in that capacity. Jagdish vs. Smt. Munni Devi and 20 others, 2019(2) ARC 203 (Alld.)

O. 32, Rr.3, 4 and 15-Application for declaration ‘X’ to be guardian of plaintiff and to be appointed as his next friend in the suit-Objection against plaintiff not a person of unsound mind-Application allowed-No judicial enquiry was held to come to conclusion plaintiff was of unsound mind-Since such an enquiry necessary, which was not done, the impugned orders set aside-Matter remanded to trial Court to consider it afresh-Plaintiff can be got examined by a psychiatrist or a psychoanalyst only to reach a definite conclusion by trial Court with regard to the plea of unsoundness of plaintiff.

Ram Prakash Yadav and another V. Sitaram, 2019(1) ARC 900 (Alld.- L.B.)

O. 32, R. 15 – Suit by next friend of unsound mind – suit by next friend of unsound mind maintainable

The appointment of next friend of a person of unsound mind is to protect the interest of such person. It is the duty of the court to take care of the welfare of a person who is minor or of unsound mind so that his or her interest is not prejudicially affected. The petitioner, who was defendant in the suit, has no right to contend that Baljati Devi was not proper person to act as next friend, particularly when the persons whom the petitioner contends should have acted as next friend have chosen to adopt the plaint case in its entirety and pursued the proceedings to their logical conclusion.

Appointment of testamentary guardian by father will not deprive the mother of her right to act as natural guardian, till she remained alive. In fact, in relation to a minor, the codified law under Section 9(2) of the Act quoted above, specifically preserves such power of the mother, till she is alive. This court fully concurs with the view taken in this regard by the courts below. Siyaram v. Ashok Kumar, 2019 (3) ALJ 234

<u>Constitution of India</u>:

Art. 14 – Equality before law – principle – cannot be enforce in negative

The law is well settled that equality claimed under Article 14 of the Constitution of India is not a negative equality. In other words, one illegality

cannot justify or become the basis for committing another illegality. If the CBSE is permitting the institutions which are not satisfying the affiliation bye-laws to function, it would be a matter of concern. The Court will leave it there. It is for the officials of the CBSE to respond to the calls of their collective conscience. Apple Grove School v. Union of India, 2019 (2) ALJ 769

Art. 16 – Promotion – Rejection of claim – Rejection of – representation does not give rise to new cause of action

The plea of repeated representations falling on deaf ears is not sufficient to explain the delay in approaching the Court. The rejection of the representation pursuant to the direction of the Court does not give rise to a fresh cause of action. Vikram Singh v. State of U.P., 2019 (2) ALJ 31

Arts. 16, 14 – Recovery – natural justice – recovery of amount from Anganwadi worker pursuant to issuance of show cause notice – order or recovery liable to be quashed

The petitioner was appointed after due selection on the post of Anganwadi Karyakatri, Village- Padampur, Post- Parsadepur, Block- Chatoh, District- Raibareli. It appears that on account of some malice the complaints were made against the petitioner. One of such complaint was inquired and the Sub-Divisional Officer, Salon, Raibareli has submitted his report dated 22.10.2007 holding that the complaint has been made with malice.

In the meantime, an explanation was called from the petitioner by the opposite party no.5 by means of letter dated 11.04.2007 and the petitioner had submitted detailed reply alongwith the documents, on which, it appears that an inquiry was conducted and a show cause notice was issued to the petitioner on 27.11.2007 calling her explanation. In the meantime another complaint was made. The petitioner had submitted her explanation alongwith the documents and affidavits by means of letter dated 05.12.2007, but no decision was taken thereon. In the meantime the report dated 20.08.2007 was submitted by the opposite party no.4 and without affording any opportunity to the petitioner on the same and holding any inquiry, the order of recovery dated 29.02.2008 was passed by the opposite party no.5 in violation of principles of natural justice.

It is settled principle of law that once the complaint was made and explanation was called from the petitioner any decision could have been taken only after considering the explanation of the petitioner. It is also to be noted that the recommendation was made by the letter dated 20.02.2008 for removal of the petitioner from service but no decision has been taken from

the competent authority as nothing has been brought on record. The order of recovery has been passed without affording any opportunity to the petitioner on the report dated 20.02.2008 and also without considering the explanation and documents submitted by the petitioner on 05.12.2007. Therefore the impugned order dated 29.02.2008 is not sustainable and is liable to be quashed. Chandar Kali v. State of U.P., 2019 (3) ALJ 442

Contempt of Court:

Sec. 12 – Disobedience of order of court

Willful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct."

It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. Ajay Kumar Singh v. Ranjeet Singh, 2019 (20 ALJ 785

Court Fees Act:

Ss.7(iv-A)(1) and 7(iv-A)(2)- Deposit of Court fee-Suit for cancellation of sale deed and permanent injunction by revisionist/ Plaintiffs-Learned Court below asked to deposit Court fee according to the valuation of property- Hence the instant revision-Held, sale deed was challenged on the grounds that the sale deed was executed on a forged power of attorney –Also urged that power of attorney was not registered and that no power to purchase the property had been given by defendant No. 2 to defendant No. 3 – Only upon first ground the Court fee should have been paid under section 7(iv-A)(2) and not under other two grounds- Revisionist/ Plaintiffs granted one month time to make good the deficiency- Civil Revision disposed of.

What is relevant for the purposes of assessment of the Court fees are averments in the plaint and not what the ultimate findings in the case would be. Therefore, the second ground in order of the Court below, *i.e.*, whether the document is signed by the parties or not is a issue to be decided on the basis of evidence and ultimate finding, is contrary to the law settled by the Supreme Court and also cannot stand.

The question before this Court, therefore, remains as to whether on the basis of averments made in the plaint, the Court fees is to be paid under section 7(iv-A)(1) or (2)?

There are three grounds of challenge raised in paragraph-11 and 13 of the plaint. The first is that a sale-deed is executed on the basis of power of attorney which is *farzi* and fictitious document and was not executed by the plaintiffs. Had that been the sole ground, the Court fee would have been required to be paid under sub-clause (2) of section 7(iv-A), as plaintiffs in the said ground are claiming that they are not party to the document. Further in paragraph-11, another ground is also taken, that, the alleged power of attorney is also not a registered document and as per settled principle of law no transfer of immovable property can be made without registered power of attorney. Same is a ground in which revisionists-plaintiffs are taking an alternative plea, that, in case it is found that they have signed the document, the said document cannot stand in Court of law, the same having been executed on the basis of power of attorney which was not registered. Further, in paragraph-13 of the plaint, plaintiffs have taken another ground that the sale is void because no specific power to purchase the property has been given by defendant No.2 to defendant No. 3. Therefore, plaintiffs have taken alternative pleas which are not based only on denial of the execution of the document. Therefore, plaintiffs are liable to pay Court fee under sub-clause (1) of the section 7(iv-A) of the Court Fees Act. Anil Jaiswal and others V. Rakesh Jaiswal and others, 2019(143) RD 105 (Alld.-L.B.)

<u>Criminal Jurisprudence</u>:

It is trite law and established principle of criminal jurisprudence that prosecution would have to sand on its own leg and would have to establish its charge against accused beyond reasonable doubt. In this case, the charges have not been proved beyond reasonable doubt. Ram Babu v. State of U.P., 2019 (107) ACC 801 (Alld)

Criminal Procedure Code:

S. 125 – Maintenance

The point for consideration by the Court would be whether, in view of the compromise application dated 10 November 2016 and the consequential orders passed by the court below, both on 12 November 2016, in Marriage Petition No.35 of 2016 and Case No.18 of 2015, the order for maintenance dated 18 June 2015 passed in Case No.194 of 2013 continues to remain in existence. A perusal of the compromise application dated 10 November 2016 itself reveals that though the parties had expressed their desire to get the order dated 18 June 2015 cancelled, but they had prayed for disposal of the case. On 12 November 2016, the joint application filed in Marriage Petition No.35 of 2016 was accepted by the court below conditionally. Further, by the order dated 12 November 2016 passed in Case No.18 of 2015, the case filed by the opposite party no.2 under Section 128 Cr.P.c. was disposed of on the ground that the opposite party no.2 did not wish to press the same. In none of these two orders, both dated 12 November 2016, is there any observation or direction that the order of maintenance dated 18 June 2015 passed in Case No.194 of 2013 was cancelled. An order of maintenance made under Section 125 Cr.P.C. can be cancelled or modified on the grounds mentioned in sub-section (5) of Section 125 or sub-sections (2) and (3) of Section 127 Cr.P.C. There is no averment in the application or in the affidavit filed in support thereof that any of the grounds mentioned in sub-section (5) of Section 125 or in sub-sections (2) and (3) of Section 127 Cr.P.C. existed that could merit the cancellation of the aforesaid order of maintenance dated 18 June 2015. The relevant provisions of Sections 125 and 127 are quoted below:

"125. Order for maintenance of wives, children and parents:The point for consideration by the Court would be whether, in view of the compromise application dated 10 November 2016 and the consequential orders passed by the court below, both on 12 November 2016, in Marriage Petition No.35 of 2016 and Case No.18 of 2015, the order for maintenance dated 18 June 2015 passed in Case No.194 of 2013 continues to remain in existence.

A perusal of the compromise application dated 10 November 2016 itself reveals that though the parties had expressed their desire to get the order dated 18 June 2015 cancelled, but they had prayed for disposal of the case. On 12 November 2016, the joint application filed in Marriage Petition No.35 of 2016 was accepted by the court below conditionally. Further, by the order dated 12 November 2016 passed in Case No.18 of 2015, the case filed by the opposite party no.2 under Section 128 Cr.P.c. was disposed of on the ground that the opposite party no.2 did not wish to press the same. In none of these two orders, both dated 12 November 2016, is there any observation or direction that the order of maintenance dated 18 June 2015 passed in Case No.194 of 2013 was cancelled. An order of maintenance made under Section 125 Cr.P.C. can be cancelled or modified on the grounds mentioned in sub-section (5) of Section 125 or sub-sections (2) and (3) of Section 127 Cr.P.C. There is no averment in the application or in the affidavit filed in support thereof that any of the grounds mentioned in sub-section (5) of Section 125 or in sub-sections (2) and (3) of Section 127 Cr.P.C. existed that could merit the cancellation of the aforesaid order of maintenance dated 18 June 2015. The relevant provisions of Sections 125 and 127 are quoted below:

"125. Order for maintenance of wives, children and parents:

....

....

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

127. Alteration in allowance:

....

....

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,-

(i) in the case where such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband by the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be, after her divorce, cancel the order from the date thereof.

Until the original order for maintenance is modified or cancelled by a higher court or is varied or vacated in terms of Section 125(4) or (5) or Section 127 Cr.P.C., its validity survives and is enforceable and no plea that there has been cohabitation in the interregnum or that there has been a compromise between the parties can hold good as a valid defence. In this case before the Supreme Court also, the wife had resumed cohabitation with her husband which was followed by an application by the wife praying that her application for maintenance be dismissed and the execution proceedings for recovery of arrears of maintenance be withdrawn. The wife was betrayed because her allegation was that her husband was keeping a mistress making it impossible for her to live in the conjugal home and, therefore, she proceeded to enforce the order of maintenance. Ran Vijay Singh v. State of U.P., 2019 (107) ACC 783 (Flld.)

S. 154

FIR-Delay in lodging- Effect-Delay of 22 days in lodging FIR- No plausible explanation by prosecution for delay –Moreover in FIR informant stating that missing report was lodged by him and names of accused persons and informant- FIR found to be lodged on account of suspicion, fatal to prosecution. -State of U.P. v. Ratan Chauhan and others 2019(3)ALJ 397

Sec. 226

"In trials before a Court of Session the prosecution "shall be conducted by a Public Prosecutor".Section 226 of the Code of Criminal Procedure, 1973 enjoins on him to open up his case by describing the charge brought against the accused. He has to state what evidence he proposes to adduce for proving the guilt of the accused. ......If that version is not in support of the prosecution case it would be unreasonable to insist on the Public Prosecutor to examine those persons as witnesses for prosecution.

When the case reaches the stage envisages in Section 231 of the Code the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear form the said section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the presence cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone so that the time of the Court can be saved from repetitious depositions on the same factual aspects. ......This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload. Time has come to make every effort possible to lessen the workload, particularly those courts crammed with cases, but without impairing the cause of justice. ......It is open to the defence to cite him and examine him as a defence witness........"

The prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined witnesses, if he so desires, in his defence. It is

the discretion of the prosecutor to tender the witnesses to prove the case of the prosecution and "the court will not interfere with the exercise of that discretion unless, perhaps, it can be shown that the prosecution has been influenced by some oblique motive." In an extra- ordinary situation, if the court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. Undoubtedly, the public prosecutor must not take the liberty to "pick and choose" his witnesses, as he must be fair to the court, and therefore, to the truth. In a given case, the Court can always examine a witness as a court witness, if it is so warranted in the interests of justice. In fact, the evidence of the witnesses, must be tested on the touchstone of reliability, credibility and trustworthiness. If the court finds the same to be untruthful, there is no legal bar for it to discard the same. Wasid Ali v. State of U.P., 2019 (107) ACC 375 (Alld.)

Sec. 233 (3) – Evidence Act – S. 65-B – Penal Code – S. 396 – Admissibility of electronic records – Secondary evidence pertaining to video CD not accompanied by certificate in terms of S. 65B, not admissible

If it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied: (a) There must be a certificate which identifies the electronic record containing the statement; (b) The certificate must describe the manner in which the electronic record was produced; (c) The certificate must furnish the particulars of the device involved in the production of that record; (d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device. It has been further held in Anvar P.V. (Supra) that the evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Special law will always prevail over the general law.

An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the

document, without which, the secondary evidence pertaining to that electronic record, is inadmissible. Ramdhari v. State of U.P., 2019 (2) ALJ 779

S. 304-B

Held - The Court while interpreting the expression "may" occurring in Section 304-B IPC held that it is not mandatory for the Court in every case to award life imprisonment to the accused once he is found guilty of offence under Section 304-B. It was held that the Court could award sentence in exercise of its discretion between seven years to life imprisonment depending upon the facts of each case. It was held that in no case it could be less than seven years and that extreme punishment of life term should be awarded in "rare cases" but not in every case. Ahsan V. State of U.P., 2019 (107) ACC 68 (Alld.)

Sec. 319,

A person can be added as an accused invoking the provisions not only for the same offence for which the accused is tried but for 'any offence'' but that offence shall be such that in respect of which all the accused could be tried together . In present case, in the dying declaration, deceased has only mentioned the name of accused but she has not mentioned the names of others. In his complaint lodged before the police on the next day father of deceased has stated that his daughter told him that accused and all other people set her on fire after pouring kerosene. Complainant has neither stated the names of the appellants nor attributed any overt act. Likewise, in their evidence before the court, Complainant and witness have only stated that deceased told them that accused and all others have set fire on deceased. Neither the complaint nor the role played by the appellants in the commission of offence and which accused has committed what offence. Under such circumstances, it cannot be said that the prosecution has shown prima facie material for summoning the accused for the offence punishable under Section 302, IPC. Further statement of complainant both in the complaint and his evidence before the court is very general stating that he had given sufficient dowry to his daughter according to his status and that the groom side were not satisfied with the dowry and that they used to demand dowry each and every time. Insofar as the demand of dowry and the dowry harassment, there are no particulars given as to the time of demand and what was the nature of demand. The averments in the complaint and the evidence is vague and no specific demand is attributed to any of the appellants. In such circumstances, there is no justification for summoning the appellants even under Section 498-

A, IPC and under Sections 3 and 4 of Dowry Prohibition Act. Sunil Kumar Gupta and Others v. State of Uttar Pradesh and Others with Khusbu Gupta v. State of Uttar Pradesh and Others 2019(3)ALJ 48

Sec. 482

Recently, this Court again had an occasion to examine the ambit and scope of Section 482 Cr.P.C. in Rukmini Narvekar Vs. Vijaya Satardekar & ors., (2008) 14 SCC 1, wherein in the main order it was observed, that the width of the powers of the High Court under Section 482 Cr.P.C. and under Article 226 of the Constitution of India, was unlimited. In the instant judgment, this Court held that the High Court could make such orders as may be necessary to prevent abuse of the process of any court, or otherwise to secure the ends of justice. In a concurring separate order passed in the same case, it was additionally observed that under Section 482 Cr.P.C., the High Court was free to consider even material that may be produced on behalf of the accused, to arrive at a decision whether the charge as framed could be maintained. The aforesaid parameters shall be kept in mind while we examine whether the High Court ought to have exercised its inherent jurisdiction under Section 482 Cr.P.C. in the facts and circumstances of this case.

Held - The width of the powers of the High Court under Section 482 Cr.P.C. and under Article 226 of the Constitution of India, was unlimited. In the instant judgment, this Court held that the High Court could make such orders as may be necessary to prevent abuse of the process of any court, or otherwise to secure the ends of justice. In a concurring separate order passed in the same case, it was additionally observed that under Section 482 Cr.P.C., the High Court was free to consider even material that may be produced on behalf of the accused, to arrive at a decision whether the charge as framed could be maintained. The aforesaid parameters shall be kept in mind while we examine whether the High Court ought to have exercised its inherent jurisdiction under Section 482 Cr.P.C.

The power vested in the High Court under Section 482 Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as it would negate the

prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 Cr.P.C. the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice. Manoj Kumar Jauhari v. State of U.P., 2019 (107) ACC 411 (Alld)

Criminal Trial:

Held - Investigation is conducted under Chapter XII Cr.P.C., starting on registration of First Information Report under Section 154 Cr.P.C., and is concluded at the time of filing police report as provided under Section 173 Cr.P.C. None of the provisions contained therein even indicate or suggest that public prosecutor/ attorney of District or the department of prosecution is involved. The investigation is required to be conducted by the investigating officer, under supervision of supervisory senior police functionaries.

The scheme of the Cr.P.C. is to the effect that the investigation has to be conducted under Chapter XII of Criminal

Procedure Code. The role of the prosecutor comes into play only after police report is furnished in the court. In such circumstances, the Public Prosecutor(s)/Government Advocate(s)/Officer(s) from prosecution department have no role to play in enforcing their advice/decision on the investigating officer. The police report prepared after investigation is subject to scrutiny of only supervisory police functionaries, and none else.

In this regard, we hereby record and hold that the investigating officer is not required to follow the opinion of such Government Advocate/Public Prosecutor. For this view, we are supported by judgment rendered by the Hon'ble Supreme Court of India in R. Sarala v. T.S. Velu & ors., AIR 2000 SC 1731. The following (relevant portion) has been held while referring to earlier judgments rendered by Hon'ble Supreme Court of India:-

"10. After dealing with various aspects of the investigation from Section 154 to Section 168 of the Code, the statute says in the next two sections regarding the subsequent step. Section 169 of the Code enjoins on the officer in charge of the police station concerned to release the accused from custody on executing a bond if it appears to him that "there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate". Section 170 of the Code directs that if upon investigation "it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report".

Section 173(1) casts an obligation for completing the investigation without unnecessary delay and sub-section (2) enjoins on the officer in charge of the police station to forward to the Magistrate a report in the form prescribed by the State Government, on completion of such investigation. The aforesaid power of the officer in charge of the police station is subjected only to the supervision of superior police officers in rank as envisaged in Section 36 of the Code. There is no stage during which the investigating officer is legally obliged to take the opinion of a Public Prosecutor or any authority, except the aforesaid superior police officer in rank.

11. There is no material difference regarding general powers of investigation by the police as between the present Code and the corresponding provisions contained in Chapter XIV of the erstwhile Code of Criminal Procedure, 1898.

"The scheme of the Code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in Section 168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear that the final step in the investigation, viz., the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under Section 551."

12. A Public Prosecutor is appointed, as indicated in Section 24 of the Code, for conducting any prosecution, appeal or other proceedings in the court. He has also the power to withdraw any case from the prosecution with the consent of the court. He is the officer of the court. Thus the Public Prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not in the scheme of the Code for supporting or sponsoring any combined operation between the investigating officer and the Public Prosecutor for filing the report in the court. Shivani Verma v. State of U.P., 2019 (107) ACC 820 (Alld)

The fate of the criminal trial depends upon the truthfulness or otherwise all the witnesses and, therefore, it is a paramount importance to arrive at the truth, its veracity should be judged and for that purpose cross-examination is an acid test. It tests the truthfulness of the statement made by a witness on oath in examination-in-chief.

When a crime is committed, the assessment of guilt and the award of punishment or, alternatively, the discharge or acquittal

of the accused are part of the criminal justice process administered by the courts of the land.

Criminal Procedure Code and Indian Penal Code are supplementary to each other and they are in support to each other as has been propounded in Kamalapati Trivedi v. State of West Bengal (1980) 2 SCC 91 at Para 45 which reads as under:

"It may be noted that the Code and the Indian Penal Code are the main statutes operating in India in relation to the dispensation of criminal justice and may in a sense be regarded as supplementary to each other,the Code forming the procedural link of the same chain of which the Indian Penal Code constitutes the link of substantive law." Jhhau v. State, 2019 (107) ACC 416 (Alld.)

Evidence Act:

Sec. 3 – Testimony of single witness

Held - It is true that conviction can be based upon the testimony of single witness, if it is based upon the conduct of relevance and in that circumstances number of witness is not important but the quality of the evidence is important, which has been propounded consistently. With the apparent emphasis that evidence be weighted and will not be counted. The conclusive test being whether it has 16 rings of truth and it is cogent, credible, trustworthy or otherwise. Wasid Ali v. State of U.P., 2019 (107) ACC 375 (Alld.)

Sec. 106 – Scope of

The prosecution has to establish guilt of the accused filtered of all reasonable prognosis favourable to the accused to secure conviction and it is never relieved of this initial duty. It is only when it has discharged its initial burden of proof that the defence of the accused has to be looked into. At this juncture, we advert to the most contentious contention mooted before us that Section 106 of the Evidence Act can be applied to fasten guilt of the appellant even if prosecution has failed in its initial burden. From what we have noted above, it is sufficiently born out that even in cases which are covered under Section 106 of Evidence Act, the same principle applies which applies in cases of eye witness account for establishing guilt of the accused. Section 106 has to

be read in conjunction with and not in derogation of Section 101 of Evidence Act. Section 106 of the Evidence Act does not relieve prosecution of its primary and foremost duty to establish accused guilt beyond all reasonable doubt independent of weaknesses of the defence. It is only when prosecution, for well perceptible and acceptable reasons, is unable to lead evidence because of circumstances beyond its control including the reason that the fact required to be proved was "within the special knowledge of the accused alone" and prosecution could not have known it by due care and diligence, that Section 106 can be resorted to by shifting burden on the accused to divulge that fact which is "in his special knowledge" and if accused fails to offer any reasonable explanation to satiate judicial inquisitive scrutiny, he is liable to be punished. But even in such a situation prosecution, has firstly to establish entire chain of circumstances woven together in a conglomerated whole unerringly indicating that it was accused alone who is the perpetrator of the crime and the manner of happening of the incident is known to him alone and is within his special knowledge. It is then that the burden shift from the prosecution to the accused to explain how and in what manner offence was committed. Section 106 of the Evidence Act can not be utilized to make up for the prosecution's inability to establish its case by leading cogent and reliable evidences, especially when prosecution could have known the crime by due diligence and care. Aid of Section 106 of the Evidence Act can be had only in cases where prosecution could not produce evidence regarding commission of crime but brings all other incriminating circumstances and sufficient material on record to prima facie probablise its case against the accused and no plausible explanation is forthcoming from the accused regarding fact within his special knowledge about the incident. That section lays down only this much that if a fact is in the "special knowledge of a person" and other side could not have due knowledge of it in spite of due diligence and care then burden of proving that fact lies on that person in whose special knowledge it is. Section 106 of the Evidence Act has no application if the fact is in the knowledge of the prosecution or it could have gained its knowledge with due care and diligence.

The general rule that in a criminal case the burden of proof is on the prosecution and S. 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that it means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not." Manik Chandra v. State of U.P., 2019 (107) ACC 402 (Alld.)

<u>Hindu Marriage Act</u>:

Sec. 13 (ia) – Divorce – petition by husband – ground of adultery by wife – plea of adultery cannot be established merely on suspicion

So far as adultery is concerned, it was alleged that the respondent used to visit to her brother-in-law which he did not like and many times prevented her. In his affidavit, the appellant has stated that the respondent left him finally in October, 2011 and shifted to her brother-in-law. But in cross-examination, he has clearly stated that he and his wife lived together in Pune till January, 2012 and thereafter, he shifted to his friend. He has further stated in his affidavit that his wife Pratibha used to visit her brother-in-law at least 8 times in 4-5 months. Admittedly, her sister and her brother-in-law lived in Pune and both doing job in private company. So, her visit to her sister is very natural being so close relative and when living in Pune away from their native place Kanpur, UP. Moreover, the frequency of visit is also not much to create any suspicion in his mind particularly when he has stated that he also used to go with her to her brother-in-law. In such circumstances, the appellant appears to be over- suspicious husband and his plea of adultery is not established.

The Rule further provides that the court can grant exemption if such person is unknown, dead, the respondent is prostitute or for any other reason the court considers sufficient. But, Neeraj has not been added him as a party in the petition, nor any exemption has been taken, and on this account also, his plea of adultery is bound to fail. Pradeep Kumar Jha v. Pratibha Jha, 2019 (3) ALJ 250

Hindu Undivided Family:

Concept of property held thereunder- Property in name of karta of undivided Hindu family- Acquirement of property otherwise- Claim of- Onus to prove- Held, onus lies on person claiming acquirement of property from individual resource- If he failed to discharge his onus- Presumption lies in favour of joint family property.

If the family was joint headed by a karta and land revenue was also being paid in respect to land acquired in the name of certain individual members of joint family from the joint family funds, onus lies upon persons who claim that property was acquired from individual resources and not from joint family fund otherwise the property acquired would constitute a joint family corpus and if not proved otherwise, presumption would lie in favour of joint family property. Dukkhu V. Deputy Director of Consolidation, Varanasi and others, 2019(143) RD 514 (Alld.)

Indian Penal Code:

Sec. 201

Held - It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. The burden of proving its case beyond all reasonable doubt lies on the prosecution and it never shifts. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

It is well-settled in law that no person can be convicted merely on the basis of suspicion, no matter howsoever strong it may be. Yogesh Kumar v. State of U.P., 2019 (107) ACC 384 (Alld)

Sec. 302- Murder- Appreciation of evidence- Accused husband administered poison to his wife, on account of matrimonial and property related dispute- Medical evidence proved presence of insecticide in viscera of deceased and cause of death to be poisoning- Accused proved to be liquor addict and alienating his properties for money- Civil suit filed by wife, prohibited accused from further selling residential house and out of that animosity, he tortured

wife- daughter of accused saw him mix something in daily medicine of wife and shaking it before handing over to wife- Husband unable to provide explanation for his actions as narrated by his daughter- Conviction, proper . Lalji Gupta v. State of U.P. 2019(2)ALJ 628

Ss. 302 & 34 – Award of sentence

Held - The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual cases.

It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of offence and the manner in which it was executed or committed. It is obligation of court to constantly remind itself that right of victim, and be it said, on certain occasions person aggrieved as well as society at large can be victims, never be marginalised. The measure of punishment should be proportionate to gravity of offence. Object of sentencing should be to protect society and to deter the criminal in achieving avowed object of law. Further, it is expected that courts would operate the sentencing system so as to impose such sentence which reflects conscience of society and sentencing process has to be stern where it should be. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against individual victim but also against society to which criminal and victim belong. Punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality which the crime has been perpetrated, enormity of crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. Ram Subhag v. State of U.P., 2019 (107) ACC 393 (Alld)

Sec. 307- Attempt to murder- Extrajudicial confession- Reliability- witnesses to extrajudicial confession were in same college- Main witness in respect of extrajudicial confession not examined- Existence of enmity between parties- Conviction cannot be based on alleged extrajudicial confession . -Heera v. State of U.P. 2019(2)ALJ 743

Sec. 364- Evidence Act (1 of 1872), S. 3- Abduction for murder – Proof- Material discrepancies in FIR and testimonies of informant and other eye-witnesses regarding who were accompanied by abductee while he was going to play cricket –Belated lodging of FIR creating doubt- Failure of prosecution to prove its case beyond reasonable doubt-Acquittal, proper.

State of U.P. v. Ratan Chauhan and others 2019(3)ALJ 397

Sec. 376 – Conviction under

It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of offence and the manner in which it was executed or committed. It is obligation of Court to constantly remind itself that right of victim, and be it said, on certain occasions persons aggrieved as well as society at large can be victims, never be marginalised. The measure of punishment should be proportionate to gravity of offence. Object of sentencing should be to protect society and to deter the criminal in achieving avowed object of law. Further, it is expected that courts would operate the sentencing system so as to impose such sentence which reflects conscience of society and sentencing process has to be stern where it should be. The Court will be failing in its duty if appropriate punishment is not awarded for a crime, which has been committed not only against individual victim but also against society to which criminal and victim belong. 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 the crime has been perpetrated, enormity of crime warranting public abhorrence and it should 'respond to society's cry for justice against the criminal'. Ram Shanker Pandey v. State of U.P., 2019 (107) ACC 789 (Alld.)

Motor Vehicles Act:

Sec. 147 – Liability of insurer – Insurer disputed involvement of tractor and driver driving it – no evidence produced b insurer to rebut same – insurer held liable to compensate claimants

The accident took place from the Tractor No.UP-44-A-9784. Since the incident is not disputed and moreover the owner of the Tractor also by filing his written statement made the aforesaid statement regarding the Tractor No.UP-44-A-9784 being involved and he had given the name of his driver along with the driving licence, a copy of the driving licence and the insurance policy, there is no contradictory material to indicate that the aforesaid statements are not correct or could not be believed.

On the other hand, there was no evidence which was led by the Insurance Company to substantiate its pleadings and, therefore, this Court finds that the Tribunal has correctly formed an opinion on the basis of oral and documentary evidence and, therefore, there is no error found in the findings, which are based on evidence. Oriental Insurance Co. Ltd. v. Hausla Prasad, 2019 (3) ALJ438

Negotiable Instrument Act:

A reading of provisions of Section 138 of the Act, together with its proviso, shows that the proviso prescribes the manner in which a prosecution under Section 138 of the Act is to be launched, prescribing a calendar for it. The conditions enumerated in Clauses (a) and (b) of the proviso, are not relevant to the issue, that arises in the present case. But Clause (c) to the proviso clearly stipulates, that the last event in the calendar is dealt with there, which says, that an offence under the Section would be made out, if the drawer of a cheque fails to make payment of the due amount of money to the payee, or as the case may, to the holder in due course of the cheque, within 15 days of receipt of the said notice. Logically, a complaint will not be maintainable, if it is instituted on the 10th day, the 11th day or even the 14th day of receipt of notice of demand by the payee from the drawer, envisaged under Clause (b) to the Proviso. The complaint in that case would be premature and, therefore, not maintainable. The Magistrate cannot take cognizance of a complaint, or issue process to the drawer, for an offence punishable under Section 138 of the Act. Subsequent passage of time will not count towards the scheduled number of days, envisaged under clause (c) of Proviso to Section 138 of the Act, for a valid cause of action can accrue only on the expiry of 15 days from the date of receipt of notice of demand, and not earlier. The cause of action must have

accrued to the drawer on the day when the complaint is filed; it makes no difference that the period of 15 days passes by, after the complaint is filed. The provisions of Section 138, including Clause (c) to the Proviso, being penal, have to be strictly construed. In short, there can be no valid complaint, before the expiry of the period of 15 days from the date of service of a notice of demand, upon the payee by the drawer. Proceedings taken on the basis of a complaint brought earlier, would not at all be maintainable. Rajeshwar Prasad Bhardwaj V. State of U.P., 2019 (107) ACC 79 (Alld.)

U.P. Consolidation of Holdings Act :

Title-Claim of –Held, on basis of mere possession-That too, against Gram Sabha land-No one can claim right or title.

Sec. 11-C-Jurisdiction and power of Consolidation Courts-To correct legal error-Held, Consolidation Court statutorily empowered to correct any legal error existing in revenue records-To safeguard interest of Gaon Sabha or State or local body or Authority-Petition dismissed.

It is well settled principle of law that on the basis of mere possession, that too, against the Gram Sabha land, no one can claim right or title.

Section 11-C of the Act was enacted by the legislature with a purpose and the purpose is apparent from a bare perusal of the said provision itself, according to which the Consolidation Courts/Officers have been statutorily empowered to correct any legal error existing in the revenue records to safeguard the interest of the Gaon Sabha or the State or the Local Body or the Authority, may be on the basis of some orders passed by the Consolidation Courts or authorities without their being any challenge made either by the State Government or by the Gaon Sabha or by the Local Body or Authority. The mandate given under section 11-C of the Act to the Consolidation Courts/ Authorities is, thus, in all appropriate cases needs to be exercised to protect the interest of Gaon Sabha or the State. Vishala Devi Uchchttar Madhyamik Vidyalaya Thru. Adhyakshya V. State of U.P. Thru. Secy., Deptt. Of Revenue, Civil Sectt. And others, 2019(143) RD 550 (Alld.-L.B.)

U.P. Zamindari Abolition and Land Reforms Act:

Ss. 166, 167 and 157-A- Transfer of land by a member of Scheduled Caste without obtaining permission-Held, void-Resultantly property vests in State Government –Petition dismissed.

U.P. Zamindari Abolition and Land Reforms Act, 1950-Section 143(1)- Agricultural land- Declaration as to Abadi-Held, without any specific declaration under section 143(1) of Act-Agricultural land cannot be treated to be an Abadi land-Only because same being used as Abadi.

Without specific declaration under section 143 of the Act, the land cannot be termed as Abadi land merely Abadi exists on the said land. With regard to the statutory provisions contained in section 157-A of the Act, the perusal of the Act and section 163 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 prior to its amendment by U.P. Act No. 20 of 1982 provided that the manner by which the sales in contravention of section 157-A of the Act could be declared as void and a procedure was prescribed which required the sales to be as void under Rule 151 of the Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952. The said section 163 of the Act was omitted by U.P. Act No. 20 of 1982 as a result whereof, section 166 of the Act provided for sale deeds which were made in contravention of the provisions of this Act as void by operation of law thus, after the omission of section 163 by U.P. Act No. 21 of 1982, no declaration is required and transfer made in contravention of any provision of the Act are void without any judicial or administrative intervention. Smt. Saroj vs. State of U.P. and others, 2019(143) RD 577 (Alld.)]