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

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Part –I (Supreme Court)

Arbitration & Conciliation Act:

Sec. 34/ 37 – Scope of Judicial Interference

An arbitral tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a 19 reasonable manner, it will not mean that the award can be set aside on this ground. It is further observed and held that construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do.

When a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Parsa Kente Collieries Ltd. V. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. 2019 (6) Supreme 65

Civil Procedure Code:

Sec. 100- Second Appeal

Held: The Second appeal does not lie on question of facts or of law, the existence of ‘ a substantial question of law’ is a sine qua non for the exercise of the jurisdiction under Section 100 of the CPC. As observed and held by this court in case of Kondiba Dagadu Kadam (AIR1999 SC 2213) in a second under section 100 of the C.PC. the High court cannot substitute its own opinion for that of the First appellate Court, unless it finds that the conclusions drawn by the lower court were erroneous being (i) Contrary to the mandatory provisions of the applicable law; or (ii) Contrary to the law as pronounced by the Apex Court; or (iii) on inadmissible evidence or no evidence. It is further observed by the Court in the aforesaid decision that if the First App. Court has exercised its discretion in a judicial manner its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in second appeal.

Under Section 100 CPC after the 1976 amendment it is essential for the High Court to formulate a substantial question of law and it is not permissible to reverse the judgment of the first appellate court without doing so. There are two situations in which interference with finding of fact is permissible. The first one is when material or relevant evidence is not considered which if considered, would have led to an opposite conclusion. The second situation in which interference with finding of fact is permissible is where a fining has been arrived at by the appellate court by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible . In either of the above situations. A substantial question of law can arise. S. Subramanian V. S. Ramasamy Etc. AIR 2019SC 3056

S. 100 – Second Appeal

Section 100 of CPC reads as under:

“100-Second Appeal- (1) Save as otherwise expressly provided in the body of this code or any other law for the time being in force. An appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of Law. (2) An appeal may lie under this section from an appellate decree passed ex-parte. (3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal. (4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. (5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal be allowed to argue that the case does not involve such question.

It is noticed that the High Court framed two substantial questions of law for the first time in the impugned judgment itself. In other words, what was required to be done by the High Court at the time of admission of the appeal to formulate a question of law after hearing the appellant as provided u/s 100 (4) of the CPC, but the High Court did it in the impugned judgment.

The Scheme of Sec. 100 is that once the High Court is satisfied that the appeal involves a substantial question of law, such question shall have to be framed under sub section (4) of sec. 100. It is the framing of the question which empowers of the High Court to finally decide the appeal in accordance with the procedure prescribed u/s sub section (5). Arulmighu Nellukadai Mariamman Tirukkoil v. Tamilarasi (Dead) By Lrs. AIR 2019 SC 3027

Sec. 151-Provincial Small Cause Court Act

Held: If initially the suit was wrongly registered as SCC suit it was only because of an incorrect mention in the case title of the suit in question saying that it is an SCC Suit. Mere wrong registration of

the Suit as an SCC suit would not in any way bar the same to be treated as a regular suit and even otherwise the correction with regard to wrong registration was within the power of the court concerned and therefore the application u/s 151 C.P.C. has been rightly allowed. All courts act within their jurisdiction to correct any errors that are apparent on the face of the record. Moreover, the Trial Court has also considered this fact that the evidence was led treating it to be summary proceedings as an SCC suit. Therefore opportunity has been given to either side to produce additional evidence, if any, now that the suit has been converted into a regular suit.

The transferee court is empowered to either retry it or proceed from the point at which it was transferred or withdraw. The Second part of Sec. 24 is in sub section (5). Under Sub Section (5) if Sec. 24 a suit or proceedings could be transferred from a court which had no jurisdiction to try it and where such transfer or withdrawal is made, a fresh exercise of recording the entire evidence would unnecessarily lead to delay in decision. Shafiuddin v. Mashur Alam, AIR 2019 Allahabad 155

O. 1, R. 10 – Necessary and proper party – applicant daughter seeking impleadment as one of the defendants in suit for partition of ancestral property on death of her parents – Daughters are therefore necessary and proper parties and are required to be impleaded

On the death of the father and mother, if they died intestate, then under the principles of the Hindu Succession Act, every Class I heir including the daughters, would be entitled to a share in the property left behind by their parents. It is precisely on this count that the applicant Srikanta Jain claims to be entitled to have a share in the properties which were allocated to Amba Prasad Jain and Smt. Devi Jain. The partition effected pursuant to decree in 1966 Suit cannot, in any way, disentitle her from claiming a share in the properties of her

father and mother. In the aforesaid premises, Srikanta Jain was definitely a necessary and proper party to be impleaded in the subsequent suit which was filed by Maya Prakash Jain.

It was, however, contended by Mr. Jitender Mohan Sharma, learned Senior Advocate appearing for Respondent No.1 that the father and the mother, namely, Amba Prasad Jain and Smt. Devi Jain had left behind Wills under which their properties had devolved upon the sons exclusively. The due execution of the Wills is yet to the proved by the Respondents. If the Wills are not proved, the daughters would be entitled to a share in the properties, being Class-I heirs. The daughters are, therefore, necessary parties to the proceedings. In the present case, if the Wills so propounded are proved, they will chart a course of succession other than the normal mode of succession and to the prejudice of the daughters. In such an action or proceeding, the daughters being Class I heirs are necessary and proper parties and are required to be impleaded. Shailndra Kumar Jain v. Maya Prakash Jain, 2019 (4) ALJ 176 (SC)

O.8, R.10 – Written statement

Held: Ordinarily a written statement is to be filed within a period of 30 days, However grace period of a further 90 days in granted which the court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come or record. What is of great importance is the fact they 120 days from the date of service of summons, the defendant shall forfeit the right the file the written statement and the court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order VIII Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days.

The consequence of forfeiting a right to file the written statement, non extension of any further time, and the fact that the court shall not allow the written statement to be taken or record all points to the fact that the earlier law of order VIII Rule 1 on the filing of written statement under order VIII Rule 1 has now been set at naught. Clearly the clear definite and mandatory provisions of order V read with order VIII Rule 1 and 10 cannot be circumvented by recourse to the inherent power u/s 151 to do the opposite of what is stated therein. Clearly therefore the earlier order of rejection of application filed under order 8 Rule 11 which applies in the face of the amendments made to CPC cannot be sustained. When comes to the subsequent order that earlier order being final, even though the provisions of law may provide otherwise, the defendant no.1's written statement which was filed on 15.12.2017 should be taken on record, the only reason for this order is that earlier order has attained finality. Even assuming that earlier order is final, res judicata cannot stand in the way of an erroneous interpretation of a statutory prohibition. M/s SCG Contracts India Pvt. Ltd. v. K. S. Chamankar Infrastructure Pvt. Ltd. and others, AIR 2019 SC 2691

O. 9, R. 13

Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits. Robin Thapa V. Rohit Dora 2019 (6) Supreme 103

O. 23, R. 1-A r/w O.1, R. 10 – Transposition of defendants as plaintiff – In the eventuality of plaintiff – In the eventuality of plaintiff withdrawing the suit or abandoning his claim – A proforma defendant has a substantial question to be decided against the co-defendant –

he is entitled to seek his transposition as plaintiff for determination of question against the co-defendants in the given suit itself – Powers of the court to grant such prayer very wide – Basic requirement is that defendant seeking transposition is have an interest in the subject-matter of the suit – In the instant case all the basics for applicability of Rule 1-A of O. XXIII r/w Rule 10 of Order 1, CPC – Principal cause in the suit is challenged to sale-deed executed by defendant No. 1 in favour of defendant No. 2 with original plaintiff asserting his ownership over the property in question - Defendant Nos. 1 and 2 were obviously entitled to seek transposition as plaintiffs under Order XXIII, R. 1-A, CPC – Trial Court rightly allowed the prayer for transposition and High Court is justified in declining to interfere

In the given status of parties and the subject-matter of the suit, when the plaintiffs entered into an arrangement with defendant Nos. 1 and 2 and sought permission to withdraw under O. XXIII, R. 1, C.P.C., the right of defendant Nos. 3 to 6 to continue with the litigation on their claim against defendant Nos. 1 and 2 immediately sprang up and they were, obviously, entitled to seek transposition as plaintiffs under Or. XXIII, R. 1-A CPC.

It is also noteworthy that even if some question is sought to be raised as regards the rights of the subsequent purchasers, the right of the defendant No. 3 to prosecute the suit as a plaintiff remains rather indisputable in view of his status as one of the legal representatives of the original plaintiff. The right of the said defendant No. 3 to challenge the sale deed between defendant No.1 and defendant No. 2 did not get annulled only by his earlier transposition as the defendant and he cannot be considered bound by the arrangement between the existing plaintiffs and the defendant Nos. 1 and 2. In the given set of circumstances, the Trail Court had been justified in allowing the prayer for transposition and the High Court has rightly declined to interfere. R. Dhanasundari v. A.N. Umakanth, (2019 (144) RD 404 (SC)

O. 41, R. 27, Additional evidence – Filing of at appellate stage – Permissibility of – A party can produce additional evidence at appellate stage – If it establishes that notwithstanding exercise of due diligence such evidence was not within its knowledge – Or even after exercise of due diligence, could not be produced by it at time when decree appealed against was passed

These documents have admittedly come into existence after the Appeal was filed before the State Commission. The appellants therefore, could not have produced the said documents before, could not have produced the said documents before the District Forum.

Under Order XLI, Rule 27, CPC a party can produce additional evidence at the appellate stage, if it establishes that notwithstanding the exercise of due diligence, such evidence was not within its knowledge, or could not even after the exercise of due diligence, be produced by it at the time when the decree appealed against was passed.

These documents are of relevance to establish that the appellants are not in a position to obtain the Occupancy Certificate from the MCGM until the unauthorized structures, which are in violation of the approved plans, are removed. In the absence of these documents, the appellants would not be in a position to substantiate their case that they are unable to obtain the Occupancy Certificate, and comply with the directions issued by the District Forum.

The State Commission was in error by rejecting the Application filed by the appellant under Order XLI, Rule 27, CPC by merely stating that the documents are “not necessary”. The said Order is an unreasoned one. The State Commission must have taken a holistic view of the matter. Jiten K. Ajmera v. M/s Tejas Co-operative Housing Society. 2019 (144) RD 562 (SC)

Companies Act:

Sec. 130(1) – Held -

While passing the order under Section 130 of the Companies Act, the learned counsel appearing in behalf of the erstwhile directors appeared and opposed the application under section 130 of the Companies Act. Therefore, the learned counsel appearing on behalf of the erstwhile directors was heard before passing the order under section 130 of the Companies Act. Therefore, it can be said that there is a compliance /substantial compliance of the principle of natural justice to be followed. It is required to be noted that as per proviso to section 130 of the Companies Act before passing the order under section 130 the Act, The Tribunal is required to issue notice to the Central Government, Income Tax Authorities, SEBI or any other statutory regulatory body or authorities concerned or nay "other person concerned" and is required to take into consideration the representation, if any made. The "other person concerned" is as such not defined. Who can be said to be "other person concerned", that question is kept open. At this stage, it is required to be noted that while passing the under section 130 of the Act. There shall be reopening of the books of accounts and re-casting of the financial statements of the company and therefore the Board of Directors of the company may make a grievance. The erstwhile directors cannot represent the company as they are suspended pursuant to the earlier order passed under Section 242 of the Companies Act. Be that as it may, even otherwise in the present case and as observed hereinabove the erstwhile directors of the company represented before the Tribunal and they opposed the application under section 130of the Act. P. Rajagopal and others Etc. v. State of Tamil Nadu, AIR 2019 SC 2866

Consumer Protection Act:

Sec. 2(1) (g) – Medical Negligence

In the practice of medicine, there could be varying approaches to treatment. There can be a genuine difference of opinion. However, while adopting a course of treatment, the medical professional must ensure that it is not unreasonable. The threshold to prove unreasonableness is set with due regard to the risks associated with medical treatment and the conditions under which medical professionals function. This is to avoid a situation where doctors resort to 'defensive medicine' to avoid claims of negligence, often to the detriment of the patient. Hence, in a specific case where unreasonableness in professional conduct has been proven with regard to the circumstances of that case, a professional cannot escape liability for medical evidence merely by relying on a body of professional opinion.

Doctors in complicated cases have to take chance even if the rate of survival is low. The professional should be held liable for his act or omission, if negligent; is to make life safer and to eliminate the possibility of recurrence of negligence in future". But, in the 4 2019 SCC OnLine SC 197 5 (2010) 3 SCC 480 absence of any evidence that the surgery was the only option even with low blood platelets, the finding of negligence of the operating surgeon cannot be ignored.

Money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the courts is difficult and hence, an endeavour has been made by this Court for standardisation which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardisation keeping in view the principle of certainty, stability

and consistency. We approve the principle of "standardisation" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age. Nand Kishore Prasad vs Dr. Mohib Hamidi 2019 (5) Supreme 552

Ss. 2(1)(a) 14(1)(d)

Though the 1986 Act empowers the authorities to award compensation for any loss or injury including building damages but the order of NCDRC or that of SCDRC of awarding complensation si without any foundation being laid down by the complainant on judicially recognized principles and is by rule of thumb. Therefore, we find that grant of compensation under various heads granted by the NCDRC cannot be sustained. DLF Homes Panchkula Pvt. Ltd. & Anr. V. D.S. Danda etc. 2019 (5) Supreme 592

Sec. 2(1)(g) – Medical negligence

In the practice of medicine, there could be varying approaches to treatment. There can be a genuine difference of opinion. However, while adopting a course of treatment, the medical professional must ensure that it is not unreasonable. The threshold to prove unreasonableness is set with due regard to the risks associated with medical treatment and the conditions under which medical professionals function. This is to avoid a situation where doctors resort to ‘defensive medicine’ to avoid claims of negligence, often to the detriment of the patient. Hence, in a specific case where unreasonableness in professional conduct has been proven with regard to the circumstances of that case, a professional cannot escape liability for medical evidence merely by relying on a body of professional opinion.

Doctors in complicated cases have to take chance even if the rate of survival is low. The professional should be held liable for his act or omission, if negligent; is to make life safer and to eliminate the possibility of recurrence of negligence in future". But, in the 4 2019 SCC OnLine SC 197 5 (2010) 3 SCC 480 absence of any evidence that the surgery was the only option even with low blood platelets, the finding of negligence of the operating surgeon cannot be ignored.

Money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the courts is difficult and hence, an endeavour has been made by this Court for standardisation which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age. Nand Kishore Prasad V. Mohib Hamidi 2019 (5) Supreme 552

Constitution of India:

Art. 21

The procedure prescribed by law, which deprives a person of his life and liberty must be just, fair and reasonable and such procedure mandates humane conditions of detention preventive or punitive. In this line, although the petitioners were sentenced to death based on the procedure established by law, the inexplicable delay

on account of executive is inexcusable. Since it is well established that Article 21 of the Constitution does not end with the pronouncement.of sentence but extends to the stage of execution of that sentence, as already asserted, prolonged delay in execution of sentence of death has a dehumanising effect on the accused. Delay caused by circumstances beyond the prisoners' control mandates commutation of death sentence. Union of India V. Dharam Pal 2019 (5) Supreme 611

Art. 226 – Writ of Habeas Corpus

Proceedings in the nature of habeas corpus are summary in nature, where the legality of the detention of the alleged detenu is examined on the basis of affidavits placed by the parties. Even so, nothing prevents the High Court from embarking upon a detailed enquiry in cases where the welfare of a minor is in question, which is the paramount consideration for the Court while exercising its parens patriae jurisdiction. A High Court may, therefore, invoke its extraordinary jurisdiction to determine the validity of the detention, in cases that fall within its jurisdiction and may also issue orders as to custody of the minor depending upon how the Court views the rival claims, if any, to such custody.

The High Court while dealing with the petition for issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the

settled legal position referred to above. Once again, we may hasten to add that the decision of the court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. The order of the foreign court must yield to the welfare of the child. Further, the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and convert that jurisdiction into that of an executing court. Indubitably, the writ petitioner can take recourse to such other remedy as may be permissible in law for enforcement of the order passed by the foreign court or to resort to any other proceedings as may be permissible in law before the Indian Court for the custody of the child, if so advised. Tejaswini Gaud and ors. V. Shekhar Jagdish Prasad Tewari and others 2019 (5) Supreme 385

Criminal Procedure Code:

Sec. 2 (wa) –Victim- Includes him or her guardians or legal heirs- Victim, real brother of unmarried deceased- Falls under category of legal heir of deceased.

In the present case the victim, thus, includes him or her guardians or legal heirs. The deceased was unmarried and the victim is the real brother and, thus, would fall under the category of legal heir of the deceased. Naval Kishore Mishra v. State of U.P. and others 2019 Cri. L.J. 3935

Sec. 154 – Preliminary Inquiry

The purpose of a preliminary inquiry is to ascertain whether a cognizable offence has been made out on the basis of which a first information report can be lodged. The basis of a first information report under Section 154 of the CrPC 9 is information relating to the commission of a cognizable offence which is furnished to an officer-in-charge of the police station. It is with a view to ascertain whether a cognizable offence seems to have been implicated in a case involving an alleged act of corruption by a public servant that a preliminary inquiry came to be directed in the judgment of this Court in P Sirajuddin. The decision in P Sirajuddin was recognized and followed by the Constitution Bench in Lalita Kumari. The Constitution Bench held that while Section 154 of the CrPC postulates mandatory registration of a first information report on the receipt of information indicating the commission of a cognizable offence yet there could be situations where a preliminary inquiry may be required. 9 154 Information in cognizable cases.- (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in

such form as the State Government may prescribe in this behalf; Indicating the cases where a preliminary inquiry may be warranted, this Court held :

"120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes
b) Commercial offences
c) Medical negligence cases
d) Corruption cases
e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay." The purpose of conducting a preliminary inquiry has been elaborated in the following extract :

"Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no

other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR." State By Karnataka Lokayukta Police Station Bengaluru V. M. R. Hiremath 2019 (5) Supreme 712

Sec. 167(2)

Held: If it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of 90 days, extend the said period up to 180 days.

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody. State by the Superintendent of Police, National Investigation Agency Kochi v. Shakul Hameed, AIR 2019 SC 3022

Sec. 154 – Delay in lodging FIR –

Held: Normally, the court may reject the case of the prosecution in case of inordinate delay in lodging the first information report because of the possibility of concoction of evidence by the

prosecution. However, if the delay is satisfactorily explained, the Court will decide the matter on merits without giving much importance to such delay, the Court is duty bound to determine whether the explanation afforded is plausible enough given the facts and circumstances of the case. The delay may be condoned if the complaint appears to be reliable and without any motive for implication the accused falsely. P. Rajagopal and others Etc. v. State of Tamil Nadu, AIR 2019 SC 2866

Sec. 195 – Cognizance of offence –

Held: Clauses under Section 195(1) (b) of the Cr. P.C. i.e. sub section 195(1)(b)(i) and sub section 195(1)(b) (ii) cater to separate offences. Though Section 340 of the Cr. P.C. is a generic section for offences committed under Section 195(1)(b) the same has different and exclusive application to clauses (i) and (ii) of Section 195 (1) (b) of the Cr.P.C.

The category of offences which fall under sub section 195(1) (b) (i) of the Cr. P.C. refer to be offence of giving false evidence and offences against public justice which is distinctly different from those offences sub section 195(1)(b) (ii) of Cr.P.C. where a dispute could arise whether the offence of forging a document was committed outside the court or when it was in the custody of the court. Sh. Narendra Kumar Srivastava v. State of Bihar and others, AIR 2019 SC 2675.

Sec . 202

The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for

investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) On the materials placed by the complainant before the court;

(ii) For the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) For deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.

Chapter XV Cr.P.C. deals with the further procedure for dealing with “Complaints to Magistrate”. Under Section 200 Cr.P.C, the Magistrate, taking cognizance of an offence on a complaint, shall examine upon oath the complainant and the witnesses, if any, present and the substance of such examination should be reduced to writing and the same shall be signed by the complainant, the witnesses and the Magistrate. Under Section 202 Cr.P.C, the Magistrate, if required, is empowered to either inquire into the case himself or direct an investigation to be made by a competent person “for the purpose of deciding whether or not there is sufficient ground for proceeding”. If, after considering the statements recorded under

Section 200 Cr.P.C and the result of the inquiry or investigation under Section 202 Cr.P.C, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he should dismiss the complaint, after briefly recording the reasons for doing so.

3. Chapter XVI Cr.P.C deals with “Commencement of Proceedings before Magistrate”. If, in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, the Magistrate has to issue process under Section 204(1)

Under the amended sub-section (1) to Section 202 Cr.P.C., it is obligatory upon the Magistrate that before summoning the accused residing beyond its jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there is sufficient ground for proceeding against the accused. Birla Corporation Ltd. V. Adventz Investments and holdings 2019 (5) Supreme 403

Sec. 227

Held: It is settled that the Judge while considering the question of framing charge u/s 227 Cr. PC in sessions cases (which is align to Sec. 239 Cr.P.C. pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material place before the Court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justice in framing the charge by the large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused the trail Judge will be justified in discharging hi. It is thus clear that while examining the discharge application filed u/s 227 Cr.PC it is expected from the trail judge to exercise its judicial mind

to determine as to whether a case for trial has been made out or no. It is true that in such proceedings the court is not supposed to hold a mini trial by marshalling the evidence on record.

Section 227 runs thus If upon consideration of the record of the case and the documents submitted therewith and after hearing the submission of the accused and the prosecution in this behalf the judge considers that there is not sufficient ground for proceeding against the accused he shall discharge the accused and record his reasons for so doing. Asim Shariff v. National Investigation Agency, AIR 2019 SC 3083

Sec. 235 (2) - Non compliance of pre-Sentence Hearing

Held: Even assuming that a procedural irregularity is committed by the Trail 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 Sec. 465 of the Cr. PC mandated that no finding, sentence or order passed by the court of competent jurisdiction shall be reversed or altered by the court of appeal on account of any error, omission or irregularity in the order. Judgment and other proceedings before or during trail unless such error, omission or irregularity results in failure of justice. Such non compliance can be remedied by the appellate court by either remanding the matter in appropriate cases or by itself giving an effective opportunity to the accused. Accused X v. State of Maharashtra AIR 2019 SC 3031

Sec. 378 – Appeal against acquitted -

Held : The High court in the present case was dealing with an appeal against acquittal. In such a case, it is well settled that the High Court will not interfere with an order of acquittal merely because it opines that a different view is possible or even preferable. The High Court, in other words, should not interfere with an order of acquittal merely because two views are possible. The interference of the High Court in such cases is governed by well established principles. According to these principles, it in only where the appreciation of evidence by the Trail Court is capricious or its conclusions are without evidence that the High Court may reverse an order of acquittal. The High Court may be justified in interfering where it finds that the order of acquittal is not in accordance with law and that the approach of the Trial Court has led to a miscarriage of justice. The High Court, however, must be satisfied that the incident cannot be explained except on the basis of the quilt of the accused and is inconsistent with their innocence. Mushishamappa and others v. State of Karnataka, AIR 2019 SC 2710

Sec. 389 (1)

Ordinarily, the superior Court should suspend the sentence of imprisonment in the matters relating to the offence under the PC Act, unless the appeal could be heard soon after filing. This Court pointed out the subtle distinction in the proposition for suspension of an order of conviction on one hand and that for suspension of sentence on the other.

The legal position, therefore, is this: though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look

at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter. N. Ramamurthy V. State by C.B.I, A.B., Bengaluru 2019 (5) Supreme 631

Criminal Trial:

Held: If there was darkness at the time and the place of occurrence making it difficult for the witnesses to identify the assailants? The evidence of eye-witnesses are contradictory to each other as to the firing of the fatal blow. The guilt of the accused has not been proved beyond reasonable doubt and the benefit has to be given to the accused. Where the appreciation of evidence is erroneous, the Supreme Court would certainly appreciate the evidence. Ashoksinh Jayendrasinh V. State of Gujarat 2019 (5) Supreme 358

Evidence Act:

Sec. 3 – Circumstantial Evidence

In a case based on circumstantial evidence it is always better for the courts to deal with each circumstance separately and then link the circumstances which have been proved to arrive at a conclusion.

Chandra @ Chandrasekaran V. State of Rep. by Deputy Superintendent of Police CB Cid and another 2019 (6) Supreme 48.

S. 3 – Circumstantial Evidence –

Held -The Circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this court indicated that the circumstances concerned “must or should” and not “may be “established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this court in Shivaji Sahabrao Borade v. State of Maharashtra where the observations were made.

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

The circumstances should be of a conclusive nature and tendency.

They should exclude every possible hypothesis except the one to be proved and

There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability

the act must have been done by the accused. Pavan Vasudeo Sharma v. State of Maharashtra through Secretary, AIR 2019 SC 2650

Sec. 65 –A/B

Held: Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. " Section 65B(4) is attracted in any proceedings "where it is desired to give a statement in evidence by virtue of this section". Emphasizing this facet of sub-section (4) the decision in Anvar holds that the requirement of producing a certificate arises when the electronic record is sought to be used as evidence. This is clarified in the following extract from the judgment:

"Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence.

Electronic records being more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice." State By Karnataka Lokayukta Police Station Bengaluru V. M. R. Hiremath 2019 (5) Supreme 712

Hindu Law:

Mitakshara Law

Held: It is settled that the property inherence by a made Hindu from his father, father's father or father's father is an ancestral property. The essential feature of ancestral property o the Mitakshara Law, is that sons. Grandsons, and great grandsons of the persons who inherits it acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be ancestral property and the natural or adopted son of the son will e interest it it and is entitled to it be survivorship.

Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors' upto three degrees above him. Then his male legal heirs upto three degrees below him would get an equal right as coparceners in that property.

Under the Hindu Law the moment a son is born, he gets a share in father's property and become part of the coparcenaries. High Court accurse to him no on the death of the father or inheritance from the father but whit the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source from the grandfather or from any other source be it separated property or not his son should have a share in that and it will become part of the joint hindu family of his son and grandson and other members who form joint hindu family with him. This court observed that this position has been affected by Sec. 8 of the Hindu Succession Act 1956. Arshnoor Singh v. Harpal Kaur and others. AIR 2019 SC 3098

Hindu Minority and Guardianship Act:

Ss. 8(3),11 – Transfer of immovable property by registered deed by natural guardian – Held -

That either the minor, or his legal representative in the event of his death, or his successor in interest claiming under him by reason of transfer inter vivos, must bring action within the period prescribed for such a suit, i.e. three years.

The effect of this sub section is that any disposal of immovable property by a natural guardian otherwise than for the benefit of the minor or without obtaining the previous permission of the court is voidable. A person entitled to avoid such a sale is either the minor or any person claiming under him. This means that either the minor, or his legal representative in the event of his death, or his successor in interest claiming under him by reason of transfer inter vivos, must bring action within the period prescribed for such a suit, i.e. three years from the date on which the minor died or attained majority, as the case may be. In the present case, the suit was brought, as found by the courts below, which three years after the minor attained majority.

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 of 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. Murugan and others v. Kesava Gounder (Dead) Thr. Lrs. And others, AIR 2019 SC 2696

Hindu Succession Act:

Sec. 14(1) R/w Sec. 2(c)

if a Hindu female has been given only a “life interest”, through will or gift or any other document referred to in Section 14 of the 1956 Act, the said rights would not stand crystallised into absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of Section 14(1) of the 1956 Act, the said rights would lnot stand crystallized into absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership title into the property by virtue of the provisions of Sections 14(1) of the 1956 Act, the provisions of Ss. 14(2) and 30 of the 1956 Act would become otiose. Section 14(2) carves out an exception to the rule provided in sub-section (1) thereof, which clearly provides that if a property has been acquired by a Hindu female by a will or gift, giving her only a “life interest”, it would remain the same even after commencement of the 1956 Act, and such a Hindu female cannot acquire absolute title. Dr. R.S. Grewsal and others V. Chander Parkash Soni and another 2019(4) Supreme 541

Indian Easements Act:

Suit for injunction-against defendants from using pathway shown as ABCD in the plaint and another suit restraining defendants from preventing plaintiff from using pathway to reach there land EFGH-Suit decreed by High Court -Once the land has been sold with right of access through the land adjoining the property sold, such right could not be exclusively conferred to plaintiff in his sale-deed-Plaintiff has to maintain the 16 feet wide passage in any case in terms of the recital in his sale-deed, therefore ,if the defendant no 2 or her transferee use the passage, then such use of passage by defendant no 2 or her transferees cannot be said to be causing any prejudice to the plaintiff-Decreetal of suit improper, hence set aside.

The learned Trial Court dismissed the suits on 22.4.1991 holding the defendants have right of necessity of access to their property over the pathway ABCD in the first suit. However, the First Appellate Court allowed the appeal on 16.9.1993 and granted injunction as prayed holding that there is no necessity of easement as the said defendant has access from the property of her husband which is on Mowbrays Road. The High Court has maintained the judgment and decree of the First Appellate Court vide judgment dated 6.3.2007.

The appellants have been granted right to use passage in the sale deed. Thus, it is not easement of necessity being claimed by the appellants. It is right granted to defendant No. 2 in the sale deed therefore, such right will not extinguish in terms of Section 41 of the Indian Easements Act, 1882. Dr. S. Kumar and others V. S. Ramalingam, 2019(2) ARC 836, S.C.

Indian Penal Code:

Sec. 53 – Written statement –

Held: The reasoning of the trial court acts as a link between the general level of sentence for the offence committed and to the facts and circumstances. The trail court is obligated to give reasons for the imposition of sentence. As firstly, it is a fundamental principle of natural justice that the adjudicators must provide reasons for reaching the decision and secondly, the reasons assume more importance as the liberty of the accused is subject to the aforesaid reasoning. Further the appellate court is better enabled to assess the correctness of the quantum of punishment challenged, if the trial court has justified the same with reasons. The aforesaid principle is fortified not only by the statute u/s 235(2) of Cr. P.C. but also by judicial interpretation. Any increase or decrease in the quantum of punishment that the usual levels need to be reasoned by the trail court. However, any reasoning dependent on moral and personal

opinion notion of a judge about an offence needs to be avoided at all costs. Accused X v. State of Maharashtra AIR 2019 SC 3031

Sec. 120 B – Murder and Conspiracy

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused." Chandra @ Chandrasekaran V. State of Rep. by Deputy Superintendent of Police CB CID and another 2019 (6) Supreme 48.

Sec. 149

Held: Every members of unlawful assembly guilty of offence committed in prosecution of common object – If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly know to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of the offence.

The provisions of Sec. 149 have been explained by the Court in Mijazi v. State of UP and in Masalti V. State of UP. Two elements are

crucial to be above definition: (i) the offence must be committed by a member of an unlawful assembly; (ii) the offence must be committed in prosecution of the common object of the assembly or must be such as the members of that assembly knew to be likely to be committed in prosecution of the common object. Once a common object of an unlawful assembly is established, it is not necessary that all persons who form the unlawful assembly must be demonstrated to have committed the overt act. The common object is ascertained from considering the acts of its members and on the basis on all surrounding circumstances.

A “common object” does not require a prior concert and a common meeting of minds before the attack. It is enough if each member of the unlawful assembly has to be same object in view and their number is give or more and that they act as an assembly to achieve that object. The “common object” of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surround circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. For determination of the common object of unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of act to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behavior of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Mushishamappa and others v. State of Karnataka, AIR 2019 SC 2710

Sec. 300, Exc. 4

Four ingredients:

(i) There must be a sudden fight;
(ii) There was no premeditation;
(iii) The act was committed in a heat of passion; and
(iv) The offender had not taken any undue advantage or acted in a cruel or unusual manner.

Rambir V. State of NCT, Delhi 2019 (5) Supreme 362

S. 302 – Evidence Act

Held: Sudden fight without any premeditation, the conviction of the appellant for an offence u/s 302 is not made out. The cause of death of the deceased in knife blow on the chest of the deceased Soman. Such injury is with the knowledge that such injury is likely to cause death, but without any intention to cause death, Thus, the death of Soman is a culpable homicide not amounting to murder as the death has occurred in heat of passion upon a sudden quarrel falling within exception 4 of section 300 of IPC. Therefore it is an offence punishable u/s 304 part - I, IPC. Ashoksinh Jayendrasinh v. Sate of Gujrat, AIR 2019 SC 2615

Sec. 302 r/w Sec. 34.

An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable. Sham Lal V. The State of Haryana 2019 (4) Supreme 564

Sec. 302/ 149

Held: In a case of a single blow, but on the vital part of the body, the case may fall under Section 302 of the IPC and the accused can be held guilty for the offence under Section 302 of the IPC. However, in the facts and circumstances of the case, more particularly that it was a case of free fight, considering the fact that the weapon used by the accused Ramavtar was Farsa and he caused the injury on the vital part of the body i.e. head which proved to be fatal, in the facts and circumstances of the case, we are of the opinion that the High Court has committed a grave error in altering the conviction of the accused Ramavtar from Sections 302/149 of the IPC to Section 304 Part II of the IPC. In the facts and circumstances of the case and considering the evidence on record, more particularly, the medical evidence and the manner in which the incident took place, we are of the opinion that the accused Ramavtar should have been held guilty for the offence under Section 304 Part I of the IPC. To that extent, the impugned judgment and order passed by the High Court deserves to be quashed and set aside. The conviction of the accused Ramavtar is to be altered from Section 304 Part II to Section 304 Part I of the IPC. State Of Madhya Pradesh V. Kalicharan 2019(6) Supreme 97

Sec. 304 Part-II & Part-I – Murder or culpable homicide not amounting to murder –

Held: Merely because the accused Ramavtar caused the injury on the head by the blunt side of Farsa, the High Court is not justified in altering the conviction to Section 304 Part II of the IPC. As held by the Court in catena of decisions, even in a case of a single blow, but on the vital part of the body, the case may fall under section 302 of the IPC and the accused can be held guilty for the offence under Section 302 of the IPC. State of Madhya Pradesh v. Kalicharan and others, AIR 2019 SC 2637

Sec. 307 – Object of

Held: Section 307 I.P.C. is a non-compoundable offence. No permission can be granted to record the compromise between the parties. In Ishwar Singh v. State of Madhya Pradesh, (2008) 15 SCC 667, the Supreme Court of India has held that in a non-compoundable offence the compromise entered into between the parties.

In a non-compoundable offence the compromise entered into between the parties is indeed a relevant circumstance which the Court may keep in mind for considering the quantum of sentence. Manjit Singh V. The State of Punjab 2019 (5) Supreme 1

Interpretation of Statue:

Held: It is settled principle of rule of interpretation that whenever a statute required a particular act to be done in a particular manner then such act has to be done in that manner only and in no other manner. Arulmighu Nellukadai Mariamman Tirukkoilv. Tamilarasi (Dead) By Lrs. AIR 2019 SC 3027

Juvenile Justice (Care and Protection of Children) Act:

Sec. 2 – Words – best interest of child -

Held : The expression “best interest of child” which is always kept to be of paramount consideration is indeed wide in its connotation and it cannot remain the love and care of the primary care giver, i.e. the mother in case of the infant or the child who is only a few years old. The definition of “best interest of the child” is envisaged in Section 2(9) of the Juvenile Justice (Care & Protection)

Act, 2015, as to mean “the basis for any decision taken regarding the child, to ensure fulfillment of his basic rights and needs, identify, social well-being and physical, emotional and intellectual development. Lahari Sakhamuri v. Sobhan Kodali AIR 2019 SC 2881

Limitation Act:

Art. 60 and 65

Held: Article 60 (b)(ii) refers to a suit when a ward dies before attaining majority. The present is a case where Plaintively dies on 11.02.1986 before attaining majority, his date of birth being 16.07.1978, the limitation to avoid instrument made by guardian of the ward is 03 years from the death of ward when he dies before attaining majority. This court had occasion to consider Article 60 and 65 of the Limitation Act in reference to alienation made by a de-facto guardian of a min or. In the case of Madhukar Vishwanath v. Madahav and Others, (1999) 9 SCC 446, the maternal uncle of the appellant has executed a sale deed. The appellant after becoming major on 22.08.1966 filed a suit on 07.02.1973 praying that transferors be required to deliver the possession of the property. On behalf of appellant, Article 65 was relied for the purpose of limitation. This Court held that it is Article 60 and not Article 65, which is applicable. Paragraph No. 4 and 5 of the judgment are relevant, which are quoted as below:

“4. That the defendant, Baburao Madhorao Puranik, was the appellant’s de facto guardian had been established and, therefore, the disposal by him of the said property was void. Being void, it was open to the appellant to file the suit for possession of the said property and the period for limitation for such suit was prescribed by Article 65.

5. Even if the suit was entertained as pleaded, no decree for possession could have been passed without first fining that the alienation was not for legal necessity and was, therefore, bad in law. To such a suit the provision of Article 60 relates to a suit to set aside a transfer of property made by the guardian of a ward by the ward who has attained majority and the period prescribed is three years commencing on the date on which the ward attains majority." Murugan and others v. Kesava Gounder (Dead) Thr. Lrs. And others, AIR 2019 SC 2696

Motor Vehicle Act:

Compensation

The term "compensation" has not been defined in the 1988 Act. By interpretative process, it has been understood to mean to recompense the claimants for the possible loss suffered or likely to be suffered due to sudden and untimely death of their family member as a result of motor accident. Two cardinal principles run through the provisions of the Motor Vehicles Act of 1988 in the matter of determination of compensation. Firstly, the measure of compensation must be just and adequate; and secondly, no double benefit should be passed on to the claimants in the matter of award of compensation. Section 168 of the 1988 Act makes the first principle explicit. Sub-section (1) of that provision makes it clear that the amount of compensation must be just. The word "just" means—fair, adequate, and reasonable. It has been derived from the Latin word "justus", connoting right and fair. The expression "just" denotes that the amount must be equitable, fair, reasonable and not arbitrary. National Insurance Co. Ltd. V. Mannat Johal and others 2019 ACJ 1849

Medical Negligence

Any individual approaching such a skilled person would have a reasonable expectation of a degree of care and caution, but there could be no assurance of the result. A physician, thus, would not assure a full recovery in every case, and the only assurance given, by implication, is that he possesses the requisite skills in the branch of the profession, and while undertaking the performance of his task, he would exercise his skills with reasonable competence. Thus, a liability would only come, if (a) either the person (doctor) did not possess the requisite skills, which he professed to have possessed; or (b) he did not exercise, with reasonable competence in a given case, the skill which he did possess. It was held not to be necessary for every professional to possess the highest level of expertise in that branch in which he practices.

Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise 4 (1968) 118 New LJ 469 5 a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

A medical practitioner would be liable only where his conduct fell below that of the standard so far reasonably competent practitioner in his field.

In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly

not negligent merely because his conclusion differs from that of other professional doctor. VI. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence. VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck.

It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.

The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the

patients have to be paramount for the medical professionals. Vinod Jain V. Santokba Durlabhji Memorial 2019 ACJ 1614

Motor Insurance – Own damage claim – Driving licence

1. ‘Light motor vehicle’ as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, ‘unladen weight’ of which does not exceed 7500 kg. and holder of a driving licence to drive class of “light motor vehicle” as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

3. The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained “medium goods vehicle” in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and “heavy passenger motor vehicle” in section 10(2)(h) with expression ‘transport vehicle’ as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

4. The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of “light motor vehicle” continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect. M.S. Bhati V. National Insurance Co. Ltd. 2019 ACJ 2385

Quantum – Fatal accident

If the age of the deceased was between 36-40 years, then the multiplier applicable would be 15. Dolma Devi and others V. Mohinder Kumar Goel and others 2019 ACJ 1630

Quantam

Held: For determination of multiplicand, it is noticed that the deceased had left behind his wife, mother and two minor sisters apart from his ather. Even if father of the deceased is not taken as dependent, it appears reasonable to take the number of his dependents as 4 and to provide for deduction of 1/4th for personal and living expenses. The deceased being 23 years of age and in the overall circumstances, multiplier of 18 would be appropriate. Shantaben V. National Power Transport and another 2019 ACJ 1784.

Negotiable Instruments Act:

Sec. 138

The notice under Section 138 of the NI Act can be issued only for the cheque amount and not for any other amount more than the cheque amount. Vijay Gopala Lohar V. Pandurang Ramchandra Ghorpade 2019 (6) Supreme 77

Sec. 141 – Explanation –

Held: The expression “Company” has been defined to mean any body corporate and to include a firm or other association of individuals , sub section (1) of Section 141 postulates that where an offence is committed under section 138 by a company, the company as well as every person, who at the time when the offence was committed, was in charge of and was responsible to the company for the conduct of the business shall be deemed to be guilty of the offence.G. Ramesh v. Kanike Harish Kumar Ujwal and another, 2019(4) Supreme 560 : AIR 2019 SC 2595

Sec. 141 – Explanation

Held: The Provisions of Sec. 141 Postulate that if the person committing an offence u/s 138 is a company, every person, who at the time when the offence was committed was in charge of or was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished. Himanshu v. B. Shivamurthy and anothers, AIR 2019 SC 3052

Sec. 141(1)

If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence. G. Ramesh V. Kanika Harish Kumr Ujwal 2019(4) Supreme 560 : AIR 2019 SC 2595

Sec. 148

The amended Section 148 of the N.I. Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the N.I. Act, though it is true that in amended Section 148 of the N.I. Act, the word used is "may", it is generally to be construed as a "rule" or

"shall" and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned.

Therefore amended Section 148 of the N.I. Act confers power upon the Appellate Court to pass an order pending appeal to direct the Appellant Accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the Appellant Accused under Section 389 of the Cr.P.C. to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the N.I. Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause shown by the appellant.

Therefore, if amended Section 148 of the N.I. Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the N.I. Act, but also Section 138 of the N.I. Act. Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonoured of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realize the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, the Parliament has thought it fit to amend Section 148 of the N.I. Act.

Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the N.I. Act and also Sec 138 of the N.I. Act. Surender Singh Deswal @ Col. S.S. Deswal V. Virender Gandhi 2019 (6) Supreme 84

Protection of Women from Domestic Violence Act :

S. 12 – Maintenance -

Held: That any aggrieved person may present an application to the Magistrate seeking one or more reliefs under the Act. Under the provisions of sec 20(1) the Magistrate while dealing with an application under sub-section (1) of Section 12 is empowered to direct the respondent(s) to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as result of domestic violence. This may include but is not limited to any order for maintenance of the aggrieved person as well as her children, if any, including an order under or in addition to an order for maintenance u/s 125 of the CrPC or any other law for the time being in force. Ajay Kumar V. Lata @ Sharuti and others. AIR 2019 SC 2600

Rent Cases:

Legal possession- Ingredient –It is necessary for such person to prove prima facie that he is either the owner of such property or is in possession as a lawful tenant or is in its permissive possession with the express consent of its true owner.

It is a settled principle of law that in order to prove that the possession of any person in any immovable property is legal, it is necessary for such person to prove prima facie that he is either the owner of such property or is in possession as a lawful tenant or is in its permissive possession with the express consent of its true owner. Masroor Ahmad Khan V. State of Uttarakhand and others, 2019(2) ARC 849, S.C.

Service Law:

Compassionate appointment

The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment.

The policy of compassionate appointment is premised on the death of an employee while in harness. The death of an employee is liable to render the family in a position of financial hardship and need. Compassionate appointment is intended to alleviate the hardship that the family of a deceased employee may face upon premature death while in service. Compassionate appointment, in other words, is not founded merely on parentage or descent, for public employment must be consistent with equality of opportunity which Article 16 of the Constitution guarantees. Hence, before a claim for compassionate appointment is asserted by the family of a deceased employee or is granted by the State, the employer must have rules or a scheme which envisage such appointment. It is in that sense that it is a trite principle of law that there is no right to compassionate appointment. Even where there is a scheme of compassionate appointment, 5 (2008) 13 SCC 730 an application for engagement can only be considered in accordance with and subject to fulfilling the conditions of the rules or the scheme. The submission which has been urged on behalf of the Union of India by the learned Additional Solicitor General is premised on the basis that there is no right to compassionate appointment. There can be no doubt about the principle that there is no right as such to compassionate appointment but only an entitlement, where a scheme or rules envisaging it exist, to be

considered in accordance with the provisions. Union of India V. V.R. Tripoathi 2019 (5) Supreme 378

Specific Relief Act:

Sec. 16(c) – Plea of Hardship by vendor – Held -

Purchaser could be compensated in terms of the money in lieu of decree for specific performance, such plea can not be entertained for the first time in appeal by was of SLP more so, when there are concurrent finings that the plaintiff was ready and willing to perform his part of the contract has been recorded by the lower courts, Therefore, the plea raised on behalf of the vendor on hardship cannot be permitted to be raised now, more particularly when no such plea was raised/taken in the written statement. Beemaneni Maha Lakshmi v. Gangumalla Appa Rao (Since Dead) by Lrs. AIR 2019 SC 3013

Transfer of Property Act :

Ss. 106, 107 – Notice–

Held: Under Sec. 111 (a) a lease of immovable property determines by efflux of time limited thereby. Once this be the position, there can be no manner of doubt that the position of the respondent on the expiration of the lease was of a tenant at sufferance. In the circumstances, there was no necessity of a notice for the termination of the leave under the provisions of Section 106. The respondent having squarely admitted in its written statement that is was in occupation for a term of fifteen years, that term having expired, the lease stood determined by efflux of time. Once the lease stood determined by efflux of time, there was no necessity for a notice of termination under Section 106.

Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term of expiry of the lease by efflux of time. The tenant at sufferance is, therefore, on who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser.

A tenancy at sufferance does not create the relationship of landlord and tenant.

The act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remains in possession after the determination of the term, the common law rule is that he a tenant on sufferance. The expression “holding over” is used in the sense of retaining possession. Sevoke Properties Ltd. V. West Bengal State Electricity Distribution Company Ltd. AIR 2019 SC 2664

Sec. 300, Exception 4

Four ingredients are required :

68. There must be a sudden fight;
69. There was no premeditation;
70. The act was committed in a heat of passion; and
71. The offender had not taken any undue advantage or acted in a cruel or unusual manner.

Rambir V. State of NCT, Delhi, 2019 (5) Supreme 362

PART – 2 (HIGH COURT)

Advocates Act:

S. 49 – Bar Council of India Rules – R. 49 – U.P. Higher Judicial Services Rules (1975) – R. 5(c) – Appointment – Eligibility for high judicial Services (HJS) – candidate not eligible for HJS

The persons employed as public prosecutor/District Authority predominantly discharge functions of advocates and would be recognized as advocates in the light of Deepak Aggarwal's case but in no other situation or employment. In the present case, there is not material or evidence to establish that the predominant function of the employment of the petitioner as defined/described in the letter of appointment issued to him by his employer Bank is that of the practice as a lawyer and that the other functions discharged by him are only bare minimum or incidental. The circular letter of the Reserve Bank of India does not seek to alter the terms and conditions of employment of the petitioner, neither do stray appearances recorded in some court cases establish that the Bank had engaged the services of the petitioner, predominant to represent it in cases before courts, tribunals etc.

In view of the aforesaid facts and circumstances, in the light of the legal fiction created by Rule 49 of the Bar Council of India Rules, the petitioner who has full time employment of the SBI ceased to be an advocate and his service period would not be counter/added in his practice as an advocate to make him eligible for UPHJS. Shiv Kumar Pankha v. Hon'ble High Court of Judicature at Allahabad, 2019 (4) ALJ 794

Adverse Possession:

The court held that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years period of adverse possession is over, even owner's right to eject him is lost and the possession owner acquires right, title and interest possession by the outgoing person/owner as the case may be against whom he has prescribed. Consequence is that once the right, title or interest is acquired it can be used as sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and

maintain a suit. Ravinder Kaur Grewal and others vs. Manjit Kaur and others, (2019)(3) ARC 161

Child Rights Jurisprudence:

No court will hold a child in age group of 7-12 years criminally responsible for the acts he is accused of without satisfying itself the child has the requisite maturity of understanding to judge nature and consequence of its act

The trial courts do not have the power to reverse the burden of proof on the children in the age group of 7-12 years of claiming the exception under the Indian Penal Code. At the same time the trial court cannot abdicate its obligation to a child. No court with a sense of responsibility will hold a child in the age group of 7-12 years criminally responsible for the acts he is accused of without satisfying itself that the child has the requisite maturity of understanding to judge the nature and consequence of its acts. In case courts come to the conclusion that the child did not have the requisite maturity of understanding to know the consequences of his acts, the court shall provide necessary protection contemplated in law to the child.

It is the imperative duty for a court, where the accused is under 12 years of age to enquire whether child possessed degree of knowledge, development and understanding essential to criminality.

The trial courts have an obligation to law to prevent miscarriage of justice resulting from the incapacity of a child to defend itself or understand its rights. The rights of a child in conflict with law can be protected only if the courts sensitize the administration of justice. The courts in India are not silent spectators in a trial but active instruments in search for correct facts and truth

and the sole repositories to dispense justice. Rajiv Kumar v. State of U.P., 2019 (4) AWC 3347

Civil Procedure Code:

(A) Practice and Procedure –Question of title-Decision thereon in suit for injunction- Permissibility-Can also be gone into incidentally when such a question is raised by other side.

(B) Practice and Procedure-Permanent injunction – Grant of –Where no relief of declaration and possession over disputed property is claimed, if title and possession is not proved, decree for permanent injunction cannot be passed.

(C) Civil Procedure Code, 1908, S.100- Suit for permanent injunction- To restrain defendants from interfering in possession of plaintiff-Suit decreed-Appeal against allowed-Sustainability of-Defendant Nos. 1 to 3 have valid title from earlier owners of disputed property, who transferred their shares by subsequent sale-deed in favour of defendant Nos. 1 to 3, in such a case, no injunction against true owners could have been granted-Plaintiff, who seeks injunction, must prove better title than the person who is allegedly interfering in his possession-Mere long continuous possession without there being any right to

property cannot be a ground to retain possession against true owner except if the case is within the ambit of doctrine of “adverse possession”.-Dismissal of suit proper.

Here injunction was sought on the ground that plaintiff possess possession over disputed land through tenants and has a clear title thereon therefore, defendants should be restrained from interfering in possession of plaintiff. It is not a case where only on the basis of possessory title any relief was claimed by plaintiff. Plaintiff’s very title was seriously disputed by defendants. Thus such an issue was framed by Courts below and it was incumbent upon plaintiff to adduce evidence to prove her title. Plaintiff based its title on the basis of a sale deed dated 29.12.1965 executed by Smt. Saraswati Bai in favour of plaintiff. Thus, according to plaintiff, Smt. Saraswati Bhai was owner in possession of disputed property till she executed sale deed dated 29.12.1965 and thereafter said rights stood transferred to plaintiff. Defendants 1 and 3 in their written statement belied above facts and challenged the very alleged title of even Smt. Saraswati Bai. They pleaded that disputed property was earlier part of Zamindari of Mahant Jaideo Dass, who was owner and Zamindar of land. He executed registered deed on 18.1.1929 in favour of Tulsi Ram, father of defendants 4 to 7. Defenants 6 and 7 transferred their share by sale to Smt. Yashoda Bai. Yashoda Bai and defendant 4 being owner of three-forth share of disputed property, transferred the same by sale to defendants 1 to 3 vide registered sale deed dated 15.11.1966.

The above pleadings of defendants dispute the very title of Smt. Saraswati Bai over land in dispute. In the evidence of plaintiff it was sought to prove that disputed property earlier belong to father of Smt. Saraswati Bai and therefrom it was succeeded by Smt. Saraswati Bai but no documentary evidence in this regard could be led by plaintiff. On the contrary, defendants adduced a certified copy of registered permanent lease dated 18.1.1929 to prove their case. When documentary evidence in respect of certain facts is produced, oral evidence has to subserve the same and documentary evidence has to prevail. Once title of defendants is found proved, then even if some persons without consent of defendants were in possession and

those persons claim to be tenants of plaintiff, an injunction against real title holder could not have been granted.

It is not the case of plaintiff that she is being evicted from property in dispute or her possession is being interfered in respect of property in dispute by resorting to unlawful means. On the contrary, plaintiff set up her case on the basis of title, which she has failed to prove. Therefore, judgment of LAC, reversing findings and decision of Trial Court, warrants no interference. Dismissed with costs. Smt. Shanti Bai Vs. Narbada and others, 2019(2) ARC 852

Sec. 100- Suit for permanent injunction to restraining defendant/ Bulandshahr Development Authority from demolishing construction on suit property – Plaint rejected under O. VII, R.11(d), CPC holding suit barred by S. 27 of 1973 Act – Appeal also dismissed- Legality of- Order of demolition of building passed by Vice-Chairman, BDA can only be called in question by filing appeal in view of 27 of the 1973 Act and the same cannot be questioned before Civil Court in view of S.27(4) and 37 of Act, 1973- Suit rightly dismissed by Courts below under O.VII, R.11(d), CPC.

Since the order of demolition of building has been passed by the Vice Chairman, Development Authority after proper opportunity to the plaintiff-appellant and such order can only be called in question by filing the appeal in view of Section 27 and the same cannot be questioned before the civil Court in view of Section 27(4) and Section 37 of the Act, therefore, the civil Court is not capable of taking different view in the matter than as taken by the competent authority

despite the provision contained in Section 52 of the Act since the civil Court is not competent to examine correctness or illegality of the decision passed by the Chairman, Development Authority under Section 27(1) of the Act otherwise the very object and purpose of enacting the Act of 1973 would be defeated.

The plaint of the plaintiff-appellant has rightly been rejected by the Courts below under Order 7 Rule 11(d) of C.P.C. as the suit is clearly barred by Section 27 of the Act. Arvind Kumar Mittal V. Bulandshahr Development Authority and another, (2019)(3) ARC 38

Sec. 100, O.VII, R.11(d) – Suit for cancellation of sale-deed-Trial Court rejected plaint under O. VII, R.11(d), CPC being barred by provision of S.331 of UPZA and LR Act- Appeal also dismissed- Sustainability of- it is admitted that the plaintiff is not at all recorded as a bhumidhar and sale deed which plaintiff want to be cancelled is a void instrument alleged to be extent of her share, plaintiff should seek a declaration before the revenue Court and in case to record her name then the sale deed executed by respondent second set in favour of respondent first set is liable to be void to the extent of her share- Dismissal of suit proper. Kumari Reeta vs. Vivek Kumar Singh and 11 others, (2019)(3) ARC 31

O.1 R.10 - Impleadment Application-Seeking impleadment in partition suit - Impleadment rejected by Court below holding applicant do not belong to family of plaintiff- The documents have not at all adverted by trial Court which have been filed by the applicant-The Court below while dealing with the impleadment application was necessarily required to be advert to the documents filed by revisionists in support of their case-Rejection improper, matter remanded for fresh consideration of the application.

Kamla Devi and 2 ors. V. Rajesh Kumar Gupta and 6 others, 2019(2) ARC 928

Sec. 115 CPC

Held that it is well settled that the revisional jurisdiction is to be exercised to correct jurisdictional errors only. This is well settled. In D.L.F. Housing and Construction Company Private Ltd., New Delhi v. Sarup Singh and others, (1970)2 SCR 368. Dorab Cawasji Warden v. Coomi Sorab Warden and others, (1990)2 SCC 117: 1991(1) ARC 1 (SC), it was held that

> “16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel

> the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who falls or would fail to e stablish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, Courts have evolved certain guidelines. Generally stated these guidelines are:
>
> (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a *prima facie* case that is normally required for a prohibitory injunction
> (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
> (3) The balance of convenience is in favour of the one seeking such relief."

This judgment also makes it clear that when a mandatory injunction is granted at the interim stage much more than a mere prima facie case has to be made out. Tek Singh v. Shashi Verma and another, (2019)(3) ARC211

O.6, R.17 – Amendment of written statement – Rejection – No due diligence on part of defendants – Neither injury nor prejudice would cause to defendants if amendment refused – Rejection proper

In the instant case, there is no dispute about the fact that amendment of written statement was sought at the final stage of the suit i.e. at the stage of arguments. In the written statement, while denying the rights and share of the plaintiffs in the suit property, a plea of adverse possession had been taken.

Plea of adverse possession was based on the conduct and the plea of acquiescence of the original owners, whereas by way of the proposed amendment, the defendant sought to add plea of adverse possession by forcible eviction of the original owners. In any case, the answering defendant had taken a plea that they are in adverse possession of the share of the suit property, to their knowledge. The adverse possession can always be claimed as against a true owner(s) to his/their knowledge. The said plea is required to be proved by the party claiming adverse possession by bringing cogent evidence. In the instant case, the defendants were conscious of the fact since the beginning that they were claiming their right to the share in the suit property, on the ground of adverse possession and they have led evidence in order to prove the same. The question thus as to how they came in possession of the share of the aforesaid persons, is a matter of evidence stage of which is over. The proposed amendments sought at the advance stage of the trial, therefore, cannot be said to be bonafide. The trial court, therefore, cannot be said to have erred in rejecting the amendment with the reasoning that in case such an amendment is allowed, it may cause delay in disposal of the suit and would cause serious prejudice to the plaintiffs. No due diligence has been shown by the answering defendants in seeking amendment at such an advance stage of the trial. Further, no injury would be caused to the defendants on account of refusal to allow the amendment, the amendments are only explanatory in nature. No prejudice much less injustice is, thus, caused to the petitioners, who are answering

defendants in the Original Suit No. 92 of 2002. Tej Bahadur v. Fasiudeen and others, 2019 (4) ALJ 434

O. 14

The court held that a plea of territorial jurisdiction is essentially a mixed question of law and fact. It is for this reason, the respondents (defendants) should be allowed to raise such plea in the written statement to enable the Court to try it on its merits in accordance with law in the light of the requirements of Order 14 of the Code of Civil Procedure, 1908 and other relevant provisions governing the issue on merits. Isha Distribution House Pvt. Ltd. V. Aditya Birla Nuvo Ltd. And another, (2019)(3) ARC 208

O.15, R.5

It has been consistently held that the tenant is required to comply with the requirements of Order XV Rule 5 CPC and make the deposits strictly in accordance with the procedure contained therein, and any deposit not made in consonance with the said rule cannot ensure the benefit of the tenant. Also, the amount to be deposited by the tenant during the continuation of the suit is required to be deposited in the Court where the suit is filed failing which the Court may strike off the defence of the tenant since the deposits made by the tenant under Section 30 after

the first hearing of the suit cannot be taken into consideration.

The provisions under Order XV Rule 5(2) provides a locus poenitentiae to the defaulting tenant to make a representation, which must be made within ten days of the first hearing of within a week from the date of accrual of rent as the case may be, and if the representation is not made within the specified time the Court has no jurisdiction to consider a time barred representation or condone the delay or extend time. Apart from the aforementioned provision of filing a representation there is no provision wherein exemption can be claimed from complying the conditions under Order XV Rule 5.

The Court also explained the circumstances under which, findings can be interfered with in exercise of jurisdiction under Section 25. There are very limited grounds on which there can be interference in exercise of jurisdiction under Section 25; they are, when (i) findings are perverse or (ii) based on no material or (iii) findings have been arrived at upon taking into consideration the inadmissible evidence or (iv) findings have been arrived at without consideration of relevant evidence. The S.C.C Revision lacks merit and it is accordingly dismissed. Pushpa Gupta Vs. Subhash Chandra and another, 2019(2) ARC 870

O. 41, R. 31 – Appeal – non framing of points for determination – suit for cancellation of sale deed – mere non framing of points for determination is not fatal unless and until it results in consequential failure of Justice.

It has now been fairly settled that unless and until the non-framing of points of determination results in any consequential failure of justice, till then, mere non-framing of point of determination is not fatal. In this regard in a decision of this Court reported in 2019 (1) ADJ Page 246 Dalla v. Nanhu, wherein it has been held as under:-

"The spirit of the provision is to ensure that the appellate Court must record reasons for the decisions and is to focus attention of the Court to rival contentions of the parties which arise for determinations and also to offer the litigating parties an opportunity of knowing and understanding the grounds upon which the decision is founded in a view to enable them to know the basis of decision and if they think proper and so advised to avail the remedy of second appeal conferred by Section 100 CPC.

Applying the ratio of the aforesaid judgments as mentioned above, if the judgment passed by the lower appellate court is perused, it indicates that the lower appellate Court has discussed the narration of facts of the case of the parties to the lis, the submission urged by the parties, the legal principles applicable and involved and has also given its finding in support of its conclusions".

"In order to successfully canvass the point of non-compliance of Order XLI Rule 31 CPC, it is not mere non framing of points of determination alone, but consequent failure of justice must also be established occasioned to a party.

The purpose and object of incorporating Section 99 CPC is to prevent mischief, which may be caused by the reversal of the decree in a case of this kind. Thus, unless and until the non-compliance of Order XLI and Rule 31 CPC is of such a nature that it affects the

merits of the case or the jurisdiction of the Court or the soul of the provision is robbed by not discussing the bare facts, issues arising therefrom, the rival points urged and recording of reasons upon which the judgment is based, till then minor infraction of the aforesaid provision will not give a latitude to a party to assail a judgment and seek its reversal only on this infraction under Section 100 CPC." Rajeev v. Ram Jeewan, 2019 (4) ALJ 29 (LB)

Constitution of India:

Art. 14 – Unless are proved before inquiry officer in presence of delinquent, he cannot be asked to disprove same – non-compliance with principles of natural justice – Disciplinary proceedings arbitrary – liable to be quashed

The Committee submitted its report dated 27.07.2006 after examining the entire matter, inter alia, stating that the enquiry was held in complete violation of principles of justice and loan disbursed may be irregular, but that does not come in the category of embezzlement. The Committee has also recorded in its enquiry report that no allegation can be levelled that the petitioner has not cooperated in the enquiry. The report further recorded that the cashier is bound to follow the orders of the Branch Manager and the regular reports were being submitted and reviewed at the level of the head of the department, but no action was taken, on account of which, the irregular disbursement of loans flourished in the branch. Therefore, the then Senior Branch Manager/ Deputy General Manager (Accounts/Administration) i.e. the present Secretary/General Manager are responsible for it and due to which Sri O.P. Jaiswal, who was appointed on the post of Branch Manager, was also not allowed to join.

Considering the report, resolution No. 24 dated 04.11.2006 was passed by the Sanchalak Mandal holding that the enquiry was not

held in accordance with the principles of natural justice therefore petitioner be reinstated provisionally and enquiry be held after affording complete opportunity of hearing to the petitioner. It also observed that the responsibility of the officers of the Bank including Deputy General Manager (Administration/Accounts), who conducted the enquiry in the matter and was posted on the post of Secretary/General Manager by that time, cannot be ruled out and, therefore, referred the matter to the Registrar, Cooperative Societies for effective action against them.

Therefore it is apparent that the enquiry has not been held in accordance with law and principles of natural justice. It has been accepted in the resolutions passed by the Sanchalak Mandal repeatedly. It is also apparent that despite repeated demands by the petitioner the Inquiry Officer had not provided the documents mentioned in the charge sheet. The three Member inquiry Committee and the Sanchalak Mandal have found that the inquiry has not been conducted in accordance with law. The conduct of the Inquiry Officer indicates that he has not acted fairly and impartially.

Adverting to the facts of the case the inquiry report shows that no date, time and place was fixed for holding the inquiry and recording the statement of the witnesses and proving the charge. The only date fixed was 05.09.2005 for personal hearing, which cannot be accepted as compliance of principles of natural justice because unless the charges are proved before the inquiry officer in presence of the delinquent, he cannot be asked to disprove the charge, therefore, fixing of date for personal hearing was nothing but merely an eye wash.

In view of above, this court is of the considered opinion that the inquriy against the petitioner has been held in flagrant violation of the principles of natural justice and the respondent no.5 who was the Inquiry Officer and against whom the observations were made by the three Member Committee as well as Sanchalak Mandal that his

involvement in the irregularities in the Bank cannot be ruled out, got the petitioner dismissed by misleading the Sanchalak Mandal, the Joint Registrar Cooperative Societies as well as the Chairman/Administrator, therefore, the impugned order is not sustainable at all and is liable to be quashed. Uma Shanker Verma v. State of U.P. through Principal Secretary to the Govt., (5) ALJ 276

Art. 226 – Writ petition – maintainability – termination of contractual employee – employee governed by simple contract of employment – write petition not maintainable for enforcement of contract of service

It is well settled that, when there is a purported termination of a contract of service, a declaration that the contract of service still subsisted would not be made in the absence of special circumstances, because of the principle that Courts do not ordinarily enforce specific performance of contracts of service [see Executive Committee of U.P. State Warehousing Corporation Ltd. V. Chandra Kiran Tyagi (1970) 2 S.C.R 250 : AIR 1970 SC 1244 : (1970) 1 SCJ 790 and Indian Airlines Corporation Vs. Sukhdeo Rai A.I.R. 1971 S.C. 1828). If the master rightfully ends the contract, ,there can be no complaint. If the master wrongfully ends the contract, then the servant can pursue a claim for damages. So even if the master wrongfully dismisses the servant in breach of the contract, the employment is effectively terminated. In Ridge v. Baldwin 1965) 1 WLR 79, Lord Reid said in his speech :

"The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he, must pay damages for breach of contract. So the question in a pure case of master and servant does n ot at all depend on whether the master has heard the servant in his

own defence; it depends on whether the facts emerging at the trial prove breach of contract. 'But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its, servants, or the grounds on which it can dismiss them."

11. On a plain reading statute 151, it is clear that it only provides that the terms and conditions mentioned therein must be incorporated in the contract to be entered into between the college and the teacher concerned. It does not say that the terms and conditions have any legal force, until and unless they are embodied in an agreement. To put it in other words, the terms and conditions of service mentioned in Statute 151 have proprio vigore no force of law. They become terms and conditions of service only by virtue of their being incorporated in the contract. Without the contract, they have no vitality and can confer no legal rights.

Whereas in the case of Prabhakar Ramkrishna Jodh v. A.L. Pande and Another (1965) 2 SCR 713, the terms and conditions of service embodied in clause 8 (vi) (a) of the 'College Code' had the force of law apart from the contract and conferred rights on the appellant there, here the terms and conditions mentioned in Statute 151 have no efficacy, unless they are incorporated in a contract. Therefore, appellant cannot found a cause of action on any breach of the law but only on the breach of the contract. As already indicated, Statute 151 does not lay down any procedure for removal of a teacher to be incorporated in the contract; So, clause 5 of the contract can, in no event, have even a statutory flavor and for its breach, the appellant's remedy lay elsewhere.

We hold that the High Court was right in its view that the writ petition was incompetent. We, therefore, dismiss the appeal but, in the circumstances, we make no order as to costs."

There can be no dispute with respect to the settled legal proposition that in the event that a person is not appointed on a regular basis, and if his service is not governed by any Statutory Rules, he shall be bound by the terms and conditions that have been incorporated in his appointment letter. (Vide : State of Punjab Vs. Surinder Kumar, (1992) S SCC 489 : 1992 SCC (L & S) 345 : (1992) 19 ATC 345 : AIR 1992 SC 1593). In such an eventuality, there can be no reason with respect to why the terms and conditions incorporated in the appointment letter should not be enforced against such an employee. In the instant case, respondent no.1 was temporarily appointed in a project and thus, she had at no point of time, been appointed on a regular basis, owing to which, she cannot claim any lien with respect to the said post.

In view of the discussion made hereinabove, this Court is of the opinion that since the employment of the petitioner was governed by a simple contract of employment, hence the writ petition is not maintainable for enforcement of contract of service. Mrs. Rupam Tewari v. Allahabad High School Society, through its Secretary, Allahabad and others, 2019 (5) ALJ 169

Art. 226 – Contractual matters – writ petition – maintainability – Issue regarding release of alleged contractual amount – no evidence to show that petitioner – company was party to contract with UPRNN – respondent so as to claim release of contractual amount – claim of company not based on public law remedy – writ petition not maintainable

In case where the contract entered into between the state and the person aggrieved is of a non-statutory character and the relationship is governed purely in terms of a contract between the parties, in such situations the contractual obligations are matters of private law and a writ would not lie to enforce a civil liability arising

purely out of a contract. The proper remedy in such cases would be to file a civil suit for claiming damages, injunctions or specific performance or such appropriate reliefs in a civil court. Pure contractual obligation in the absence of any statutory complexion would not be enforceable through a writ. The remedy under Article 226 of the Constitution being an extraordinary remedy, it is not intended to be used for the purpose of declaring private rights of the parties. In the case of enforcement of contractual rights and liabilities the normal remedy of filing a civil suit being available to the aggrieved part, this Court may not exercise its prerogative writ jurisdiction to enforce such contractual obligations. In the instant case the claim sought to be set up by the petitioner has been strongly disputed, and the petitioner has not been able to place on record any material to demonstrate that it was a party to any agreement in terms of which it would be entitled to raise any claim against the respondents. Despite time being granted, the petitioner has not been able to bring any material on record to demonstrate that it was a party to any agreement on the basis of which it may claim entitlement to raise a claim in respect of the reliefs prayed for in the writ petition. Therefore extraordinary jurisdiction under Art. 226 of the Constitution. Cannot be exercised in favour of petitioner. M/s. Ipjacket Technology Indian Pvt. Ltd. v. M.D.U.P. Rajkiya Nirman Nigam Ltd., 2019 (4) ALJ 273

Art. 226 – Minor or major detenue, victim of offence under Ss. 363, 366-A, 366, 376 of Penal Code – cannot be detained in nari Niketan against her wish – Order of Magistrate directing detention of victim to protective home is without jurisdiction and unsustainable

It may also be appreciated that the issue whether the victim/detenue who is a minor, can be sent to Nari Niketan against her wish, is no longer resintegra and has been conclusively settled by a catena of decisions of this Court. In the case of Smt. Kalyani

Chowdhary v. State of U. P. reported in 1978 Cr. L. J. 1003 (D.B.), a Division Bench of this Court has taken the view that:

"no person can be kept in a Protective Home unless she is required to be kept there either in pursuance of Immoral Traffic in Women and Girls Protection Act or under some other law permitting her detention in such a home. In such cases, the question of minority is irrelevant as even a minor cannot be detained against her will or at the will of her father in a Protective Home."

It is not the case of the respondent that the petitioner has instituted any suit for her marriage with Shivam Kumar being declared void on the ground of the same being child marriage. The detenue in her affidavit deposed that she is major and she had left her home on her own accord and solemnized marriage with Shivam Kumar on her own sweet will without any pressure or fear. Thus, the Chief Judicial Magistrate, Amroha did not have any right to snatch the custody of the detenue from the husband and place her in a protective home. The detenue/petitioner is not an accused of the offence under Sections 363 and 366, IPC. She is only a victim. A victim, as held by the Division Bench of this Court in the case of Pushpa Devi, may at best be a witness and there is no law where under the Court may direct detention of a witness simply because he or she does not like him to go to any particular place. In such circumstances, the direction of the learned Magistrate that she shall be detained at Nari-Niketan is absolutely without jurisdiction and illegal as he is not a natural guardian or duty appointed guardian of minors. Smt Kajal Shivam Kumar v. State of U.P., 2019 (3) ALJ 604

Art. 226 – Habeas Corpus petition – case for grant of indulgence made out – detenue released

It is also been informed that the marriage is registered and the certificate of registration of marriage has been annexed on page

no.32 of the writ petition. The same has also perused by us. It is the certificate of registration of marriage under the Uttar Pradesh Marriage Registration Rules, 2017.

In view of the aforesaid facts and circumstances of the case, the age of the girl, the statement made by the girl before this Court as well as the statement under Section 164 Cr.P.C., case for grant of indulgence has been made out. The HCWP accordingly is allowed. The corpus Smt. Varsha, presently detained at Rajkiya Balgrih Balika, Swaroop Nagar, Kanpur, the respondent no.5, shall be released from custody forthwith. Varsha v. State of U.P., 2019 (4) ALJ 92

Contempt of Courts Act :

Sec. 12 – CPC, Or. 39, R. 2-A – Contempt – Alleged violation of order of temporary injunction – Remedy is to approach court under O. 39, R. 2-A CPC – Contempt petition, not maintainable

Contempt of court is essentially a matter which concerns the administration of justice and the dignity and authority of courts and judicial tribunals. It is not a right of a party to be invoked for the redress of his grievances. It is also not a mode by which the rights of a party, adjudicated upon by a Court or Tribunal can be enforced against another party. Moreover, if the matter, as in the present case, requires a detailed enquiry, it must be left to the court which passed the order and which presumably is fully acquainted with the subject-matter of its own order. When the matter relates to mere infringement of an order, as between parties, it is clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order, merely because other remedies may take time or are more circumlocutory in character. Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it. Shambhu Nath v. Rajeev Kumar Singh, 2019 (3) ALJ 431

Criminal Procedure Code:

Though Magistrate is not bound to permit victim but victim has right to assist court. When Grant of permission to victim to take over enquiry of pendency before Magistrate.

In view of such principles laid down, we find that though the Magistrate is not bound to grant permission at the mere asking but the victim has a right to assist the Court in a trial before the Magistrate. The Magistrate may consider as to whether the victim is in a position to assist the Court and as to whether the trial does not involve such complexities which cannot be handled by the victim. On satisfaction of such facts, the Magistrate would be within its jurisdiction to grant of permission to the victim to take over the inquiry of the pendency before the Magistrate. Amir Hamza Shaikh and others V. State of Maharashtra and another, 2019(108) ACC 917

Sec. 53 DNA – DNA test is a serious matter should not be lightly resorted to without appropriate satisfaction.

There can be no dispute to the right of police authorities to seek permission of the Court for

conducting DNA test in an appropriate case. In the present case, FIR alleges obtaining false caste certificate by the appellant by changing his name and parentage. The order impugned itself notices that investigation is not yet completed and material evidence are yet to be collected. The police authorities without being satisfied on material collected or conducting substantial investigation have requested for DNA test which is nothing but a step towards roving and fishing enquiry on a person, his mother and brothers. It is a serious matter which should not be lightly to be resorted to without there being appropriate satisfaction for requirement of such test.

It is the submission of learned Counsel for the respondent that section 53, Cr.P.C. empowers the police authorities to request a medical practitioner to conduct examination of a person. There cannot be any dispute to the provision empowering police authorities to made such a request. Present is a case where without carrying out any substantial investigation, the police authorities had jumped on the conclusion that DNA test should be obtained. It was too early to request for conduct of DNA test without carrying out substantial investigation by the police authorities. The Additional Junior Civil Judge also failed to notice that in the investigation conducted by the Investigating

Authority no such materials have been brought on the basis of which it could have been opined that conducting DNA test is necessary for the appellant on his mother and two brothers. Kathi David Raju V. State of A.P. and another, 2019(108) ACC 912

Ss. 145, 146(1)-order of attachment was set aside.

The law is well settled that no injunction can be granted to one tenure holder or owner of the property against co-tenure holder on the principle that possession of one is possession fall. It appears that this principle got escaped the judicial mind of the learned Magistrate while passing the order of attachment. At least initially while issuing notices, the Magistrate should have waited for the version of the other side. There should be imminent threat of breach of peace on the spot, to wit, an emergency. However, order of attachment in this case does not contain any such observation to at least form a prima facie opinion regarding existence of such an emergency. The Court may record that even in the civil suit bearing O.S. No. 330 of 2018 for permanent injunction initiated by the present applicant Civil Court refused to grant any ex-parte injunction. Even otherwise question of possession is the basic issue to be adjudicated in a

proceeding under section 145 of Code of Criminal Procedure, 1973 and order of attachment at the very threshold of the proceedings may prejudice the claim of the party in possession. While making these observations, I am reminded of the judgment of the Apex Court in Ashok Kumar v. State of Uttarakhand and others, 2013(80) ACC 599 (SC), in which vide paragraph Nos. 10, 11 & 12 the Court held thus;

"10. The ingredients necessary for passing an order under section 145 (1) of the Code would not automatically attract for the attachment of the property. Under section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under section 146 of the Code, has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate, before passing an order under section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be a material on record before Magistrate when the submission of the parties filed, documents produced or evidence adduced.

A case of emergency, as per section 146 of the Code has to be distinguished from a mere case of apprehension of breach of peace. When the reports

indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. Narendra Singh V. State of U.P. and others, 2019(108) ACC 649

Sec. 173 – Scope of order of further investigation by Magistrate

Considering the law laid down by this Court in the aforesaid decisions and even considering the relevant provisions of the Cr.P.C., namely sections 167(2), 173, 227 and 228 of the Cr.P.C., what is emerging is that after the investigation is concluded and the report is forwarded by the police to the Magistrate under section 173(2)(i) of the Cr.P.C., 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 section 156(3) and require the police to make a further report. If the Magistrate disagrees with the report and drops the proceedings, the information 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 Cr.P.C., 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 Cr.P.C., learned Magistrate in exercise of the powers under section 227 of the Cr.P.C. discharges the accused, thereafter, it will not be open for the Magistrate to *suo motu* 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 recognizance 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 Cr.P.C., 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 motu* order the further investigation by the investigating agency. Once the order of discharge is passed, thereafter the Magistrate has no jurisdiction to *suo motu* direct the investigating officer for further investigation and submit the report. In such a situation, only two remedies re 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 Cr.P.C. However, at the same time, considering the provisions of section 173(8) of the Cr.P.C., it is always open for the investigating agency to file an application

for further investigating 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 motu* direct for further investigation under section 173(8) of the Cr.P.C. or direct the reinvestigation into a case at the post-cognizance stage, more particularly when, in exercise of powers under section 227 of the Cr.P.C., the Magistrate discharges the accused. However, section 173(8) of the Cr.P.C. confers power upon the officer in charge 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 Cr.P.C. Therefore, it is always open for the investigating officer to apply for further investigation, even after forwarding the report under sub-section (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 in charge and the Magistrate has no jurisdiction to suo motu pass an order for further investigation/ reinvestigation after he discharges the accused. Bikash Ranjan Rout V. State Government of N.C.T. of Delhi, 2019(108) ACC 327

Sec. 178 – Jurisdiction of Court in cases where a woman, forced to leave his in-laws house, sue from place where she take shelter.

"Whether a woman forced to leave her matrimonial home on account of acts and conduct that constitute cruelty can initiate and access the legal process within the jurisdiction of the Courts where she is forced to take shelter with the parents or other family members".

We, therefore, hold that the Courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under section 498-A of the Indian Penal Code. Smt. Rupali Devi vs. State of U.P. and others, 2019(108) ACC 991

Sec. 190 – Courses available to Magistrate on FR.

After submission of final report in criminal case following four courses are open to the Magistrate and he may adopt any one of them as the facts and

circumstances of the case may require: (i) to accept final report, (ii) to take cognizance of the offence against a person although a final report has been filed by the police in the event sufficient material exist in the C.D. itself, (iii) in the event protest petition filed to treat the same as a complaint petition and prima facie case is made out, to issue precess to the accused, and (iv) to direct reinvestigate the matter.

It is settled view that the Magistrate on receipt of final report is not debarred from t aking cognizance under section 190(1)(b) of Cr.P.C. and he has not to adopt procedure of complaint case. V.V. Shree Khande and others vs. State of U.P. and other, 2019(108) ACC 184

Sec. 190 (1)(b) – Cognizance of offence – by considering extraneous material i.e. affidavit filed along with protest petition – Unsustainable

If in any case, the final report is submitted by the police, against which protest petition is filed by first informant, then the Magistrate has following three options:-

1. He may accept the final report and drop the proceedings, or
2. He may direct the police for further investigation, or
3. He may summon the accused on further two grounds:-

(A) If he chooses to summon the accused on the basis of evidence collected by the Investigation officer, he may do so directly without any further evidence. or

(B) If accused is summoned on the basis of protest petition, relying on extraneous material filed with protest petition, then he has to follow the procedure laid down under chapter XV of Cr. P.C. i.e. to treat the protest petition as complaint and record the evidence u/s 200 and 202 Cr P.C. and cognizance cannot be taken on the basis of extraneous material u/s 190 (1)(b) Cr.P.C, without following the aforesaid procedure. Dr. Satish Chandra Srivastava v. State of U.P., 2019 (3) ALJ 405

Ss. 195, 340- IPC Ss. 195, 211, 220, 323, 330, 197 – quashing of order of registration of FIR against Investigating officer.

This writ petition challenges the order dated 25.4.2019, passed by the Addl. Sessions Judge/ F.T.C.-I, Kushinagar at Padrauna, directing for registration of cases against the petitioners and the consequential FIR dated 28.4.2019 as Case Crime No. 235/2019, under section 195/211 /220/ 323/330/197 IPC, P.S. Taraya Sujan, Kushinagar.

1. Brief facts are as under:-

Petitioner No. 1, the Sub-Inspector, No.2, the Investigating Officer and No. 3, the Constable of the P.S. concerned on 24.4.2019 allegedly recovered 1.9

kg. of ganja from accused Sarwan Yadav in Case Crime No. 230/2019, under section 8/20 of the N.D.P.S. Act, P.S. Taraya Sujan, Kushinagar. The accused was produced for remand before the Addl. Sessions Judge/ F.T.C.-I, Kushinagar (Special Court) on 25.4.2019. the accused informed the Court that he had been illegally detained for the last 4 days at the police station where he was subjected to physical torture and the alleged recovery is fake and planted. The medical report of the accused prepared by Dr. Sanjay Kumar, C.H.C., Tamkuhiganj did not indicate any pain or injury. The Special Court physically examined the injuries of the accused and found several injuries on his body and directed the C.M.O., Kushinagar, to get the accused examined by a board of 2 doctors for fresh medical examination. The Board examined the accused and reported as many as 17 injuries. The Board opined that out of 17 injuries, injuries Nos. 2, 7, 11, 12, 15,16 & 17 are old, injuries Nos. 1,3,4,5,8,9 & 14 are 3-5 days old, injury Nos. 6 is a week old, injury No. 13 is an inflammatory lesion and injuries Nos. 5 & 10 are hard blunt trauma. The Court below on above materials, was of the view that prima facie the contention of the accused that he was subjected to physical torture in police custody, is made out while refusing to grant further remand of the accused, directed for his immediate release on personal bond, imposed a

penalty of Rs. 1,000/- each on the petitioners, which was directed to be paid to the accused after deduction from their salary with a simultaneous direction for prosecution against the petitioners under section 195/211/220/ 323/ 330 IPC and under section 197 IPC against the doctor concerned along with a direction to send a copy of the order to the authorities concerned. Pursuant thereto, respondent No. 4 lodged the above FIR against the petitioners, i.e., the Sub-Inspector, the Investigating Officer, the Constable of the police station concerned and the doctor, (non-petitioner).

The order dated 25.4.2019 does not specifically direct for lodging of an FIR, rather it directs for registering a case which could be interpreted both ways, i.e., FIR/ complaint but the illegality crept in when the learned Judge after conducting a preliminary inquiry, instead of remitting the matter to the complaint Magistrate as a complaint as envisaged under section 340 Cr.P.C. not only adjudicated the issue but also awarded penalty against the petitioners for an offence which was yet to be established in a Court of competent jurisdiction, i.e., before the complaint Magistrate, we precisely for these reasons, are not directing the FIR to be treated as complaint before the complaint Magistrate.

It is evident that if the Court upon an application or otherwise finds it in the interest of justice that an inquiry in respect of offences mentioned in section 195 of the Code is necessary, the Court would make a preliminary inquiry and after such inquiry, record a finding to that effect and make a complaint in writing to the Magistrate of 1st class having jurisdiction. Raghvendra Singh and others vs. State of U.P. and others, 2019(108) ACC 655

Ss. 284, 285 – Commission for recording evidence.

Thereafter, with reference to sections 284 and 285, Cr.P.C., this Court further observed that –

"22. ..... Thus in cases where the witness is necessary for the ends of justice and the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case would be unreasonable, the Court may dispense with such attendance and issue a commission for examination of the witness. ..... Normally a commission would involve recording evidence at the place where the witness is. However advancement in science and technology has now made it possible to record such evidence by way of video-conferencing in the town/city where the Court is.

Thus in case where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience the Court could consider issuing a commission to record the evidence by way of video-conferencing." Manju Devi vs. State of Rajasthan and another, 2019(108) ACC 377

Sec.311A – Proviso of Sec. 311A is restricted to accused only

Whether the Magistrate can issue directions under Sec. 311-A Cr.P.C. to a person pending investigation of a crime to give a specimen of his signature or handwriting, if at no time he has been arrested in connection with the said crime?

Thus considered, the operation of the proviso to section 311-A of the Code has to be restricted to the case of an accused, so as to avoid an absurd result. This appears to be the clear legislative intent also, as already analyzed. Vinod Kumar Singh vs. State of U.P. and another, 2019(108) ACC 500

Sec. 319 – Sec. 319 cannot be invoked if trial itself has come to an end.

Under section 319 of the Code, the Court may summon the person to be tried along-with existing accused. If the trial itself has come to an end and judgment pronounced, provision of section 319 of the Code cannot be invoked.

Section (4) of 319 of the Code does not envisage for a separate trial, what it provides for is that once a person is summoned under section 319 of the Code, the proceeding in respect of such person shall be commenced afresh and witnesses reheard. It only means that in an existing trial, such person will have to be taken through all the procedures afresh and that is the only option available. Smt. Jubnesh V. State of Uttarakhand, 2019(108) ACC 59

Sec. 319.

Thus, even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial Court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of section319 of the Cr.P.C. and even those persons named in the FIR but not implicated in the charge-

sheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused. Rajesh and others vs. State of Haryana, 2019(108) ACC 978

Sec. 340 – for Sec. 340 then should be something deliberate.

For Perjury U/ S. 340 Cr.P.C. it is clear therefore from a reading of these judgments that there should be something deliberate – a statement should be made deliberately and consciously which is found to be false as a result of comparing it with unimpeachable evidence, documentary or otherwise. Aarish Asgar Qureshi V. Fareed Ahmed Qureshi and another, 2019(108) ACC 926

Sec. 451 - Essential Commodities Act 1955 Sec. 6A – Release application U/Sec. 451 CrPC, release of essential commodity during pendency of confiscation proceeding U/Sec. 6A of Essential Commodity Act not maintainable.

The Apex Court in the case of Suresh Nanda v. C.B.I., 2008(63) ACC 555 (SC), has held that the

provision of Special Act prevail over the general provisions of the Code of Criminal Procedure. The aforesaid dictum of the Apex Court has been further relied upon by Patna High Court in the case of Manju Kumari and others, 2006 Cr.L.J. 3014, as well as Bombay High Court in Rajendra v. State of Maharashtra and another, (Criminal Writ Petition No. 846 of 2016 decided on 10.10.2016)

The Apex Court in case of Divisional Forest Officer and other v. G.V. Sudhakar Rao and others, 1986(23) ACC 23 (SC), has held that the High Court has no jurisdiction to release the vehicle under section 482 Cr.P.C., when a confiscation proceeding is pending before the designated authority.

The Apex Court in case of State of West Bengal v. Sujeet Kumar Rana, 2004(48) ACC 627 (SC), has held that once confiscation proceedings has been initiated, the jurisdiction of Criminal Court is excluded.

The law with regard to release of essential commodities and seized vehicle, etc. during pendency of confiscation proceedings under section 6-A of the Essential Commodities Act has also been settled by the Apex Court in case of State of Bihar and another v. Arvind Kumar and another, 2012(79) ACC 396 (SC), wherein the Apex Court has held that so long as the

confiscation proceedings under section 6A of The Essential Commodities Act are pending, release of vehicle, etc. and essential commodities involved in the commission of an offence under section 3/7 of The Essential Commodities Act is not maintainable in view of statutory bar contained under section 6-E of The Essential Commodities Act.

Recently, the Apex Court on 26.3.2019 in case of State of M.P. and others v. Uday Singh and others, 2019 SCC Online SC 420, has considered the power and jurisdiction of the Magistrate under section 451 Cr.P.C. during pendency of confiscation proceedings under the Forest Act and held that the jurisdiction under section 451 of the Code of Criminal Procedure is not available to the Magistrate, once the authorized Officer initiated the confiscation proceedings on account of clear bar of jurisdiction in certain cases under the Forest Act.

After the aforesaid analysis in the light of dictum of the Apex Court there is no doubt that release application dated 1.3.2019 under section 451 Cr.P.C. of the revisionist for release of Essential Commodity during pendency of confiscation proceedings under section 6-A of The Essential Commodities Act was not maintainable. M/s. Raghuvir Saran Madan Murari (Wholesaler), Mandi Samiti, through its Proprietor

Tehrauli, Jhansi V. State of U.P. and another, 2019(108) ACC 566

Evidence Act:

Sec. 134 – conviction on sole testimony of Single witness.

It is settled principle of criminal law that no specific number of witnesses is required for proving prosecution case. It depends on facts and circumstances of each case. From perusal of legal proposition propounded by Supreme Court in Vadivelu Thevar v. The State of Madras, AIR 1957 SC 614. It is clear that it is established principle of criminal law that Court can and may act on the testimony of a single witness provided he/she is wholly reliable. There is no legal impediment or bar in convicting an accused on the sole testimony of single witness. This principle is also based on the legal position provided in Section 134 of Evidence Act, 1872 which provides that:-

> "No particular number of witnesses shall in any case be required for the proof of any fact."

In the facts and circumstances of this case it would be against the established norms of human behavior to suggest that an injured witness and real

brother of deceased would falsely implicate his own father leaving aside the real culprit. Hence, the witnesses produced by the prosecution in this case are sufficient to prove the prosecution case. Therefore, non-examination of mother and other brothers of deceased by prosecution is not fatal to its case and the submission made by learned Amicus Curiae is not sustainable. Sugreev Kushwaha V. State, 2019(108) ACC 595

Circumstantial evidence – 5 Golden Principles.

This Court in *Sharad Birdhi Chand Sharda v. State of Maharashtra, (1984)4 SCC 116,* elaborately considered the standard of proof necessitated for recording a conviction on the basis of circumstantial evidence and laid down the five golden principles of standard of proof required to be established in such a case, which are paraphrased as follows:

(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established;

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, these should not be

explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be conclusive in nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the acts must have been committed by the accused. Ramesh Dasu Chauhan and another V. State of Maharashtra, 2019(108) ACC 698

Evidentiary value of interested witness, related witness Related witness is not same as interested witness:

It is well settled principle of law that evidence of an interest witness should not be equated with that of tainted evidence or that of an approver so as to require corroboration as a matter of necessity. All that the Courts required as a rule of prudence, not as a rule

of law, was that the evidence of such witness should be scrutinized with a little care. It has to be realized that related and interested witness would be the last person to screen the real culprits and falsely substitute innocent ones in their places. Indeed there may be circumstances where only interested evidence may be available and no other, e.g. when an occurrence takes place at midnight in the house when the only witnesses who could see the occurrence may be the family members. In such cases, it would not be proper to insist that the evidence of the family members should be disbelieved merely because of their interestedness. But once such witness was scrutinized with a little care and the Court was satisfied that the evidence of the interested witness have a ring of truth such evidence could be relied upon even without corroboration. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can and certainly should, be relied upon. (See Anil Rai vs. State of Bihar; 2001 (43) ACC 614 (SC), State of U.P. v. Jagdeo Singh; (2003)1 SCC 456, Bhagalool Lodh and another v. State of U.P..; 2011 (74) ACC 238(SC), Dahari and others v. State of U.P.,; (2012)10 SCC 256, Raju @ Balachandran and others v. State of Tamil Nadu; (2012)12 SCC 701,

Gangabhavani v. Rayapati Venkat Reddy and others; (2013)15 SCC 298, Jodhan v. State of M.P.,; (2015)11 SCC 526).

The Supreme Court in the matter of Bur Singh and another v. State of Punjab, 2009(65) ACC 98(SC), has held that merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. Further, the Supreme Court in the matter of Sudhakar v. State, 2018(104) ACC 302(SC), and Ganapathi v. State of Tamil Nadu, 2018(104)ACC 349(SC), relying in its earlier judgments held as under:

> "18. Then, next comes the question what is the difference between a related witness and an interested witness?. The plea of "interested witness", "related witness" has been succinctly explained by this Court that "related" is not equivalent to "interested". The 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 seeking an accused person punished. In this case at hand PW 1and 5 were not only related witness, but also

‘interested witness’ as they had pecuniary interest in getting the accused petitioner punished. Prefer State of U.P. v. Kishanpal and ors., 2009(64)ACC 394(SC). As the prosecution has relied upon the evidence of interested witnesses, it would be prudent in the facts and circumstances of this case to be cautious while analyzing such evidence. It may be noted that other than these witnesses, there are no independent witnesses available to support the case of the prosecution.”

Relationship is not a factor to affect credibility of a witness. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused. A witness who is a relative of deceased or victim of the crime cannot be characterized as ‘interested’. The term ‘interested’ postulates that the witness has some direct or indirect ‘interest’ in having the accused somehow or other convicted due to animus or for some other oblique motive. A close relative cannot be characterized as an ‘interested’ witness. He is a ‘natural’ witness. His evidence, however, must be scrutinized carefully. If on such scrutiny his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the ‘sole testimony of such witness. (See- Harbans Kaur and another v. State of

Haryana; 2005(52) ACC 59(SC), Namdeo v. State of Maharashtra; 2007(58) ACC 414(SC), Sonelal v. State of M.P., 2009(64) ACC 898(SC) and Dharnidhar v. State of Uttar Pradesh and others & other connected appeals) 2010(71) ACC 321(SC). Dinesh V. State of U.P., 2019(108) ACC 64

Hostile witness – How testimony of hostile witness should be applied.

There may be various reasons for hostility and while appreciating the evidentiary value of a hostile witness, the Trial Courts should not be mechanical and should consider the evidence in the light of factual matrix in each case. In case the witness has turned hostile during cross-examination, the statement in examination-in-chief may be taken in support of other reliable and trustworthy evidence available on record. It should be always kept in mind that right of cross examination is available to the accused as part of his right to fair trial and unless there is evidence of threat, fear or pressure or the like to procure hostility, the Trial Courts should be very cautious in placing reliance on it, otherwise, the valuable right of the accused of cross examination and fair trial will become futile and nugatory.

The principle of law as laid down by different judgments of the Supreme Court that the testimony of hostile witnesses shall not be completely discarded

and the part of the statement which supports the prosecution version can always be taken into consideration cannot be disputed, but the way it has been applied in the facts and circumstances of this case, that was totally uncalled for and unwarranted. It has been held in Ram Swaroop v. State of Rajasthan, 2004 (48) ACC 965 (SC), that the credibility of a hostile witness cannot be discarded altogether. But this puts the Court on guard and caution the Court against acceptance of such evidence without satisfactory corroboration. Rajendra V. State of U.P., 2019(108) ACC 578

Family Courts:

Sec. 9 – Hindu Marriage Act – Sec. 23(2) settlement – Decree of divorce, illegal on account of non - Observance of mandatory provision

Section 17 of the Family Court Act incorporates that judgment of a family court shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision. Order XIV of the Code of Civil Procedure provides for framing of issues after pleadings have been submitted by the parties so that to pinpoint the dispute between them and to enable them to adduce their evidence on those points. From the perusal of the entire order-sheet and judgment, we find that the learned Family Court has not framed issues and has fixed the case for evidence on the date the defendant filed her WS. No point for determination has been formulated in the impugned judgment.

Section 9 of the Family Court Act provides that the court shall make all endeavor for settlement between the parties and also persuade them for such settlement. Section 23(2) of the Hindu Marriage Act also obligates the court of first instance for re-conciliation process. In Balvinder Kaur vs Hardeep Singh, (1997) 11 SCC 701 and Jagraj Singh vs Birpal Kaur, (2007) 2 SCC 564, it has been held that a decree without undergoing re-conciliation process is not sustainable in law. Court below has omitted to make any effort for re-conciliation process, and as such the impugned judgment is illegal on account of non-observance of mandatory procedure. Nisha Soni V. Mukesh Soni, 2019 (5) ALJ 349

Hindu Adoption and Maintenance Act:

Sec. 19 – Maintenance to widowed daughter in law – she is entitled to get maintenance along with children from her father in law

In the present matter, the respondent no.1 has specifically spelled out the ancestral properties in possession of her father-in-law (petitioner herein) in the application, which includes a flat measuring area 200 square yard at Karwal Nagar Delhi, a plot measuring area 250 square yard at Rudrapur Uttrakkhand and 20 bigha agricultural land in District-Moradabad. In reply, petitioner has not denied about existence of above mentioned properties, but only made a bald denial about the status of property, being ancestral. Petitioner has also admitted that he is a retired government employee.

On the other hand the respondent no.1 has been able to establish that she has not sufficient means to maintain herself and her two minor sons.

In view of above factual aspect, the respondent no.1 who is unable to maintain herself and his two minor sons and the fact that petitioner (father-in-law) is in possession of the ancestral property,

the impugned order whereby maintenance of Rs. 1500/- for each of the respondent has been awarded does not warrant interference under supervisory power of this Court provided under Article 227 of the Constitution. Janki Prasad V. Smt. Sapna Rani Kashyap, 2019 (4) ALJ 17

Hindu Law:

Joint family property – property claimed to be acquired from individual sources – if family was headed by karta and land revenue also pain in respect of land acquired in name of certain individual member of joint family from joint family funds – onus lies on person who claims that property was acquired – otherwise property acquired would constitute as joint family corpus and if not proved otherwise presumption would be favour of joint family property

An undivided Hindu family thus is ordinarily joint not only in estate but in food and worship. The presumption, therefore, is that members of a Hindu family are living in a state of union unless contrary is established.

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. Bharat Ram V. Collector of Allahabad, 2019 (5) ALJ 217

Hindu Marriage Act:

Ss. 13(1)(i-b), 9 – Divorce – court cannot grant divorce on ground of cruelty when it is sought on ground of desertion

Where divorce has been sought on the ground of desertion only, the court cannot grant divorce on the ground of cruelty. Moreover, from the side of appellant, a copy of the petition under Section 9 of the Hindu Marriage Act seeking relief of Restitution of Conjugal Rights was also filed but the same has been ignored by the court below. Nisha Soni V. Mukesh Soni, 2019 (5) ALJ 349

Indian Penal Code:

Proportion between crime and punishment has to be maintained.

Therefore, awarding of just and adequate punishment to the wrong doer in case of proven crime remains a part of duty of the Court. The punishment to be awarded in a case has to be commensurate with the gravity of crime as also with the relevant facts and attending circumstances. Of course, the task is of striking a delicate balance between the mitigating and aggravating circumstances. At the same time, the avowed objects of law, of protection of society and responding to the society's call for justice, need to be kept in mind while taking up the question of sentencing in any given case. In the ultimate analysis, the proportion between the crime and punishment has to be maintained while further balancing the rights of

the wrong doer as also of the victim of the crime and the society at large. No strait jacket formula for sentencing is available but the requirement of taking a holistic view of the mater cannot be forgotten.

In the process of sentencing, any one factor, whether of extenuating circumstance or aggravating, cannot, by itself, be decisive of the matter. In the same sequence, we may observe that mere passage of time, by itself, cannot be a clinching factor though, in an appropriate case, it may be of some bearing, along-with other relevant factors. Moreover, when certain extenuating or mitigating circumstances are suggested on behalf of the convict, the other factors relating to the nature of crime and its impact on the social order and public interest cannot be lost sight of. State of M.P. V. Suresh, 2019(108) ACC 04

Sec. 448 - – Sec. 456(2) of CrPC – Limitation of 30 days would have applied in case no order in respect of case property was passed by Trial Court.

In this case, the Trial Court while convicting the accused had passed an order directing restoration of the property to the complainant Shankar Prasad Dube. In the order, it has been stated that the property in the

case be handed over to the petitioner Prayag Prasad Dube. Keeping in view of the nature of the dispute, there is no other case property except the property whose possession was forcibly taken by the respondents and their father. Therefore, no separate order was required directing restoration of possession since such an order had been passed while convicting the respondents and their father.

In the present case, after the appeal filed by the respondents and their father was dismissed, the father of the present appellant applied for handing over possession to him in terms of the order already passed by the Trial Court while convicting the respondents and their father, in which eventually, the limitation of 30 days would not apply. It would apply only if the Trial Court had not passed any order in respect of the case property while convicting the accused. Mahesh Dube V. Shivbodh and others, 2019(108) ACC 684

Juvenile Justice (Care and Protection of Children) Act:

Determination of juvenility on ground of High School mark sheet if no certificate is there neither other documents support plea of juvenility.

The purpose of the above discussion is that the age of juvenility can be determined on the basis of high school certificate- marks sheet if there is no doubt with regards to genuineness and authenticity thereof. When there arises reasonable doubt in respect thereof, the same cannot be relied blindly and the Court is empowered under law to ignore the same. In the case in hand, the appellant claimed him to be juvenile only on the basis of high school/ matriculation marks sheet. From the perusal of the record attached with this appeal and the impugned order passed by the learned Court below, it is clear that the marks-sheet of appellant has been issued bearing signature and seal of the principal, Samaj Kalyan Inter College, Bangouli and the same has been further attested by him. It has been argued by the OP that, now, the UP Board issues marks-sheet cum certificate and that has not been filed by the appellant. This argument finds further support from the three marks-sheets cum certificates of Saniya Aalams, Shahrukh Khan & Sanu Chauhan for the year 2017 and 2018. No such marks-sheet cum certificate has been produced by the appellant till date. If his marks-sheet was genuine, he could have filed the certificate also. Till date, no such certificate has been produced by the appellant. Therefore, the learned Court below rightly concluded it to be a suspicious document. Moreover, the Aadhar

Card, information of voting, extract of voting list and Pan card also shows that the appellant was more than 18 years in age.

There is one more reason which makes the contention of the appellant suspicious. The date of incident as per FIR is 31.8.17. The plea of juvenility has been raised for the first time by giving application dated 25.8.2018. Prior to that, the appellant was granted bail by order of this Court dated 21.3.2018 passed in Criminal Misc. Bail Application No. 4579/2018. The mark-sheet filed by the appellant is in respect of examination of high school for the year 2018 the examination of the same took place in February, 2018, almost after six months from the date of occurrence and therefore, there is weight in the argument of the learned A.G.A. that the possibility is there that the appellant appeared in such examination to manipulate and obtain a proof of age to make him eligible for the benefit of the provisions of the Juvenile Justice Act,. No doubt that there is no stage provided under law for the claim of juvenility and such plea can be raised at any time during trial or even at appellate stage. But, a belated claim surrounded by such suspicious circumstances, aggravates the doubt, as is the situation in the present case. Sher Khan V. State of U.P. and another, 2019(108) ACC 626

Direction to State Govt. to appoint a panel of psychologist for preliminary assessment.

It was also brought to the notice of the Court that the Session Divisions are ill equipped to sale out the mandatory provisions of the Act and its execution. While preliminary assessment was made in the heinous offence of the Board, there is requirement of law that the Board may take the assistance of “experienced psychologist” or “psycho social experts”. There is no expert in most of the Session Divisions which is really scary state of affairs whereby the Board is often handicapped, on this count. In the absence of expert psychologist or psycho-social expert, it would not be possible to assess the mental or psychological faculty of mind of that particular juvenile objectively, which in fact, is the foundation stone of Juvenile Justice Jurisprudence in its correct prospective. In the absence of detailed objective preliminary age group of 16-18 years, their level of understanding about the gravity of the offence and other attending circumstances, the very purpose and objective of present Act would go haywire. In the prevailing circumstances, this Court thus directs the State Government to take such a remedial step preferably within a period of six months to appoint a panel of at least six expert psychologist/

psycho-social experts in each Commissioner's Division, so that their services may be utilized by the respective Juvenile Justice Boards within that particular Division for making such an assessment of delinquent juveniles. Radhika (Juvenile) V. State of U.P., 2019(108) ACC 884

Mental Health Care Act:

Post conviction Illness, Directions required to be followed in Future Cases.

Following directions need to be followed in the future cases in light of the above discussion-

(a) That the post conviction severe mental illness will be a mitigating factor that the Appellate Court, in appropriate cases, needs to consider while sentencing an accused to death penalty.

(b) The assessment of such disability should be conducted by a multidisciplinary team of qualified professionals (experienced medical practitioners, criminologists etc), including professional with expertise in accused's particular mental illness.

(C) The burden is on the accused to prove by a preponderance of clear evidence that he is suffering

with severe mental illness. The accused has to demonstrate active, residual or prodromal symptoms, that the severe mental disability was manifesting.

(d) The State may offer evidence to rebut such claim.

(e) Court in appropriate cases could setup a panel to submit an expert report.

(f) 'Test of severity' envisaged herein predicates that the offender needs to have a severe mental illness or disability, which simply means that objectively the illness needs to be most serious that the accused cannot understand or comprehend the nature and purpose behind the imposition of such punishment. Accused X V. State of Maharashtra, 2019(108) ACC 259

NDPS Act:

Sec. 50 applies only to personal search.

Section 50 provides reasonable safeguard to the accused before search of his person is made by an officer authorized under section 42 of the Act to conduct search. In State of Punjab v. Baldev Singh, 1999 (39) ACC 349 (SC), (Five Judge Bench), it was

settled by the Supreme Court that search of person under section 50 of the N.D.P.S. Act does not include search &recovery from bag, brief case and container etc. Section 50 applies where personal search of a person is involved. In T. Hamza v. State of Kerala, 1999 (39) ACC 511 (SC), it has been clarified that section 50 has been incorporated to provide statutory safeguard to lend credibility and fairness and to avoid arbitrariness keeping in view, the severe punishment prescribed in the statute. It has been further clarified in Megh Singh vs. State of Punjab, 2004 (50) ACC 128 (SC), that section 50 applies only in case of personal search of a person and does not extend to search of a vehicle, container, bag or premises. In Ajmer Singh v. State of Haryana, 2010 (69) ACC 299 (SC), and Jarnail Singh v. State of Punjab, 2011 (73) ACC 448 (SC), the above view was further affirmed.

In Kulwinder Singh v. State of Punjab, 2015 (91) ACC 300 (SC). Where bags containing poppy husk were seized from truck in his the accused were sitting, it has been held by the Supreme Court that it was not case of personal search of the accused and section 50 of the N.D.P.S. Act, 1985 was not attracted as section 50 only applies in case of personal search of person and not applicable to search of vehicle, container, bag or premises.

In this instant case, the prosecution version is that the illegal charas was recovered from the accused from the bag she was carrying. It was not recovered from the search of her person. This fact has been proved by the prosecution witnesses. Thus, PW-1 Excise Inspector R.B.Singh has stated that 2 kg charas was recovered from the bag which the accused was keeping in her lap and tried to conceal the same after seeing him. PW 2 Bachaulal is the public witness of recovery and he has also stated that the charas was recovered from the bag of the accused. Therefore, section 50 is not applicable in the present case at all. Smt. Champa Devi V. State, 2019(108) ACC 616

Negotiable Instrument Act:

Ss. 118, 139 – Sec. 139 is a rebuttable Resumption.

We having noticed the ratio laid down by this Court in above cases on section 118(1) and 139, we now summarise the principles enumerated by this Court in following manner:

(i) Once the execution of cheque is admitted section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, section 139 imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence. Basalingappa V. Mudibasappa, 2019(108) ACC 943

Sec. 138 – Cr.P.C.Sec. 219, 220 – Single complaint relating to more than one cheque is maintainable;

reasoning is cause of action is single notice not various cheques.

The aforesaid provision introduces a special rule as to evidence for the purpose of taking cognizance of a complaint under section 138 of the Act, which does not require the complainant to be examined on oath. All that is required is an affidavit to enable the Magistrate to proceed with the complaint, which subject to all just exceptions would be readable in evidence in any inquiry, trial or other proceedings, under the Code of Criminal Procedure. The aforesaid provision carries a non obstante clause excluding anything to the contrary provided under the Code of Criminal Procedure, relating to the evidence of the complainant.

The second objection put forward in the affidavit is that there are four cheques involved, each of which give rise to a different cause of action, in support of which a single complaint would not be maintainable.

In the present case, if the four cheques are finally held to be part of the same transaction, though apparently they are, as these have been issued in liquidation of the same debt of Rs. 2,00,000/-, can well entail all the offences being charged and tried together by virtue of section 220 Cr.P.C. The same

would not vitiate proceedings as held in M/s. Kumar Rubber Industries, Kapurthala (supra). In the event, it is held by the Trial Court that these are not the part of the same transaction, it would be open to the complainant to choose which of these three cheques, she would maintain the prosecution upon. This was precisely the situation in M/s. Kumar Rubber Industries, Kapurthala (supra) and it was held there that the complaint is not liable to be quashed on this ground, subject of course to the complainant's right to choose, which of the three cheques she wants to pursue the prosecution about, in case it is held that it did not form part of the same transaction, within the meaning of section 220 Cr.P.C. The view that a single complaint relating to more than one cheque is maintainable also finds support from a decision of the Karnataka High Court in Tiruchandoor Muruhan Spinning Mills (P) Ltd. And others v. Madanlal Ramkumar Cotton and General Merchants, ILR 2000 (Kar.).

Here, the reasoning is that the cause of action is the single notice and not the various cheques in relation to which the notice of demand is issued.

The inevitable conclusion, therefore, is that a complaint as framed is maintainable and will be tried. However, in case, on hearing the accused, the learned

Magistrate finds that the case does not arise from the same transaction within the meaning of section 220 Cr.P.C., the Magistrate will give opportunity to the complainant to choose which out of the three cheques she wants to pursue this prosecution about, leaving her free to proceed in respect of the fourth instrument, separately, in the event it is found to be part of the same transaction, it can be charged and tried at the same trial for all the four instruments. This decision has to be taken by the Magistrate at the stage of framing of charges. Gulshan Seth V. Additional Chief Judicial Magistrate, District Meerut and another, 2019(108) ACC 553

Ss. 138, 141 – Principle contained in Sec. 141 is no applicable sole Propriety concern.

In the case of a sole proprietary concern, there are no two persons in existence. Therefore, no vicarious liability may ever arise on any other person. The identity of the sole proprietor and that of his ‘concern’ remain one, even though the sole proprietor may adopt a trade name different from his own, for such ‘concern’. Thus, even otherwise, conceptually, the principle contained in section 141 of the Act is not applicable to a sole-proprietary concern.

Accordingly, there is no defect in the complaint lodged against the applicant, in his capacity as the sole proprietor of the concern M/s. Manoj Rice Mill. There was no requirement to implead his sole proprietary concern as an accused person nor there was any need to additionally implead the applicant by his trade name. Manoj Singh V. State of U.P. and another, 2019(108) ACC 466

Ss. 138, 142 Limitation Act – Prior to amendment of 2002 Sec. 5 limitation Act was applicable but after amendment delay is condoned in Proviso of Sec. 142(b) of NI Act but complaint should not be dismissed merely on ground that Sec. 5 Limitation Act was applied of instead of Sec. 142.

Considering the definition of word “complaint as defined under section 2(d) of Cr.P.C., the word ”application’ as defined under section 2(b) of the Limitation Act, as well as proviso to section 142(b) of the N.I. Act, as discussed above, I am of the view that a complaint, where a prayer has been made either to take cognizance or to convict an accused, is a petition which term comes within the definition of “application” as used in section 29(2) of the Limitation Act, and, therefore, section 5 of the Limitation Act applies to a

complaint filed under section 138 of the N.I. Act prior to coming into force of Amendment Act No. 55 of 2002 and delay could be condoned, if the Court is satisfied that there was sufficient cause for not filing the complaint within the time prescribed under sub section (b) of section 142.

After amendment in the Negotiable Instruments Act, by Act No. 55 of 2002 w.e.f. 6.2.2003, the period of limitation can be extended and the delay in filing a complaint can be condoned by the Court concerned in view of proviso to section 142(b) of the N.I. Act.

It is also well settled that where the interpretation serves society more than the prejudice, if any, to an individual, the requirement of society should prevail, so that offender does not escape trial on technical grounds. In view of the matter, I am also of the considered opinion that merely filing an application under section 5 of the Limitation Act instead of filing an application in view of proviso to section 142(b) of the N.I. Act, the complaint cannot be dismissed as barred by limitation.

So far as another issue raised on behalf of the petitioner that the impugned notice is invalid on account of the reason that it contain demand of some additional amount other than cheque amount is

concerned, considering the law as settled by the Apex Court in case in *Suman Sethi* (supra), that if in the notice, claim/ demand of cheque amount as well as other amount for interest, etc. have been made specifying the same separately, the same will not invalidate the notice. In view of aforesaid discussion, this Court is of the considered opinion that the notice dated 20.5.2010 of the present case cannot be said to be invalid notice.

It is also well settled that once the notice is sent by the registered by correctly addressing to the drawer of the cheque, the requirement under proviso (b) of section 138 stand complied. As such there is no illegality in this case in sending notice by the respondent No. 2/complainant to the petitioner/ accused. Tulsi Ram Naik V. State of U.P. and another, 2019(108) ACC 167

Practice and Procedure:

Doctrine of Merger – Applicability of – Doctrine of merger is founded on the rationale that there cannot be more than one operative decree at a given point of time – The doctrine of merger applies irrespective of whether the Appellate Court has affirmed, modified or reversed the decree of Trial Court.

Upon the decision of the Appellate Court, there was a merger of the judgment of the Trial Court with the decision which was rendered in appeal. Consequent upon the passing of the decree of an Appellate Court, the decree of the Trial Court merges with that of the Appellate Court. The doctrine of merger is founded on the rationale that there cannot be more than one operative decree at a given point in time. The doctrine of merger applies irrespective of whether the Appellate Court has affirmed, modified or reversed the decree of the Trial Court.

In the present case, once the Appellate Court confirmed the judgment and decree of the Trial Court, there was evidently a merger of the judgment of the Trial Court with the decision of the Appellate Court. Once the Appellate Court renders its judgment, it is the decree of the Appellate Court which becomes executable. Hence, the entitlement of the decree holder to execute the decree of the Appellate Court cannot be defeated. Surinder Pal Soni V. Sohan Lal (D) Thru LR and others, (2019)(3) ARC 22

Probation of Offenders Act:

Ss. 3,4,6 – Release of accused on probation – Conviction for offence of cruelty – For offence of cruelty, maximum sentence provided was 3 years of imprisonment and fine – Accused having no criminal antecedents – Incident happened 16 year ago and husband taking care of baby born out of wedlock – Husband and in laws of victim ages 46, 71 and 65 years respectively – Accused remained in jail for 3

months and in-laws of victim remained in jail for 1 month – Accused entitled to be released on probation

In this case the accused/appellants Ramesh Prasad and Leelawati alias Leela are parents of accused/appellants Rakesh Kumar Gupta. From perusal of material available on record, it transpires that a baby was also born after the marriage of deceased. The alleged incident was happened in the year 2002 i.e. 16 years ago. The statements of accused-appellants were recorded by trial court in 2003 i.e. 15 years ago, wherein the age of accused/appellants Rakesh Kumar Gupta, Ramesh Prasad and Leelawati alias Leela were recorded by the learned trial Court as 31 years, 56 years and 50 years respectively. It means that they are 46 years, 71 years and 65 years old at present. Neither any fact nor any material has been placed regarding their previous conviction nor any submission in this regard has been made by the learned A.G.A before this Court. The provision of Probation of Offenders Act, 1958 is beneficial legislation which has been made by legislative for reformation of accused who is first offender as well as young person. It is also pertinent to mention at this juncture that from the perusal of record it further transpires that all the accused/appellants had surrendered before the Magistrate concerned during investigation. The accused-appellants Leelawati alias Leela and Ramesh Gupta were detained in jail for a period of more than one month whereas accused/appellant Rakesh Kumar Gupta was detained in jail for a period of more than three months.

Considering the fact and circumstance of the case, I am of the view that the benefit of provision of Probation of Offender Act, 1958 should be provided to the accused/appellants Rakesh Kumar Gupta, Ramesh Gupta and Leelawati alias Leela. Rakesh Kumar S/o Ramesh Gupta and others V. State of U.P., 2019 (4) ALJ 370

Provincial Small Cause Courts Act:

Sec. 17- Application for setting aside ex parte decree-Application rejected –An application in the Court seeking to set aside an ex parte decree passed by a Court of small causes or for a review of its judgment must be accompanied by deposit of the amount due from the applicant under the decree or in pursuance of the judgment-J.D./revisionist has not complied with the mandatory provisions of proviso to sub-section (1) of S.17 of Act, 1887, therefore, the application incompetent-Rejection proper.

The proviso to Section 17(1) of the Act 1887 with regard to application under Order IX Rule 13 C.P.C. was interpreted by the Hon'ble Supreme Court in the case of Kedarnath (paras 7,9,10 and 11) and it was held that an application under Order IX Rule 13 C.P.C. filed without complying with the proviso to Section 17(1) of the Act 1887, is not maintainable.

An application seeking to set aside an ex-parte decree passed by a Court of Small Causes or for a review of its judgment must be accompanied by a deposit in the Court of the amount due from the applicant under the decree or in pursuance of the judgment. The provision as to deposit can be dispensed with by the Court in its discretion subject to a prtevious application by the applicant seeking direction of the Court for leave to furnish security and the nature thereof.

In the case of Sardar Basant Singh v. Sardar Satnam Singh, 2016(1) ARC 326 (Para 10, this Court followed the judgment of Hon'ble Supreme Court in the case of Kedarnath

In the present case the judgment debtor-revisionist has not moved any application for dispensing with the deposit and seeking the leave of the Court for furnishing security for performance of the decree. Neither any such application was filed nor the deposit of the amount required under the proviso to Section 17(1) was made on the presentation of the application for recall of the ex-parte judgment and decree. Thus, the judgment debtor revisionist has not complied with the mandatory provisions of the proviso to sub-section (1) of Section 17 of the Act 1887. Therefore, the application of the judgment debtor revisionist was incompetent. Consequently, the revision is dismissed. Anil Kumar Agrawal V. Saroj Jain, 2019(2) ARC 921

Section 23 of the Provincial Small Cause Courts Act provides for return of plaint in a suit involving questions of title and in terms thereof when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be

presented to a Court having jurisdiction to determine the title.

It is thus clear that Section 23 confers a discretion on the Small Cause Court to return a plaint when a dispute in respect of title is raised which it finds is of such a nature that it would be more appropriate to be decided by regular civil Court.

It may thus be seen that where the Small Cause Court is called upon to consider a prayer for return of plaint under Section 23 of the Act, what is required to be considered is whether the suit has been filed on the basis of relationship of landlord and tenant and as to whether the denial of relationship of landlord and tenant was *bonafide* or had been set up only to oust the jurisdiction of the Judge Small Cause Court, in a case where relationship between the parties of landlord and tenant has been established refusal by the trial Court to return the plaint could not be said to be arbitrary.

A suit for eviction filed before the Judge Small Cause Court is to be decided on the basis of the relationship of landlord and tenant, and in a case where the said relationship is duly established the question of title does not at all get involved and the provisions of Section 23 of the Act for return of plaint would not be attracted. Asharam Chaurasia V. Om Prakash Gupta and 2 others, (2019)(3) ARC 63

Public Gambling Act :

Sec. ¾ - U.P. Gangsters & Anti Social Activities (Prevention) Act, 1986 – Sec. 3/4 of Gambling Act have to be read in conjunctions & not in isolation.

On weighing the entire facts and the scenario of the case, it transpires that section ¾ of the Public Gambling Act will have to be read in conjunction and not in isolation. It cannot be said that the petitioner was only found in the house of the accused as such only section 4 of the Public Gambling Act would apply which does not come within the purview of section 2(b)(vi) of Gangsters Act. When the petitioner is indulged in illegal activities, his role cannot be deciphered with co accused Abid that Abid alone is liable to be prosecuted under the Gangsters Act. When any person abets or assists in the illegal activities, he certainly comes within the clause (c) of the section 2 of Gansters Act as the place is being used as common gaming house. Shaukin V. State of U.P. and 2 others, 2019(108) ACC 150

Service Law:

Employment – appointment – Compassionate appointment – Delay and laches on part of petitioner – Failure to raise claim in time – such appointments cannot wait for claimants to attain majority or acquire additional qualifications

The purpose of compassionate appointments provides their justification. The death of a bread winner might force the family of the deceased into penury. The immediacy of the financial crisis creates the requirement for urgent redressal. The concept of compassionate appointments is created only to enable the bereaved family to tide over the immediate financial crisis.

However, there is a caution. Compassionate ground appointments are an exception and cannot be made the rule. The exception can be maintained only by strictly adhering to the pre-conditions of the appointment in a strict fashion. A relaxation in the aforesaid pre-conditions would open a floodgate of appointments on compassionate grounds. It will turn the compassionate ground appointments into a regular source of recruitment. The constitutionally accepted mode of appointment to public office or any other post under the State Government or its instrumentalities is by open and transparent recruitment process. Such recruitment process would invite eligible persons from the open market to compete for appointment. This process is consistent with the mandate of Article 14 and Article 16 of the Constitution of India.

Thus only present and imminent financial crisis provides the sole justification for making appointments on compassionate grounds. Delay in making such applications for appointment on compassionate grounds raises a presumption that the immediate financial crisis has been tided over. Lifting of the immediate financial penury, denies the justification for making an appointment on compassionate grounds.

The criteria of financial hardship faced by the family of the deceased caused by his death, provides a thin membrane of legitimacy to compassionate appointments. Bereft of this thin cover of legitimacy or if any other criteria is employed to make compassionate appointments, the appointments would become vulnerable to a constitutional challenge. Appointments based on

descent or claims of appointment which rest on heredity, invite the wrath of Article 16 of the Constitution of India.

The compassionate ground appointments are not an alternative source of recruitment. They are an exception. Permitting delayed appointments under the Dying-in-Harness Rules will make such appointments a regular source of recruitment.

Coming back to the facts of the case. In the instant case, the petitioner did not approach this Court for more than five years after the death of his father and from the date of the application for appointment on compassionate grounds. The delay on part of the petitioner in approaching this Court attracts the presumption that the immediate financial crisis caused by the death of the father of the petitioner was tided over or did not infact exist at all.

In the light of the preceding discussion, the petitioner is not entitled to be appointed under the Dying-in-Harness Rules on compassionate grounds. The writ petition is liable to be dismissed on this ground. Vinod Kumar V. State of U.P., 2019 (4) AWC 3535

Specific Relief Act:

Sec. 16 (c) – Suit for specific performance – Readiness and willingness – Vendee showing that he is having sufficient funds to pay balance consideration – Readiness and willingness on part of vendee established – Entitled to relief of specific performance

The findings of the frst appellate court regarding the plaintiff being ready and willing is based on proper appreciation and appraisal of the evidence and this court accepts the same. No perversity could be pointed out which could persuade this Court to set aside the findings returned by the first appellate Court. Bishun Das V. Vinod Kumar, 2019 (4) ALJ 514

Sec.34 –Suit for cancellation of sale-deed- On ground original plaintiff was of week intellect did not know what is good and bad for him, etc. –Suit dismissed-Appeal against allowed holding original plaintiff's mental age of 7 to 8 years accordingly treated as minor, hence the sale deed void-Sustainability of – No single medical prescription which indicate original plaintiff suffering from any mental ailment or that he had suffered from mental retardation from his childhood-The suit has been instituted casually without first seeking the permission of the Court to institute the suit, through the next friend –Khatauni and one medial certificate is also mired with suspicious circumstances – Finding returned by First Appellate Court in respect of evidence of the medical expert that original plaintiff was of unsound mind, does not corroborate from the pleadings as well as the facts – Since the evidence on the aforesaid point was not satisfactory, therefore, it cannot be said that the plaintiff has satisfactorily discharged its burden to prove its case – Dismissal of suit proper.

In the present case, the evidence does not categorically indicate the unsoundness of mind of Dubar to be of such an extent that he was unable to look after his person and property and this fact being in the special means of knowledge of Bhagwan Deen could and ought to have been proved in a much more satisfactory and better manner since the issue

regarding the declaration of a person as of unsound mind is a serious issue, which required a higher standard of proof then was sought to be tendered before the Trial Court by the plaintiff-respondent.

Second appeal is allowed. Lalta Prasad (Deceased) Through L.R. Laling Ram and 2 others V. Bhagwan Deen, 2019(2) ARC 907

Sec. 34- Suit for declaration Shri Ram Mandir a Private mandir, State has no right to interfere in the management, poojaarchan, and in possession of the agricultural land, etc-State filed W.S contending it to be a public temple-Suit decreed-appeal against allowed, second appeal also dismissed-Sustainability of - Plantiff not adduced any evidence to show that there is resticted participation of the public for darshan-There is no blood-relationship between the successive pujaris, no evidence adduced to show that the temple belonged to one family-if the temple was a private temple, the succession would have been hereditary and would be governed by the priciples of Hindu Succession i.e. by blood, marriage and adoption, the case in hand, succession by Guru-Shishya relationship -No error in impugned order.

The onus of proving that a temple is a private temple is on the person who is asserting it. Shri Ram Mandir, Indore V. State of Madhya Pradesh and others 2019 (2) ARC 841

Statutory Provisions:

Ministry of Law and Justice (Legislative Deptt.) Noti. No. G.S.R. 551 (E), dated August 5, 2019 and published in the Gazette of India, Extra., Part II, Section 3(i), dated 5th August 2019, p. 2, No. 444

In exercise of the powers conferred by clause (1) of article 370 of the Constitution, the President, with the concurrence of the Government of State of Jammu and Kashmir, is pleased to make the following Order:-

1. (1) This Order may be called the Constitution (Application to Jammu and Kashmir) Order, 2019.

(2) It shall come into force at once, and shall thereupon supersede the Constitution (Application to Jammu and Kashmir) Order, 1954 as amended from time to time.

2. All the provisions of the Constitution, as amended from time to time, shall apply in relation to the State of Jammu and Kashmir and the exceptions and modifications subject to which they shall so apply shall be as follows:-

To article 367, there shall be added the following clause, namely:—

"(4) For the purposes of this Constitution as it applies in relation to the State of Jammu and Kashmir—

(a) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State;

(b) references to the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office, shall be construed as references to the Governor of Jammu and Kashmir;

4. references to the Government of the said State shall be construed as including references to the Governor of Jammu and Kashmir acting on the advice of his Council of Ministers; and

(d) In proviso to clause (3) of article 370 of this Constitution, the expression "Constituent Assembly of the State referred to in clause (2)" shall read "Legislative Assembly of the State"."

Ministry of Law and Justice (Legislative Deptt.) Noti. No. G.S.R. 562 (E), dated August 6, 2019 and published in the Gazette of India, Extra., Part II, Section 3(i), dated 6th August 2019, p. 2, No. 453

G.S.R. 562(E)— The following Declaration made by the President is notified for general information:—

DECLARATION UNDER ARTICLE 370(3) OF THE CONSTITUTION

"C.O. 273"

In exercise of the powers conferred by clause (3) of Article 370 read with clause (1) of Article 370 of the Constitution of India, the President, on the recommendation of Parliament, is pleased to declare that, as from the 6th August, 2019, all clauses of the said Article 370 shall cease to be operative except the following which shall read as under, namely :—

"370. All provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in Article 152 or Article 308 or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgment, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under Article 363 or otherwise."

2019 LLT Part-III 506

U.P. Basic Education Act:

Ss. 19, 6 – Appointment – Teachers – eligibility test

According to the mandate of the Supreme Court the scope of judicial review in such matters is very limited and can be exercised only when the key answers are demonstrated to be patently illegal on the face of it, which is not the case herein. The Court after considering the opinion of the expert and the authentic text books was satisfied that the key answers to the other questions are correct and, therefore, court not found good reason to interfere with the said conclusion. Himanshu Gangwar v. State of U.P., 2019 (4) ALJ 606

U.P. Revenue Code:

Sec. 207 - Scope of – an appeal could be filed against order by a person who was not a party to the suit if he could establish that by the judgment his interest was being prejudiced – liberty given to file an appeal within a period of one month – If appeal is filed within the stipulated period it shall be entertained without going into the question of limitation – Petition disposed of with observations

Having considered the rival submissions made by the petitioners and the Counsel for the respondents with regard to the fact as to whether an appeal would lie or not under section 207 of the Code, I hold that when the legislature contemplates the filing of an appeal by a party to the suit, then, in fact, it meant that an appeal could be filed even by a person who was not a party to the suit if he could establish that by the judgment his interest was being prejudiced. Sudhakar Rao Geta v. Collector, Varanasi, 2019 (144) RD 661

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act:

Stay Order – Execution proceedings – though High Court stayed eviction of revisionist “until further order” - But executing Court relying upon judgment of Supreme Court in Asian Resurfacing of Road Agency Pvt. Ltd. And another v. Central Bureau of Investigation, inclined to proceed with execution of decree passed by Trail Court – Contention of – Direction of Supreme Court in relation to pending trial where proceedings of Trial Court stayed by High Court – In present matter, trail has concluded and final judgment of Trial Court under challenge – Therefore, staying eviction of revisionist pursuant to impugned decree and judgment - Would not automatically come to end upon expiry of six months unless modified or vacated – Executing Court directed accordingly – application disposed of

It is abundantly clear that the above direction of the Supreme Court is in relation to the pending trial where proceedings of the Trial Court is stayed by the High Court. The said direction would not apply to the facts of the instant case where the trial has concluded and the final judgment of the Trial Court is under challenge.

This court, therefore holds that the order passed by this Court while entertaining the writ petition dated 3.8.2016 staying eviction of the revisionist pursuance to impugned judgment and decree, would not automatically come to end upon expiry of six months unless modified or vacated. Daharam Vir Sood v. Smt. Savitri Devi, 2019 (144) RD 129

Sec. 12(1)(a) – Release of premises – Bona-fide need

The provision makes it amply clear that a landlord after seeking release of the building under Section 21(1)(a) has to necessarily occupy it himself or through member/s of his family, either for residential purposes or for purposes of any profession, trade or calling, but is not entitled to let out the same to fetch a higher rental income. Even under clause (b) where the release is not granted on the ground of bonafide need of landlord or any member of his family but for the purposes of demolition and new construction, the sitting tenant has been given right of re-entry on a rent to

be settled by the District Magistrate. He cannot directly let out the newly constructed building, without the tenant failing to exercise his right of re-entry.

Concededly, in the instant case, the only ground on which release was sought, was for construction of a new commercial complex so as to fetch higher rental income. This, in considered opinion of the Court, would not be a need falling within the ambit of Section 21(1)(a) of the Act. This Court, therefore, finds no illegality in the view taken by the courts below. However, as per statement made by learned counsel for the respondent-tenants, the respondent-tenants would be liable to pay rent at the rate of Rs.500/- per month for each shop in their tenancy since the month of April, 2019. Munna Lal Agrawal v. Mani Ram Gupta, 2019 (4) ALR 78

Sec. 21 (1) (a) - U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, (1972), R. 17 – Release of premises – Bona fide need – landlord requiring his ancestral house for his stay after his retirement and also to get his son married from that house – plea of tenant that suit house was not required by landlord, as landlord currently living in Meerut and already got his son married from Delhi – Despite possessing house in Meerut, landlord could still have genuine and pressing need to live at his native place on his retirement – Tenant during pendency of litigation had made no genuine efforts to search alternative accommodation – Liable to be evicted

The Prescribed Authority in the release application has considered the need of the landlord to be bona fide, genuine and pressing as he retired on 31.05.2014 from government job and for his residence purposes, needed the ancestral house which was his only property in the city of Muzaffarnagar. It is not necessary for this Court to make any observations on the conclusion arrived at by the Prescribed Authority and by the Appellate Court that despite possessing house in Meerut, the landlord could still have a genuine and pressing need to live at his native place at Muzaffarnagar on his retirement. It is well known that as a person gets old, desire to live at his

native place gets stronger. Bharat Bhushan v. Anoop Kumar Gupta, 2019 (3) ALJ 567

Sec. 12(1)(a) – Suit – for eviction and arrears of rent – prescribed authority allowed the application and directed the tenant to hand over physical possession to the landlord and to pay Rs. 2,400/- as two years ret towards compensation

It is not disputed that no objection with regard to the maintainability of the release application on the ground of want of six months' notice was raised by the defendant-tenant in his written statement nor any arguments in this regard were raised before the Prescribed Authority. Even in the memorandum of appeal preferred by the tenant no such ground was mentioned.

On the facts of the present case, therefore, it must be held that the defendant-tenant had waived the contention about the release application being premature for the reason of having been filed before the expiry of six months from the date of notice. Therefore, the Appellate Authority could not have allowed the appeal on this ground alone. The defendant tenant had waived his right to service of notice. Compliance with a mandatory provision can be waived if the same is aimed at safeguarding the interest of an individual.

The proceedings for release in the present case although having been initiated without complying with the mandatory provision of six months' notice under Section 21(1)(a) proviso, the same may not be held to be a nullity and the non-compliance thereof may be considered to be only an irregularity. Also, no objection having been raised in this regard before the Prescribed Authority or even in the memorandum of appeal, the notice would be deemed to have been waived by the defendant-tenant and the release order cannot be held to be vitiated only on the ground of non-compliance of the mandatory provision of notice.

The order of the Appellate Authority dated 22.02.2018 which has been passed on the sole ground that the mandatory requirement of six months was not fulfilled, thus cannot be sustained. Smt. Kamala Devi v. Ikram Ali, 2019 (4) AWC 4079

Sec. 24(2)

A combined reading of the provisions under Section 24(2) with Section 21(1))(b) would clearly show that the proceedings under Section 24(2) are a continuation of the proceedings for eviction under Section 21(1)(b) and provide a logical culmination to the said proceedings.

As a logical corollary the provisions contained under Section 34(4) which provide for substitution of the heirs or legal representatives of the deceased-tenant in proceedings for eviction would be applicable to proceedings under Section 23(2).

While using the expression “original tenant” under Section 24(2), the term “tenant” is qualified by the word “original”. Looking to the context the expression “original tenant” would be referable to the “evicted tenant” who has been evicted in proceedings initiated under Section 21(1)(b) for release of the building on the ground that the same is in a dilapidated condition and is required to be demolished and reconstructed.

The scheme of the Act clearly indicated that under Section 24(2) a right is conferred on the evicted tenant to be placed in occupation of the building from which he was evicted in proceedings under Section 21(1)(b), and it is not

merely the discretion of the Collector to order the landlord to place him in occupation of the building. The right of re-entry under Section 24(2) is to be seen as a statutory right flowing from the legislative mandate. Any other construction would, in my view, defeat the purpose of the statutory provision itself.

In view of the foregoing discussion, the order dated 13.12.2018 passed by the District Magistrate/Collector, Budaun rejecting the objections raised by the petitioner-landlord on the ground that the provisions contained under Section 34(4) did not contain any bar with regard to substitution of the legal heirs and representatives of the deceased-tenant, cannot be faulted with. The District Magistrate while passing the order has clearly held that the landlord could not substantiate their arguments with regard to the substitution application being barred by the provisions contained under Section 34(4) of the Act, 1972 and Rule 25 of the Rules, 1972 by placing any authority so as to demonstrate that the substitution of the legal heirs of the deceased-tenant was barred under the provisions of the Act, 1972. Sanjay Bhardwaj @ Bablu and another V. Dinesh Chandra Gupta and 12 others, (2019)(3) ARC 125.

U.P. Zamindari Abolition and Land Reforms Act:

Sec. 331(1-A) – CPC, 1908 – Sec. 21 – Sec. 331(1-A) of the Act, 1950 is analogous to Sec. 21 of the CPC – Sec. 331(1-A) of the Act, 1950, like Sec. 21 of the CPC requires that for ouster of jurisdiction of the Civil Court all the conditions provided therein must co-exist i.e. that objection is raised before trial at or before framing of the issue and that there has been a consequent failure of justice – The Appellant Court or Revisional Court cannot entertain

such an objection except when it is established that there has been failure of justice in trial of the proceeding in the Court

Further it is held that Section 331 (1-A) of the Act' 1950 is analogous to Section 21 of the Code of Civil Procedure. Section 21 of the Code of Civil Procedure is also in similar language. Section 331 (1-A) of the Act' 1950, like section 21 of the Code of Civil Procedure requires that for ouster of jurisdiction of the Civil Court all the conditions provided therein must co-exist i.e. that objection is raised before the trial at or before framing of the issue and that there has been a consequent failure of justice. The appellate court or revisional court cannot entertain such an objection except when it is established that there has been failure of justice in trial of the proceeding in the court.

The present petition, consequently, falls and is dismissed. Rameshwar Prasad Verma v. Smt. Seetamani Devi Kushwaha, 2019 (144) RD 210

UP Excise Act:

Sec. 72- CrPC Sec. 457 – Magistrate has no power to release property confiscated U/s. 72 of U.P. Excise Act.

Sec. 72 of the ‘Act’ does not contain any provision indicating that such seized property may be released by the Magistrate in the exercise of his power under section 457 Cr.P.C. The provisions contained in sub-sections (1) to (4) of section 72 of the ‘Act’, clearly denudes the Magistrate of his power to pass any order under section 457 Cr.P.C. for release of anything seized in connection with an offence purporting to have been committed under the ‘Act’.

In view of the foregoing discussion, we find that the case of Ved Prakash (supra) lays down the correct law on the subject-matter of this reference and neither Nand v. State of U.P., 1997(34) ACC 320 (Alld.), or Rajiv Kumar Singh v. State of U.P. and others, 2017(99) ACC 260 (Alld.), nor Sunderbhai Ambalal Desai v. State of Gujarat, 2003(46) ACC 223 (SC), can be said to be authorities on the power of the Magistrate to release anything seized or detained in connection with an offence committed under the 'Act' in respect of which confiscation proceedings under section 72 of the U.P. Excise Act are pending before the Collector. Virendra Gupta V. State of U.P., 2019(108) ACC 438