Legal Dictations

for Stenos'
Recruitment/Skill Tests of
High Courts/Judicioury/SSC/Jr. Gr.D.

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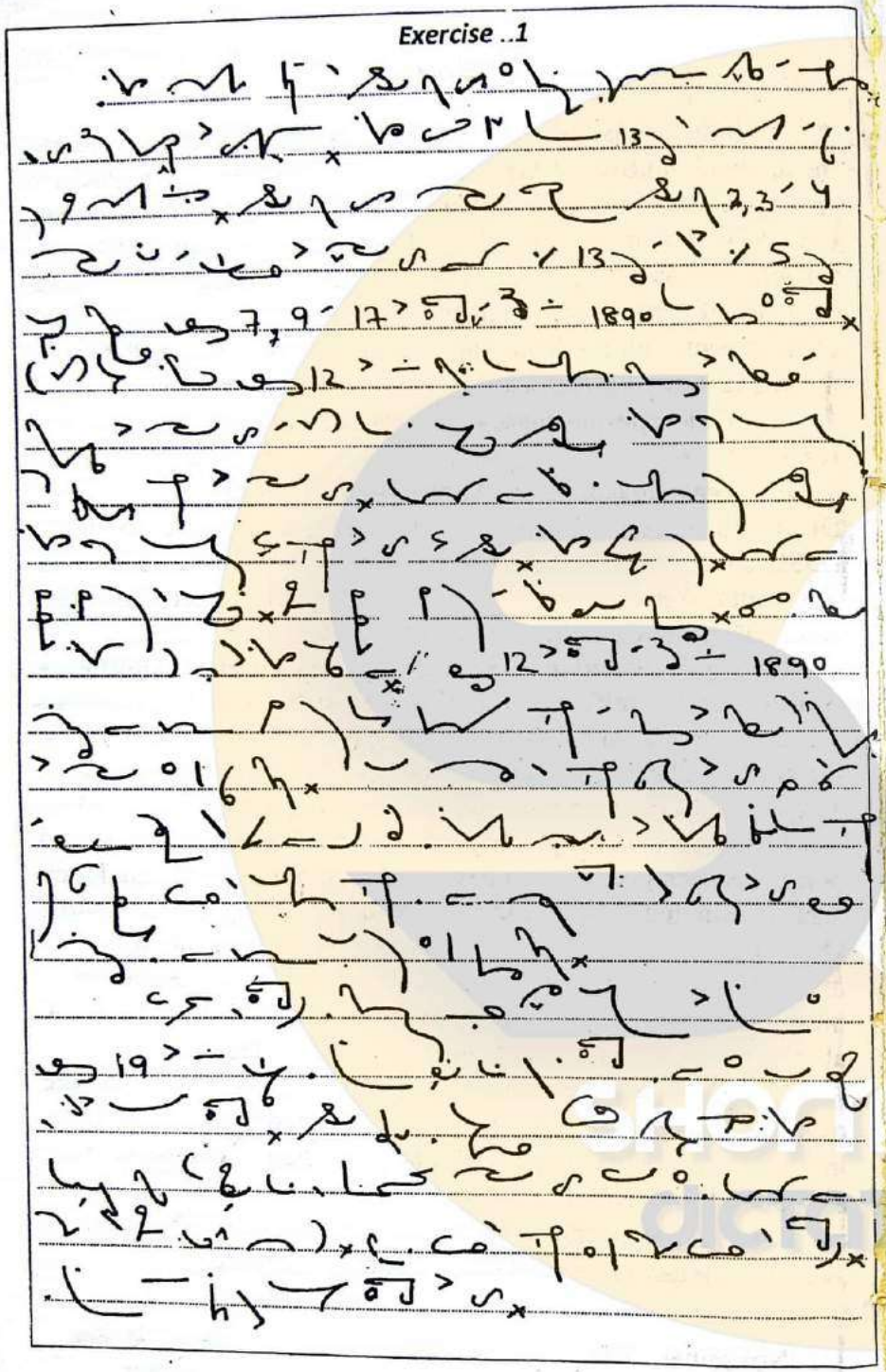
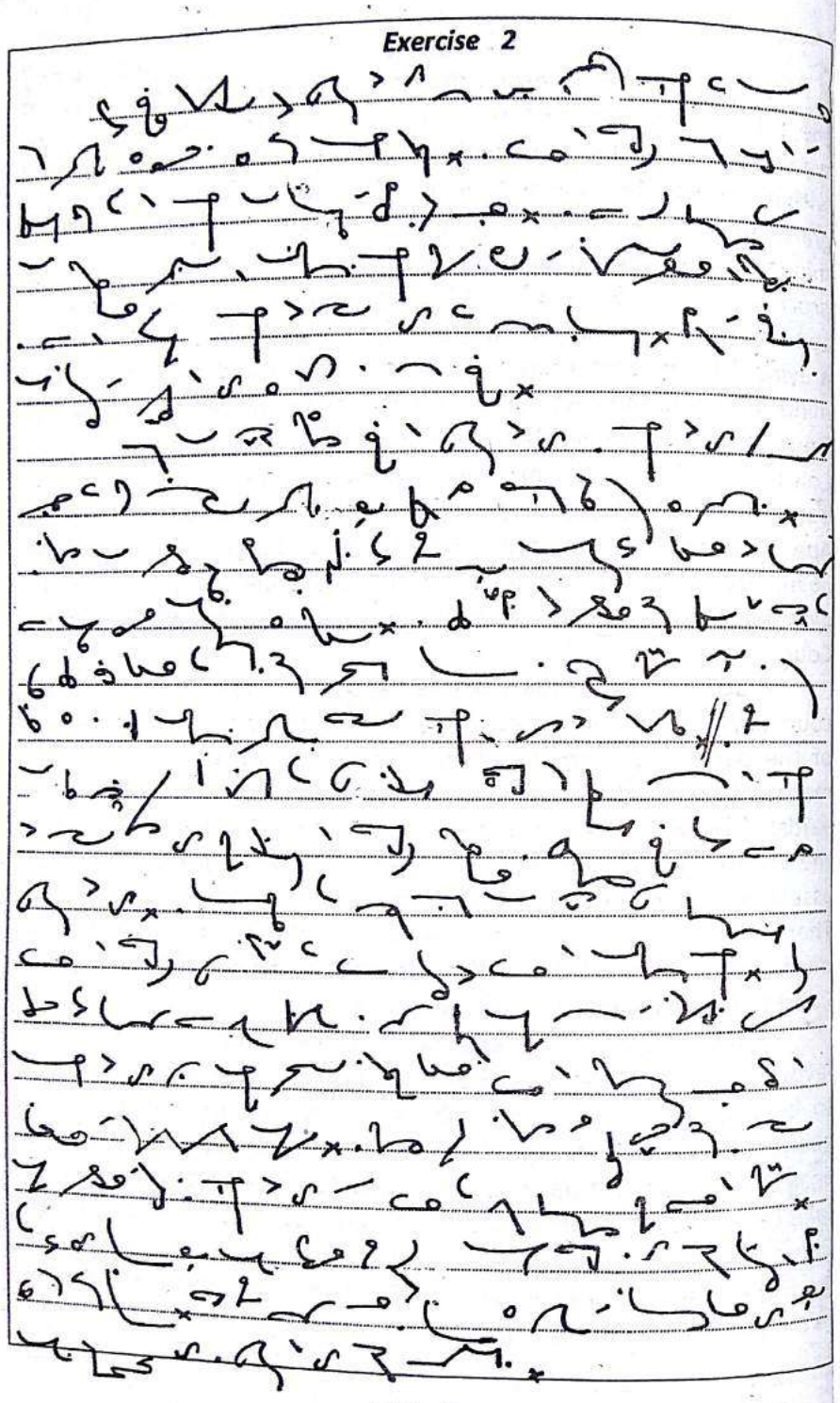


The Appellant married the daughter of respondent no. 1 as per the Islamic rites and customs. Two children were born / out of the wedlock. Appellant's wife died after thirteen years of marriage and within a year he married again. // Respondent no. 1 maternal grandfather, respondent nos. 2,3, and 4 maternal aunt and uncles of the minor children, girl /// aged 13 years and boy aged 5 years, initiated proceedings u/s 7,9 and 17 of the Guardian and (1) Wards Act, 1890 for appointment as guardians. They also filed application u/s. 12 of the act praying / for interim protection of the persons and properties of the minor children and also for an injunction restraining the appellant // from interfering or disturbing the custody of the minor children. Family Court passed an interim order restraining the appellant from/// interfering with the custody of the children with the respondent. Appellant challenged the order. Family Court set aside the said (2) order of injunction. High Court set aside the said order and passed certain directions. Hence the present appeal was made/ by the appellant in this Court.

Sections 12 of the Guardian and Wards Act, 1890 empowers court to // "make such order for the temporary custody and protection of the person or property of the minor as it thinks proper." /// In matters of custody, welfare of the children is the sole and single yardstick by which the Court shall assess (3) the comparative, welfare of the children is the sole and single yardstick by which the Court shall assess the comparative / merit of the parties contesting for custody. Therefore, while deciding the question of interim custody, the court must be guided by // the welfare of the children since empowers the Court to make any order as it deems proper.

With regard to /// guardianship, the prima facie case lies in favour of the father as u/s. 19 of the Act, unless the (4) father is not fit to be a guardian, the Court has no jurisdiction to appoint another guardian. Respondents, despite the / voluminous allegations leveled against the appellant have not been able to prove that he is not fit to take care // of the minor children, nor has the Family Court or the High Court found him so. However, the question of /// custody is different from the question of guardianship. The father can continue to be the natural guardian of the children. (5/400)

Exercise 2



L.M.- 6

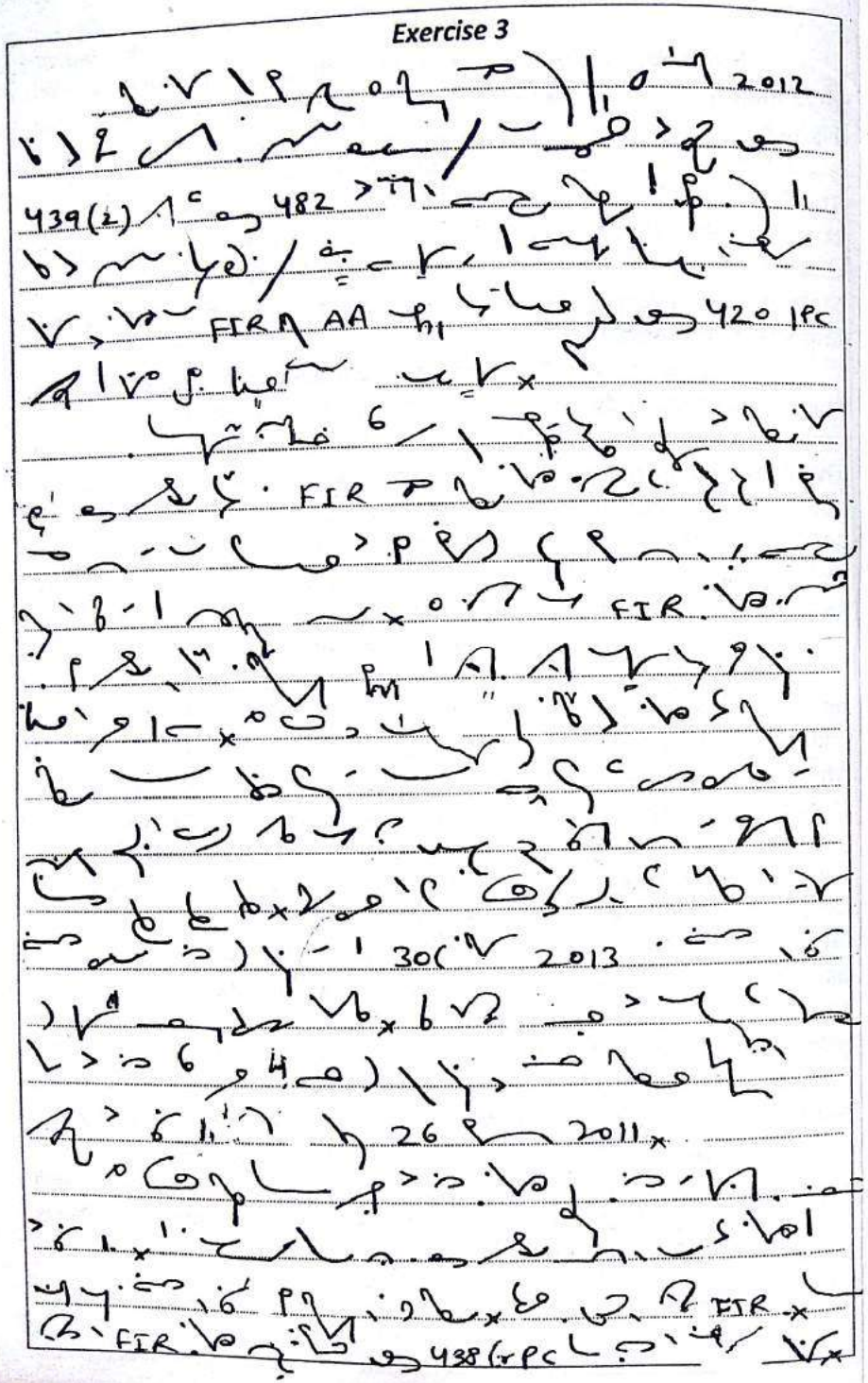
Exercise 2 **(80 w.p.m.)**

However, the considerations pertaining to the welfare of the child may indicate lawful custody with another friend or relative as/ serving his/her interest better. The question of guardianship can be independent of and distinct from that of custody // in facts and circumstances of each case. The Court shall determine whether, in proceedings relating to interim custody, there are /// sufficient and compelling reasons to persuade the Court to change the custody of the minor children with immediate effect. Stability (1) and consistency in the affairs and routines of children is also an important consideration.

Keeping in mind the paramount consideration /of welfare of the children, the custody of the children which currently rests with their maternal relatives is not disturbed // as the scope of this order is limited. The appellant, in response to these submissions, contended that the High court /// could not interfere with the findings of the Family Court unless serious infirmity is proven. The decisions cited by the (2) respondents were distinguished on the ground that these decisions concerned findings that were recorded after a full fledged trial and /not an order passed as an aid-interim relief granting custody to one of the parties.

The High Court in // its impugned judgment had held that while appointing the guardian or deciding the matter of custody of the minor children /// during the pendency of guardianship proceedings, the first and foremost consideration for the Court is the welfare of the children. (3) The factors that must be kept in mind while determining the question of guardianship will apply with equal force to / the question of interim custody. It was observed that the Family Court should have delved a little deeper into the// matter and ascertained where the interest of the children lay, instead of recording abstract findings questions of prima facie case, /// balance of convenience and irreparable injury. The terms on which the appellant and his deceased wife were, the manner in (4) which the respondents obtained the custody of the children are questions that should be determined during the course of trial. /Though when the children's father is not unfit otherwise he shall be the natural guardian, a child cannot be forced // to stay with his/her father. According to the High court, merely because the father has love and affection /// for his children and is not unfit to take care of the children, the welfare of children cannot be guaranteed. (5/400 words)

L.M.- 7



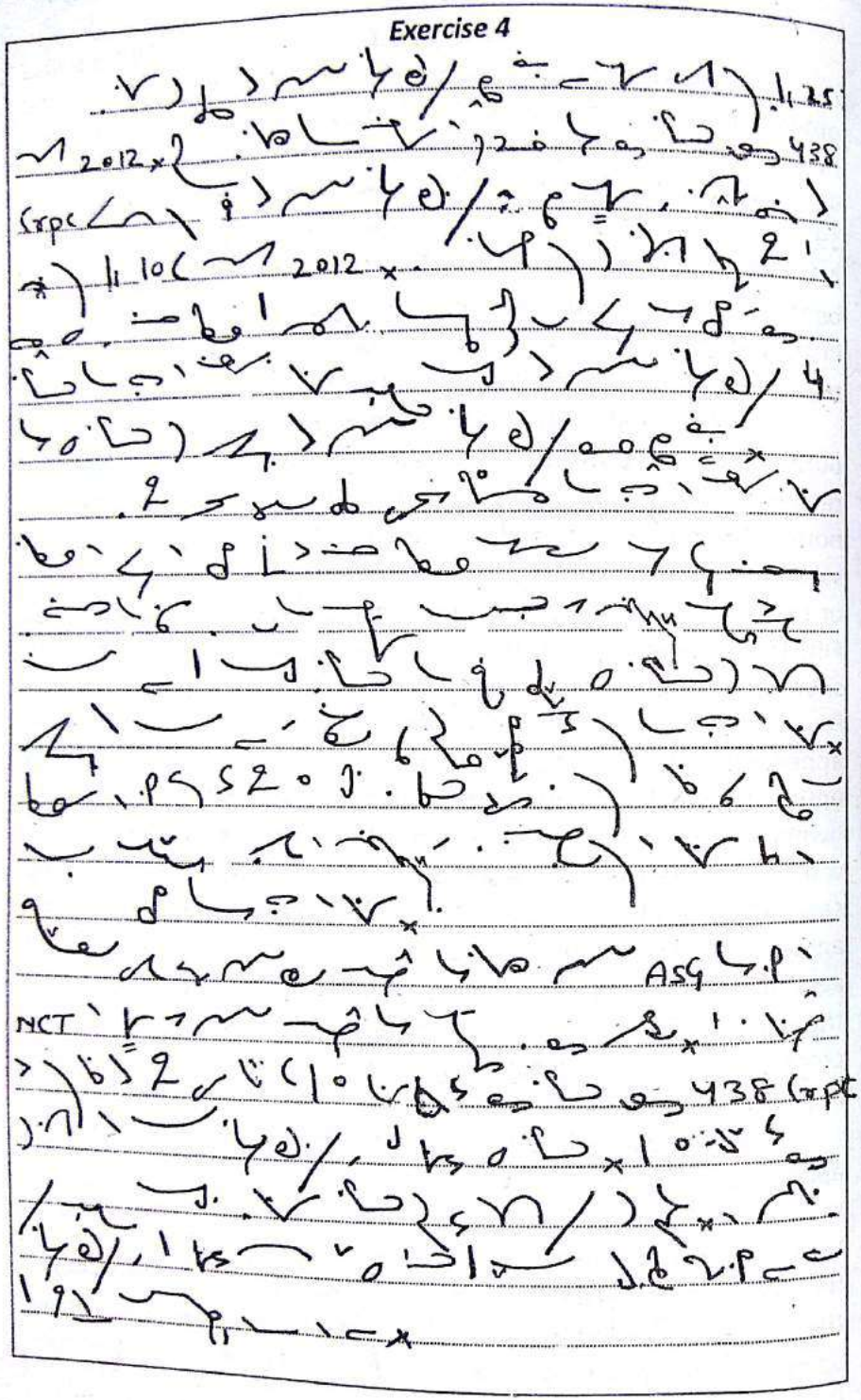
Exercise 3 **(80 w.p.m.)**

The present appeal, by Special Leave, is directed against the order dated, Ist October, 2012 passed by the / High Court, whereby the learned Single Judge, in exercise of the jurisdiction under Section 439(2) read with // Section 482 of the Code of Criminal Procedure, 1973 has set aside the order dated passed /// by the learned Additional Sessions Judge, Saket Courts, Delhi, who had granted the benefit of anticipatory bail to the appellants (1) in FIR no. AA instituted for the offence punishable under Section 420 IPC, registered at Police Station, Defence Colony, New Delhi. /

The factual matrix that is required to be exposited for the purpose of disposal of the present appeal is that // the 2nd respondent filed an FIR against the present appellants alleging that both of them had conspired against him and /// in furtherance of the said conspiracy, they had subjected him to cheating, criminal breach of trust and have misappropriated the (2) money. As alleged in the FIR, the appellants allured the said respondent to buy a property situated at Lodhi / Road, New Delhi, for which he paid an advance of Rs. 1 crore. As the narration would unfurl, it was // apprised by the appellants that the property comprising entire basement floor and entire ground floor with one servant and impartible /// share of ownership rights in the land underneath would be sold to him and he will be delivered vacant peaceful physical (3) possession. There are series of other allegations which would show that on the basis of oral agreement, certain amount was / paid and on 30th April, 2013, an agreement to sell was duly executed between the parties. It is also // the case of the informant that remaining part of the amount i.e. Rs. 4 crores was to be paid to the /// accused persons at the time of registration of the sale deed on or before 26th September, 2011. (4)

As the allegations proceed, after receipt of the amount, the appellants disputed the amount and delayed the execution of the/ sale deed. On an enquiry being made, the 2nd respondent came to know that the appellants had entered into an agreement // to sell the said property to a third person. That was the foundation to lodge the FIR. After the lodgment of /// the FIR, the appellants moved an application under Section 438 Cr. P. C. for grant of anticipatory bail. (5/400 words)

Exercise 4



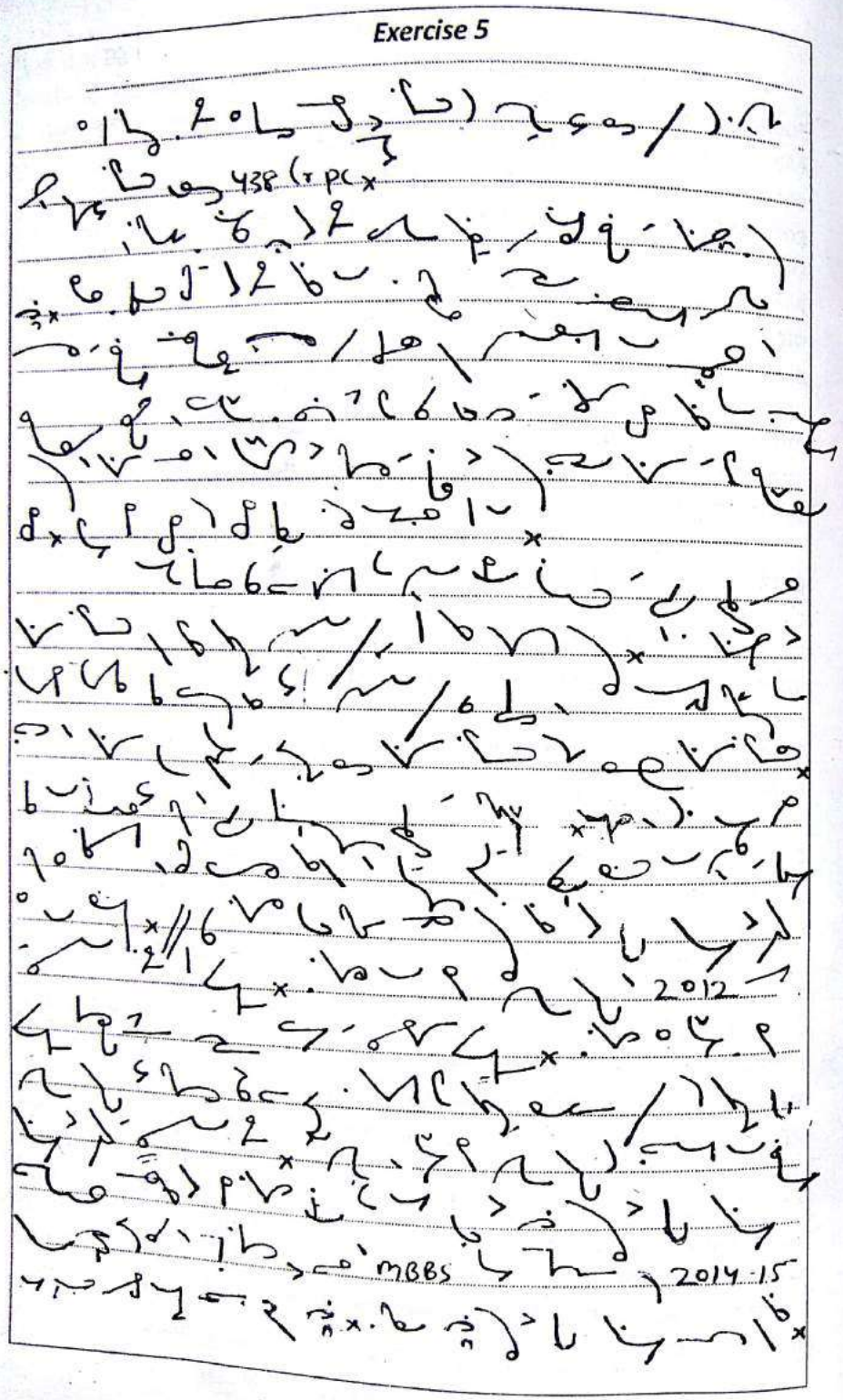
Exercise 4 *(80 w.p.m.)*

The Appeal was dismissed by the learned Additional Sessions Judge, South East, Saket Courts, New Delhi vide order dated 25th / March, 2012. Thereafter, the appellants after expiry of three weeks filed second application under Section 438 // Cr. P. C. which came to be considered by the learned Additional Sessions Judge-2, South East, New Delhi, who /// allowed the same by the impugned order dated 10th March, 2012. the aforesaid order was assailed before the (1) High Court on two grounds, first the accused persons had misrepresented the facts and that there was no change in / the circumstances; and second, the application for grant of anticipatory bail could not have been entertained by the learned Additional // Sessions Judge-4, for the first application was rejected by the learned Additional Sessions Judge-6, South East Saket. ///

The High Court referred to certain decisions with regard to the parameters for grant of anticipatory bail, absence of change (2) of circumstances, conduct of the accused persons in the manner in which they had executed the agreement for sale, the / need for custodial interrogation and the impropriety in view of the fact that another court had entertained the application for // consideration despite the fact that the first application was earlier rejected by another court and analyzing these aspects, set aside /// the order for grant of bail. It is necessary to state here that the High Court has drawn a distinction (3) between an order passed which is perverse in nature inviting the wrath of impropriety and a cancelling order of bail / due to supervising circumstances after the grant of bail.

We have heard the leaned senior counsel for the appellants, learned // A. S. G. for the State of N. C. T. of Delhi and the learned counsel for the informant, the /// 2nd respondent. On a perusal of the order passed by the High Court, we find that it has felt disturbed that (4) the second application under Section 438 Cr. P. C. was allowed by another Additional Sessions Judge who had / not dealt with the first application. It has opined that the Second Judge could not have entertained the bail application // especially when the earlier Judge was available. To elaborate, the Additional Sessions Judge who has dealt with the matter on /// the first occasion, had neither been transferred from the said court, nor had he become incapacitated to come to court. (5/400 words)

Exercise 5



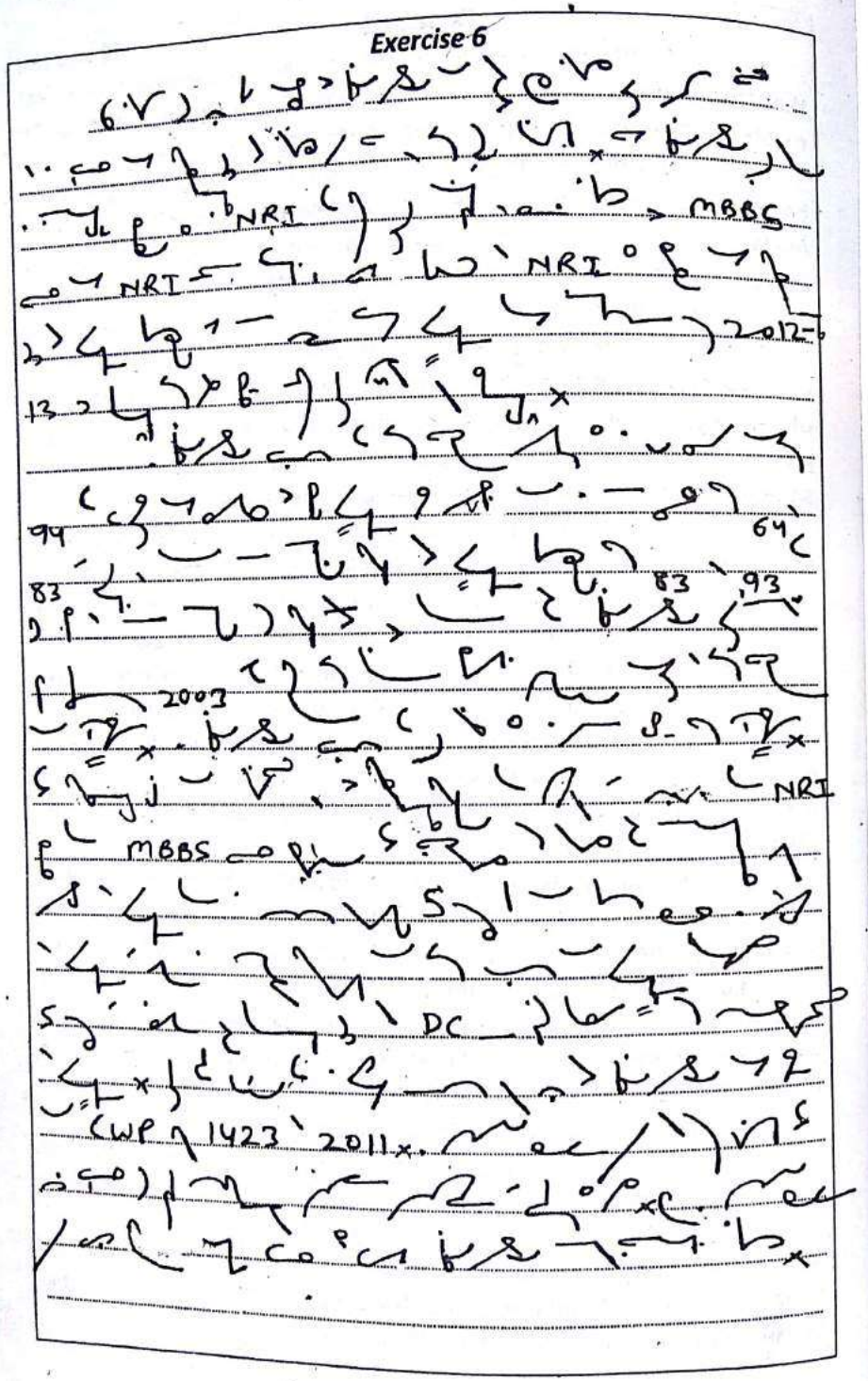
Exercise 5 *(80 w.p.m.)*

As it appears, the High Court has taken exception to the fact that the application was moved when the 2nd / Judge was allotted the roaster to deal with the application under Section 438 Cr.P.C.

To appreciate the // analysis made by the High Court we have bestowed our anxious consideration and perused the order impugned. As far as the /// distinction drawn by the High Court passed in a perverse manner excluding the relevant matters and considering the extraneous matters (1) which deserves to be lancinated in exercise of supervisory jurisdiction to nullify the same and the other, which is fundamentally / and absolutely situation based for cancelling the order of bail because of violation of the terms and conditions of the // order granting bail and other supervising circumstances. However, the said situation or circumstance does not arise in the case at /// hand.

In that context, this Court held that long standing convention and judicial discipline requires bail application to be placed (2) before the learned Judge who had passed earlier orders. On a perusal of the aforesaid authorities, it is clear to / us that the learned Judge, who has declined to entertain the prayer for grant of bail, if available, should hear // the second bail application or the successive bail applications. It is in consonance with the principle of judicial decorum, discipline /// and propriety. Needless to say, unless such principle is adhered to, there is enormous possibility of forum-shopping which has no sanction (3) in law and definitely, has no sanctity.

These appeals have been preferred against the orders passed by the Division Bench / of the Punjab and Haryana High Court at Chandigarh. The Appellants in Special Leave Petition of 2012 are // the Chandigarh Administration and the Government Medical College & Hospital, Chandigarh. The Appellant has filed the Special Leave Petition with /// the permission of this Court, who was not a party, either before the Single Judge or before the Division Bench (4) of the Punjab and Haryana High Court. Leave to file Special Leave Petition was granted in considering the grievances expressed / by the said Appellant contending that in the event of the impugned orders of the Division Bench being implemented, her // chance of getting admission to the course of M.B.B.S. for the academic year 2014-15 /// under the Non-Resident India category would be impugned. The present impugned orders of the Division Bench came to be passed. (5/400 words)

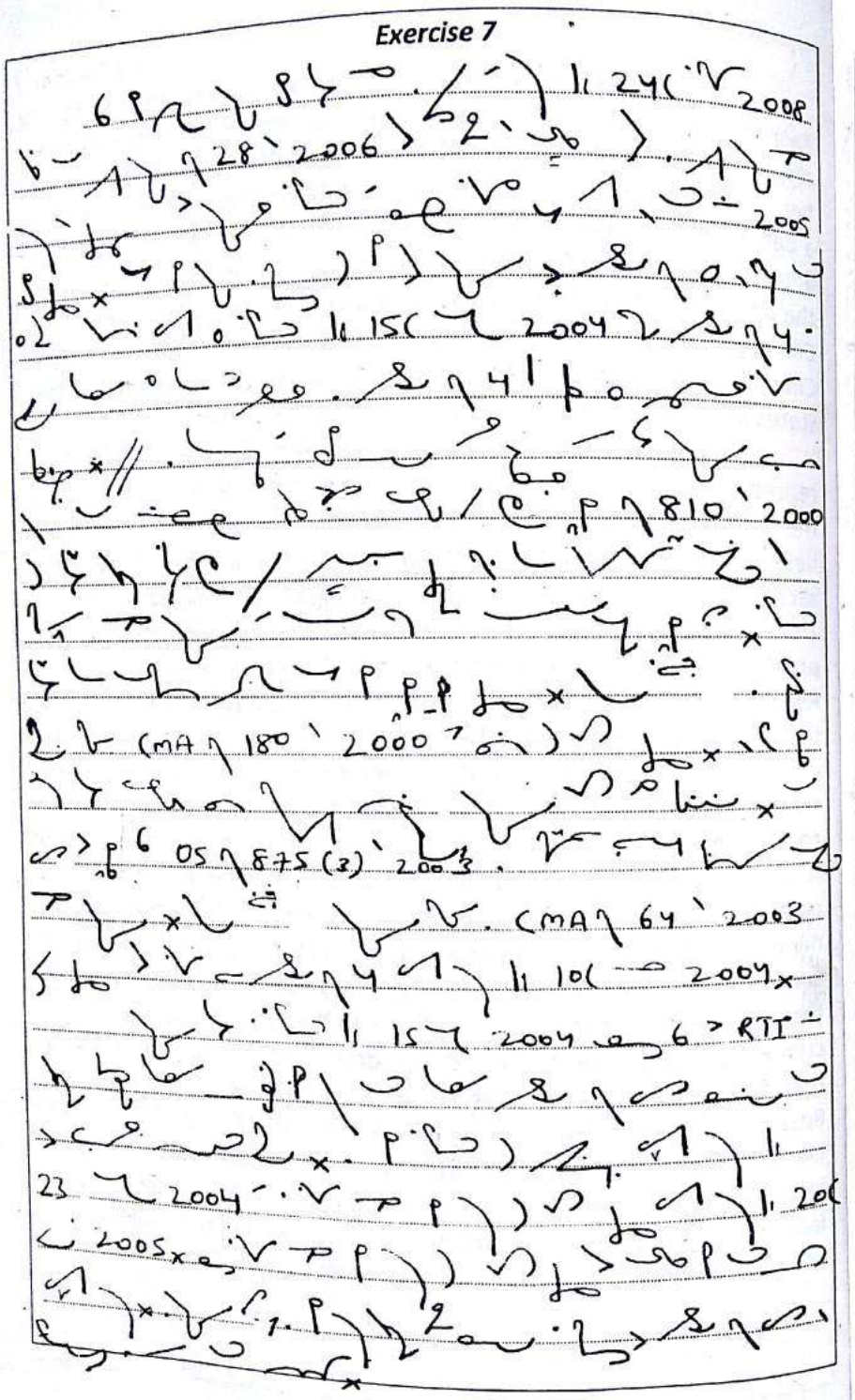


Exercise 6 **(80 w.p.m.)**

This appeal was made at the instance of the contesting Respondent in both the Civil Appeals who was really aggrieved / of a clause in the prospectus issued by the Appellants, which according to her was not valid. According to the // contesting Respondent, she being a Canadian Citizen is an N.R.I., that, therefore, she was entitled to seek admission /// to the M.B.B.S. course in the NRI category quota but yet the definition of (1) N.R. I. as specified in the prospectus issued by the Chandigarh Administration and the Government Medical College, Chandigarh for / the academic year 2012-13 would denude her of such status and, therefore, it was liable to be // struck down.

The contesting Respondent claimed that her grand-father retired as an Under Secretary in the year 1994, /// that when he was in the services of the State of Chandigarh he resided in a Government house (2) from 1964 to 1983 and shifted to another Government accommodation provided by the Chandigarh Administration from / 1983 to 1993, that third set of Government accommodation was provided by the Government to the // father of the contesting Respondent which was occupied till December 2003 and that thereafter, her father started living /// in the house of her grandfather in Mohali. The contesting Respondent claimed that she passed as a regular student (3) from Mohali, that the prescription contained in paragraph 2 of the prospectus providing for eligibility and merit for N.R./ I. seats for M.B.B.S. course stipulating that the grandparents or parents of the candidates should be resident of // Chandigarh for a minimum period of 5 years at any time since the origin of Chandigarh and should have immovable property /// in her name in Chandigarh for the last at least 5 years and a certificate to that effect issued by (4) D.C. - cum-Estate Officer or Municipal Corporation of Chandigarh. It was on that footing that a challenge came to / be made by the contesting Respondent in the High Court in C. W. P. No. 1423 of 2011. // The learned Single judge by order held that the impugned clause was totally impracticable, illegal, illogical and declared as such./// However, the learned Single Judge went further into the question as to whether the contesting Respondent can be granted admission. (5/400 words)

Exercise 7



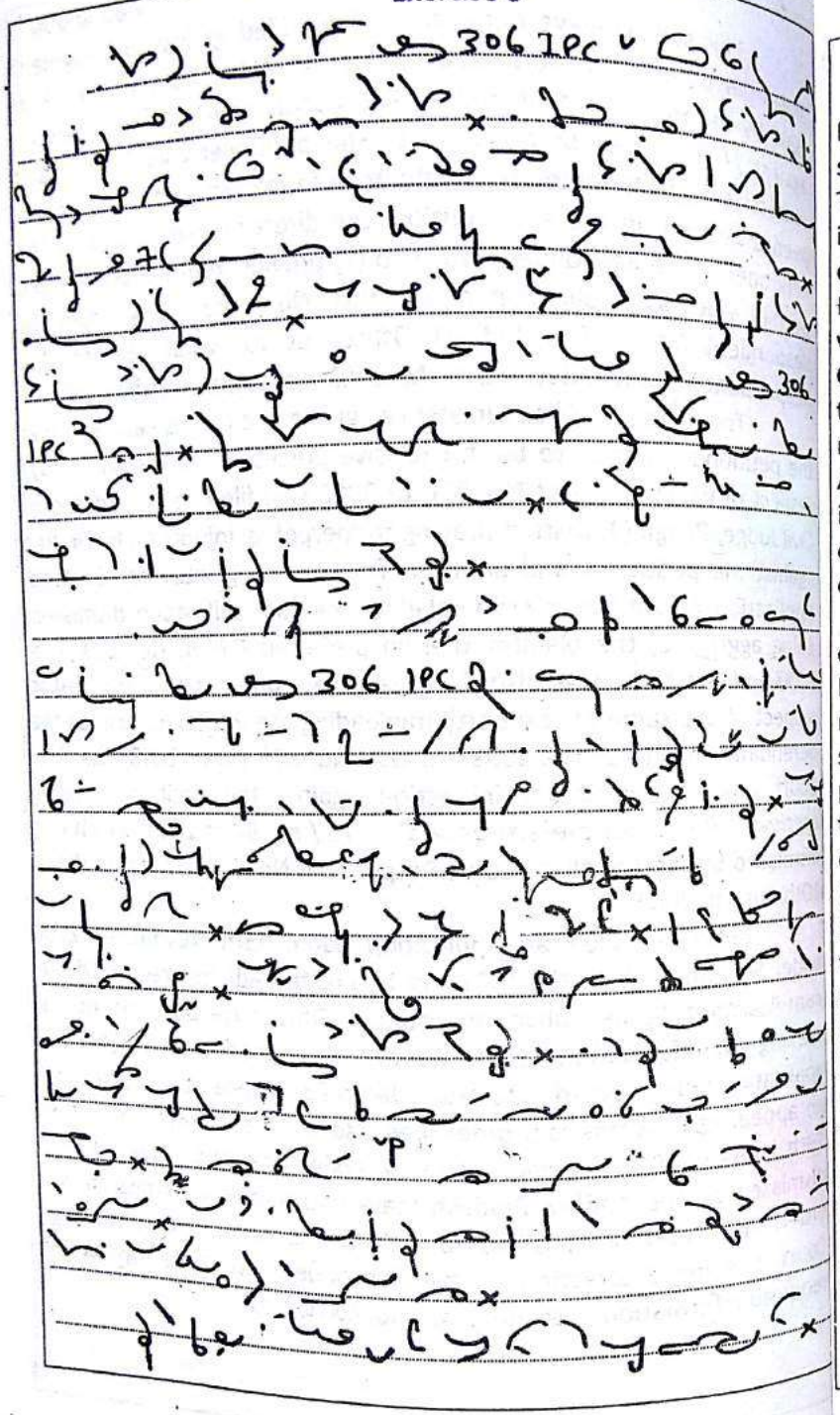
Exercise 7 *(80 w.p.m.)*

This special leave petition has been filed against the judgment and order dated 24th April, 2008 passed in Writ / Petition No. 28 of 2006 by the High Court of Andhra Pradesh by which the writ petition against // the order of dismissal of the petitioner's application and successive appeals under the Right to Information Act; 2005 /// has been dismissed. In the said petition, the direction was sought by the Petitioner to the Respondent No. 1 to (1) provide information as asked by him vide his application dated 15th November, 2004 from the Respondent No. 4 / a Judicial Officer as for what reasons, the Respondent No. 4 had decided his Miscellaneous Appeal dishonestly.

The facts and // circumstances giving rise to this case are, that the petitioner claimed to be in exclusive possession of the land in /// respect of which civil suit No. 810 of 2000 was filed before Additional Civil Judge, Ranga (2) District praying for perpetual injunction By Dr. Rao against the petitioner and another, from entering into the suit land. Application / filed for interim relief in the said suit stood dismissed. Being aggrieved, the plaintiff therein preferred C.M.A. No. 180 // of 2000 and the same was also dismissed. Two other suits were filed in respect of the same /// property impleading the Petitioner also as the defendant. In one of the suits i.e. O.S. No. 875 (3) of 2003, the Trial Court granted temporary injunction against the Petitioner. Being aggrieved, Petitioner preferred the C. M.A. / no. 64 of 2003, which was dismissed by the Appellate Court-Respondent No. 4 vide // order dated 10th August, 2004.

Petitioner filed an application dated 15th November, 2004 under Section 6 /// of the R.T.I. Act before the Administrative Officer-cum-Assistant State Public Information Officer (respondent no. 1) seeking (4) information to the queries mentioned therein. The said application was rejected vide order dated 23rd November, 2004 / and an appeal against the said order was also dismissed vide order dated 20th January, 2005. Second Appeal // against the said order was also dismissed by the Andhra Pradesh State Information Commission vide order. The petitioner challenged the /// said order before the High Court, seeking a direction to the Respondent no. 1 to furnish the required information immediately. (5/400 words)

Exercise 8

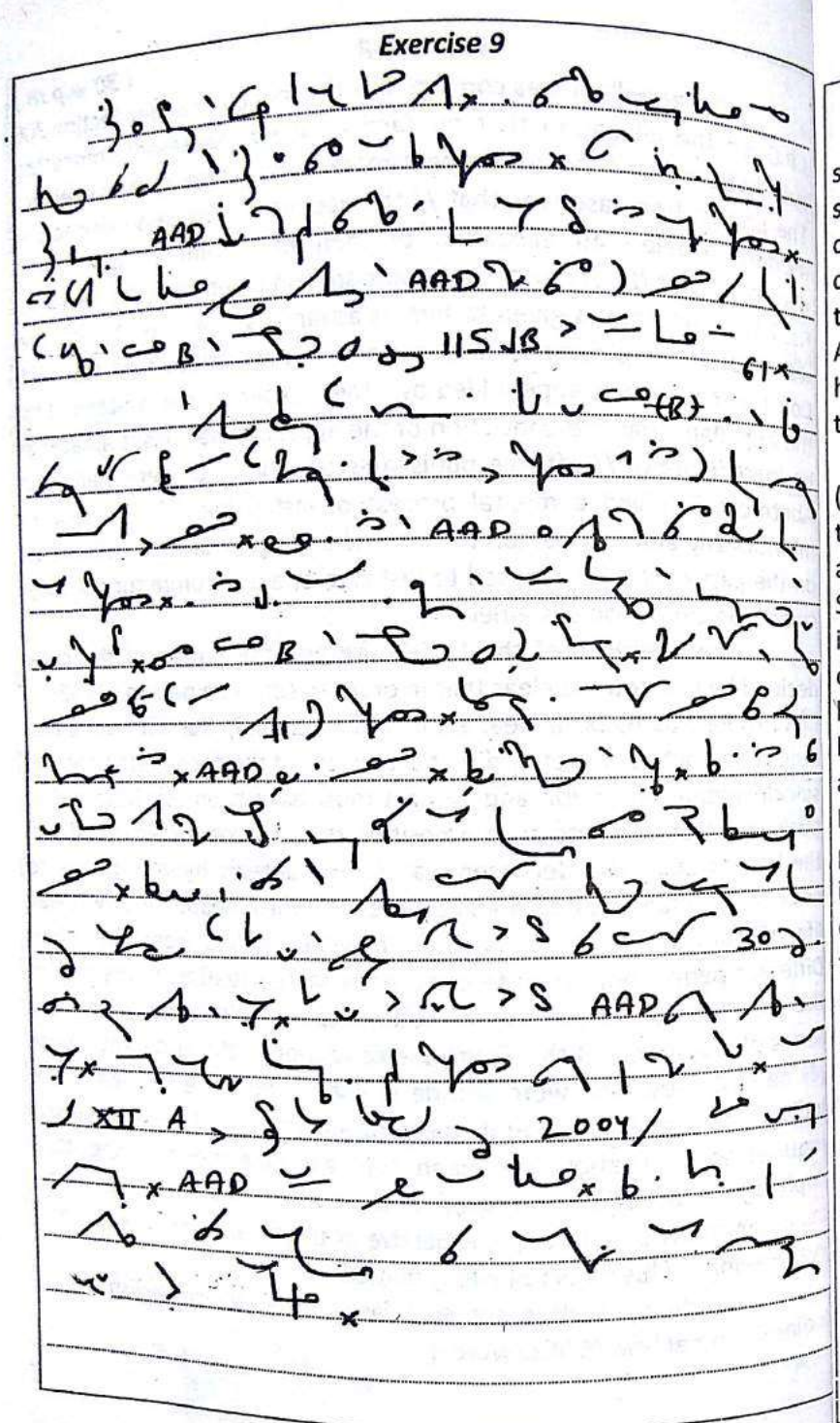


Exercise 8 **(80 w.p.m.)**

The appellant was convicted by the trial court under Section 306 I.P.C. on the allegation that his farm / labour (deceased) committed suicide because of the harassment meted out to him by the appellant. The prosecution case was that // the appellant, two days prior to the incident, leveled an allegation of theft of ornaments against the deceased; that the /// appellant had also demanded from the deceased Rs. 7000/- which was given to him as advance at the time (1) when he was kept in employment. The conviction was affirmed by the High Court. In the instant appeal filed by / the accused, it was contended for the appellant that the conviction of the appellant was unsustainable as no ingredients of // offence punishable u/s 306 I.P.C. were made out. Abetment involved a mental process of instigating /// a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the (2) accused to instigate or aid in committing suicide, conviction cannot be sustained.

The intention of the Legislature and the / ratio of the cases decided by this court is clear that in order to convict a person u/s 306 // I.P.C. there has to be a clear mens rea to commit the offence. It also requires an active /// act or direct act which led the deceased to commit suicide seeing no option and this act must have been (3) intended to push the deceased into such a position that he committed suicide. In the instant case, the deceased was / undoubtedly hyper sensitive to ordinary petulance, discord and differences which happen in day to day life. Human sensitivity of each // individual differs from the other. Different people behave differently in the same situation. In the light of the provisions of law /// and the settled legal positions crystallized by a series of judgments of this Court, the conviction of the appellant cannot (4) be sustained. The word suicide in itself is nowhere defined in the Indian Penal Code, however its meaning and import is / well known and requires no explanation. 'Sui' means 'self' and 'cide' means 'killing', thus implying an act of self-killing. // In short a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving /// his object of killing himself.

Suicide by itself is not an offence under either English law or Indian Criminal law. (5/400 words)



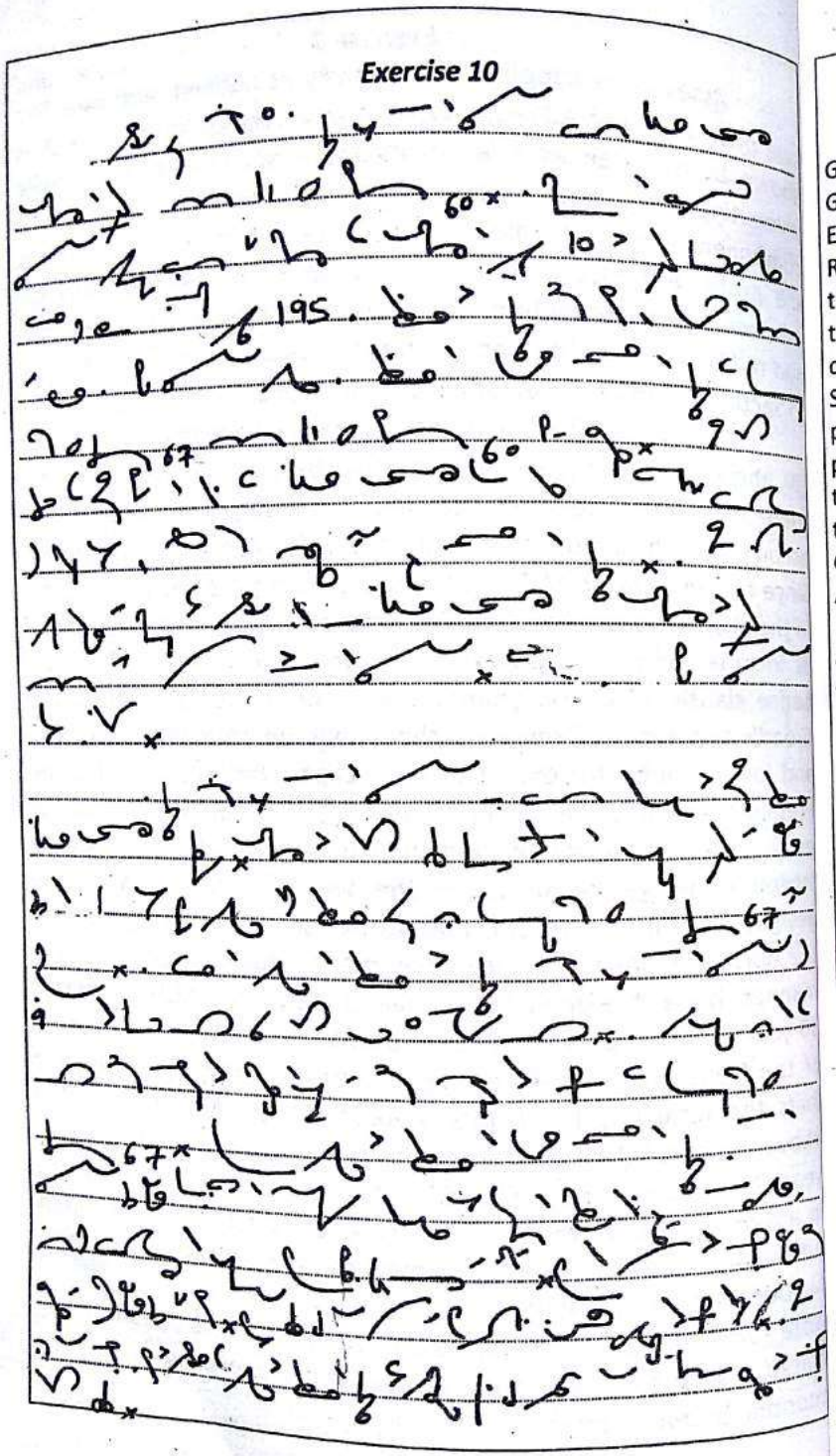
Exercise 9 **(80 w.p.m.)**

Assessee is supplier of electricity at notified tariff rate. The sale price included Advance Against Depreciation (AAD) / which is shown by assessee as sales in its profit and loss account. While computing the book profit, assessee deducted // the AAD component from total sale price and took only balance amount into the profit and loss account. /// According to the Authority for Advance Rulings, reduction of AAD from the sales was reserve which had to (1) be added back on the basis of Clause (b) of Explanation –I to Section 115JB of the Income Tax / Act, 1961.

On reading, it is clear that to make an addition under clause (B), the two conditions // which must be jointly satisfied are that there must be a debit of the amount to the profit and loss /// account and the amount so debited must be carried to the reserve. Since the amount of AAD is (2) reduced from sales, there is no debit in the profit and loss account. The amount did not enter the stream / of income for the purposes of determination of net profit at all, hence clause (b) of Explanation-I was not // applicable. There are broadly two types of reserves, those that are routed through profit and loss account, for example, a /// Capital Reserve such as Share Premium Account. AAD is not a reserve. It is not appropriation of profits. (3) It is an amount that is under obligation, right from the inception, to get adjusted in the future, hence, cannot /. be designated as a reserve. It is nothing but an adjustment by reducing the normal depreciation includible in the future // years in such a manner that at the end of useful life of the Plant (which is normally 30 years) /// the same would be reduced to nil. At the end of the life of the Plant, AAD will (4) be reduced to nil. / Keeping in view the facts the total profit and loss account will be different from the above. In fact, Schedule-XII A to the balance sheet for the financial years 2004-05 onwards indicated recouping.// AAD "income received in advance". It is a timing difference and represents adjustment in future which is in ///-built in the mechanism notified by the Income-tax Department. (5) (400)

Note - Join two dictations for writing 10 minutes. The Dictations are edited in such a manner that there will be no variation in speed or its counting at any quarter.

Exercise 10

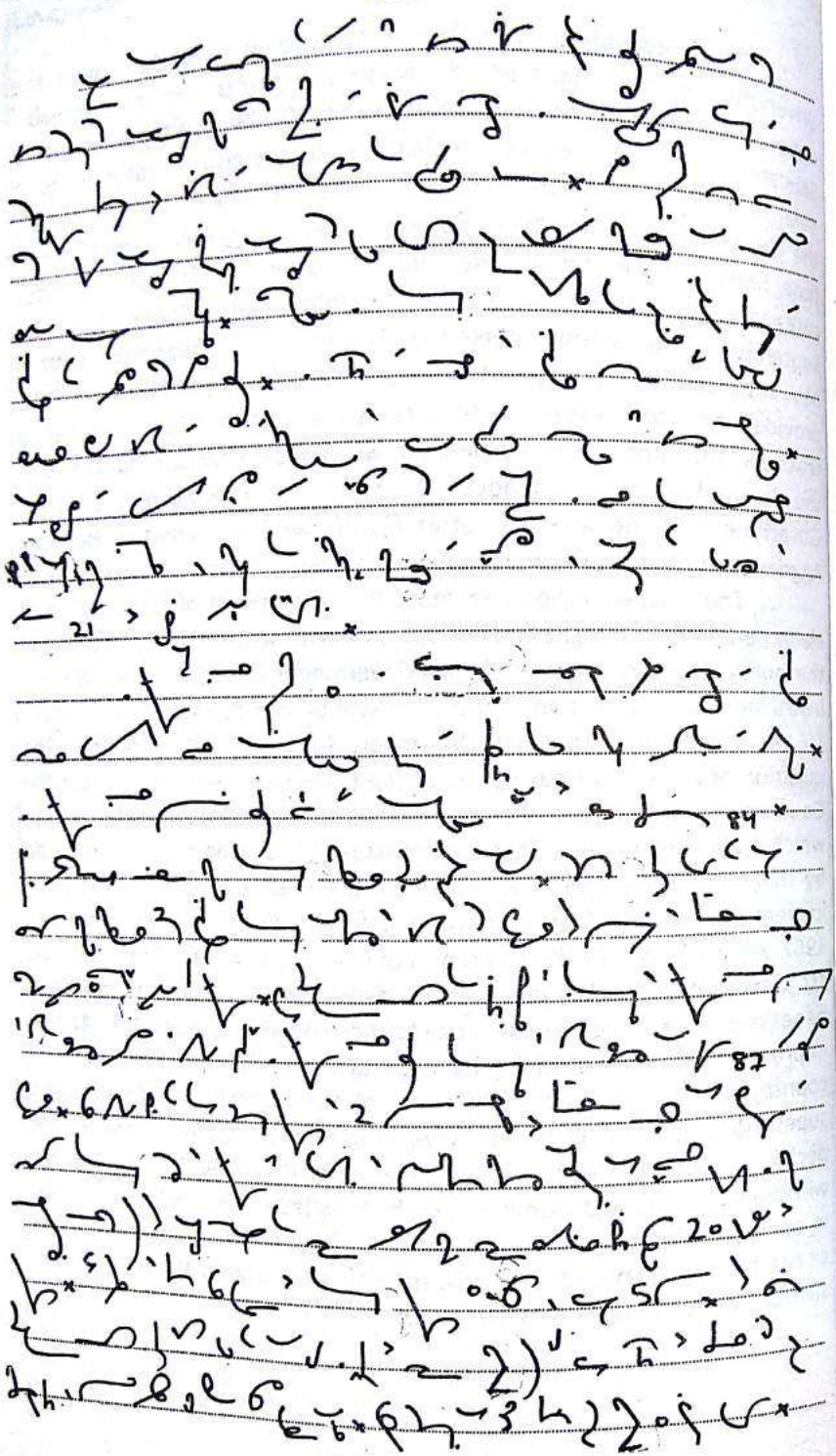


Exercise 10 **(80 w.p.m.)**

The respondent, who was employed as a teacher under the Government of Haryana, claimed advance increments in terms of Punjab / Government Memo dated 1st September, 1960. The Director of Secondary Education, Haryana rejected the claim on the premise // that in terms of Rule, 10 of the Punjab Education Service Class-III (School Cadre) Rules, 195, the pay scales ///of the teachers were subject to variation from time to time, and since the State of Haryana revised the pay (1) scales of various categories of teachers w.e.f. 1st December, 1967, Memo dated 1st September, /1960 stood superseded. He also observed that higher start of pay with advance increments for post graduate qualification // was provided only to Masters or Mistresses and not to other categories of teachers. The High Court allowed the writ /// petitions and directed that the respondent be given advance increments in terms of the Punjab Government Memo and the letter (2) of the Government of Haryana. Aggrieved, the State of Haryana filed the appeal.

The teachers employed under the Government of / Haryana could claim benefit of the higher pay scales, advance increments etc. in terms of the policy decision taken by // the Government of undivided Punjab and instructions issued by it only till the revision of their pay scales, which were /// made effective from 1st December, 1967 and not thereafter. The question of revision of pay scales of the (3) teachers employed under the Government of Haryana was considered by the Education Commission which is also known as Kothari Commission. / The recommendations made by that Commission were accepted by the President of India and were implemented by the State Government // with effect from 1st December, 1967. After revision of the pay scales of various categories of teachers, the /// Government of Haryana issued instructions for grant of monetary benefits in the form of personal pay to those Government servants (4) who improved their qualifications by undertaking further studies within the country and abroad. Further, by letter, all the existing instructions / were superseded and fresh instructions were issued on the subject. However, the decisions contained in letter and other related communications // were withdrawn by the State Government by their letter. The High Court erred in accepting the plea of the respondents that revision of/// the pay scales of teachers with the retrospective date did not result in automatic super-session of the existing policy decisions. (5/400 words)

Exercise 11

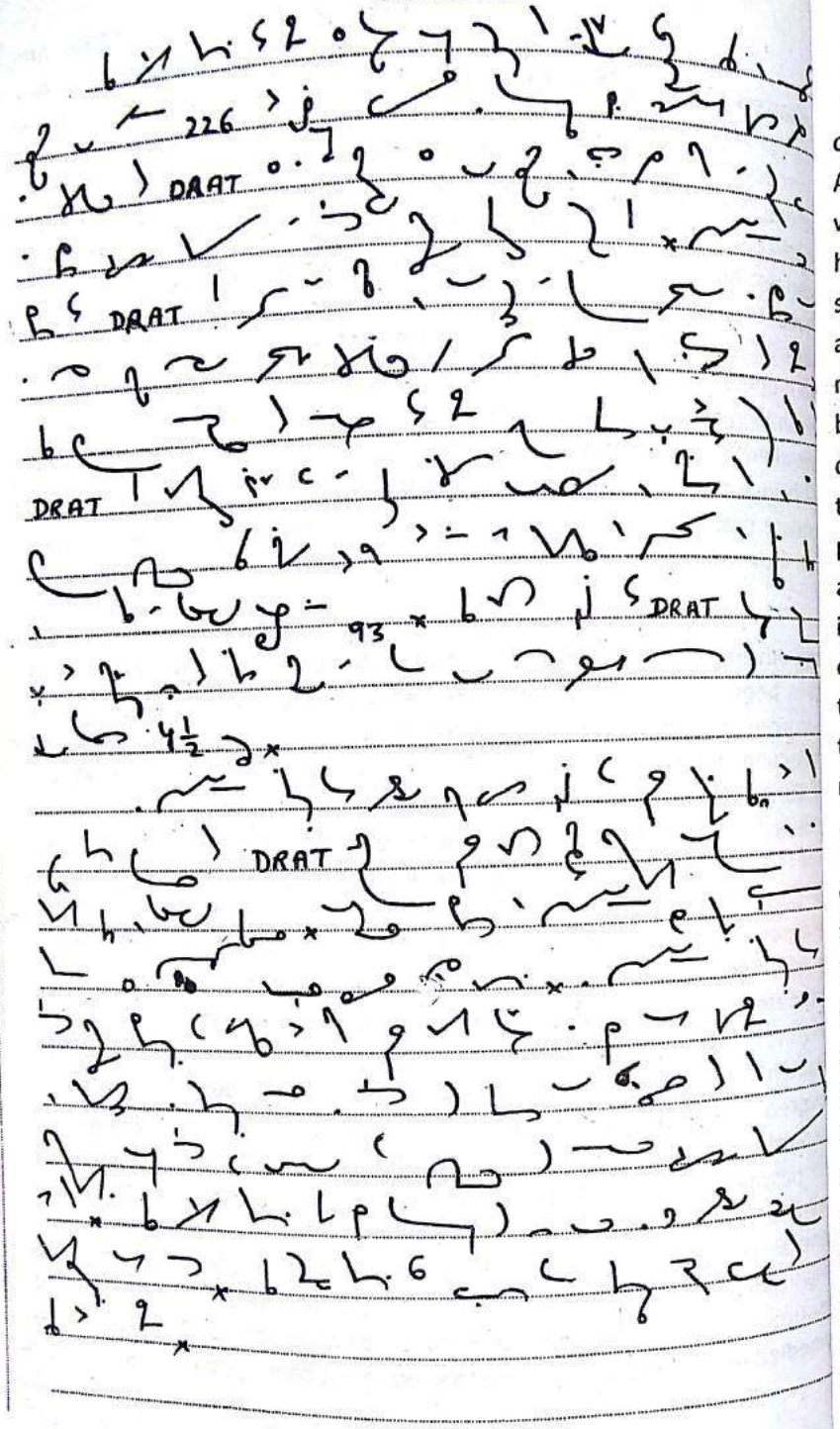


Exercise 11 *(80 w.p.m.)*

Unlike natural calamities that are beyond human control, avoidable disasters resulting from human error or negligence prove more tragic and completely / imbalance the inter-generational equity and cause irretrievable damage to the health and environment for generations to come. Such tragedy may // occur from pure negligence, contributory negligence or even failure to take necessary precautions in carrying on certain industrial activities. More often /// than not, the affected parties have to face avoidable damage and adversity that results from such disasters. The magnitude **(1)** and extent of adverse impact on the financial soundness, social health and upbringing of younger generation, may have been beyond / human expectations. Ir such situations and where the laws are silent or are inadequate, the courts have unexceptionally stepped in to // bridge the gaps, to provide for appropriate directions and guidelines to ensure that fundamentals of Article 21 of the /// Constitution of India are not violated.

The Bhopal Gas Tragedy is a glaring example of such imbalances and adverse impacts, where by court's **(2)** intervention, poor and destitute have been provided relief and rehabilitation. The Bhopal Gas Leak Disaster occurred on the intervening night / of the 2nd December, 1984. Data reflecting the exact number of affected persons was not available initially. // Earlier, it was felt that only a small number of persons were adversely affected in terms of health or otherwise by the /// leakage of toxic gases from the Union Carbide Unit at Bhopal. However, the Scientific Commission for Continuing Studies on **(3)** Effects of Bhopal Gas Leakage on Life Systems released a Report titled 'The Bhopal Gas Disaster: Effects on Life Systems' / in July, 1987 which suggested otherwise. This Report stated that for the estimated population of 2 lakh exposed to the toxic gases in the severely and moderately // affected areas of Bhopal and the variety of long-term problems anticipated in the crisis period, the number of exposees /// covered so far by the Indian Council for Medical Research through the medical surveys constitute less than 20 per cent **(4)** of the population. With the passage of time, this figure of the affected population has swollen to nearly 5 lakh. / By the same Scientific Commission, it was also found that in general, the output of the medical project so // far had not equaled the magnitude of the tasks assigned to them, presumably due to lack of resources trained staff /// as well as physical inputs. This has to be remedied in the shortest time so that project is completed fully. **(5)**

Exercise 12

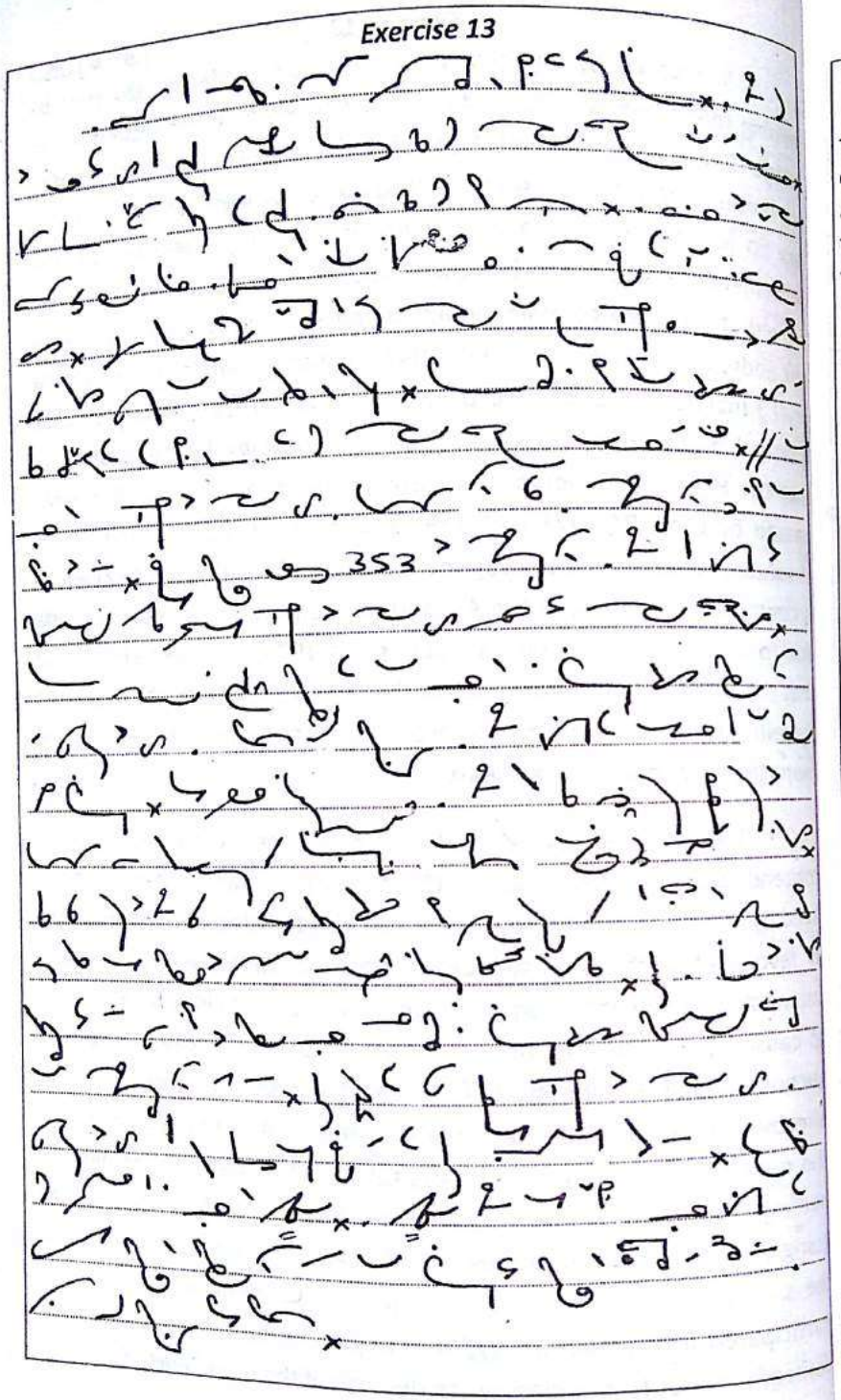


Exercise 12 ***(80 w.p.m.)***

It is urged by him that the High Court has fallen into error by opining that there was no justification / to exercise jurisdiction under Article 226 of the Constitution of India whereas the facts stated warranted deletion of // such an observation by the DRAT as a tribunal has no jurisdiction to grant such liberty and, /// especially, when a settlement between the borrower and auction purchaser had been arrived at. Learned counsel would submit that the (1) DRAT had really not addressed to any issue and, after recording a settlement in a most brief / manner, recorded the observations which really deserved to be quashed by the High Court. It is further canvassed by the Counsel // that the High court should have taken note of the fact that the order passed by the DRAT /// had already been complied with and it was absolutely unnecessary to drag the bank to a further litigation (2) which is contrary to the spirit of the Act and the purpose of Recovery of Debts due to Banks and Financial Institutions Act, 1993. / It is also contended that the DRAT failed to take note of the // prayer made by the appellant therein and for no important reason the matter was kept pending for more than /// four and half years.

The learned counsel appearing for the Respondent No. 1, contended that he had paid the (3) dues of the bank within the time fixed by the DRAT and thereafter he had also transferred / the property in favour of a third party due to financial difficulties. In essence, submission of learned counsel is that putting // the clock back is likely to cause serious loss to him. The learned counsel appearing for the auction purchaser, submitted /// that on the basis of the liberty he had already filed a suit in the Delhi High Court and (4) is entitled to pursue the remedy because the action was taken in hot haste by the bank in putting / the property into auction without indicating that litigation was going on between the borrower and the bank. It is urged // by him, had the said fact was made known the third respondent would not have participated in the auction. /// It is argued by him that his claim for damages cannot be nullified by the decision of the High Court. (5)

Exercise 13



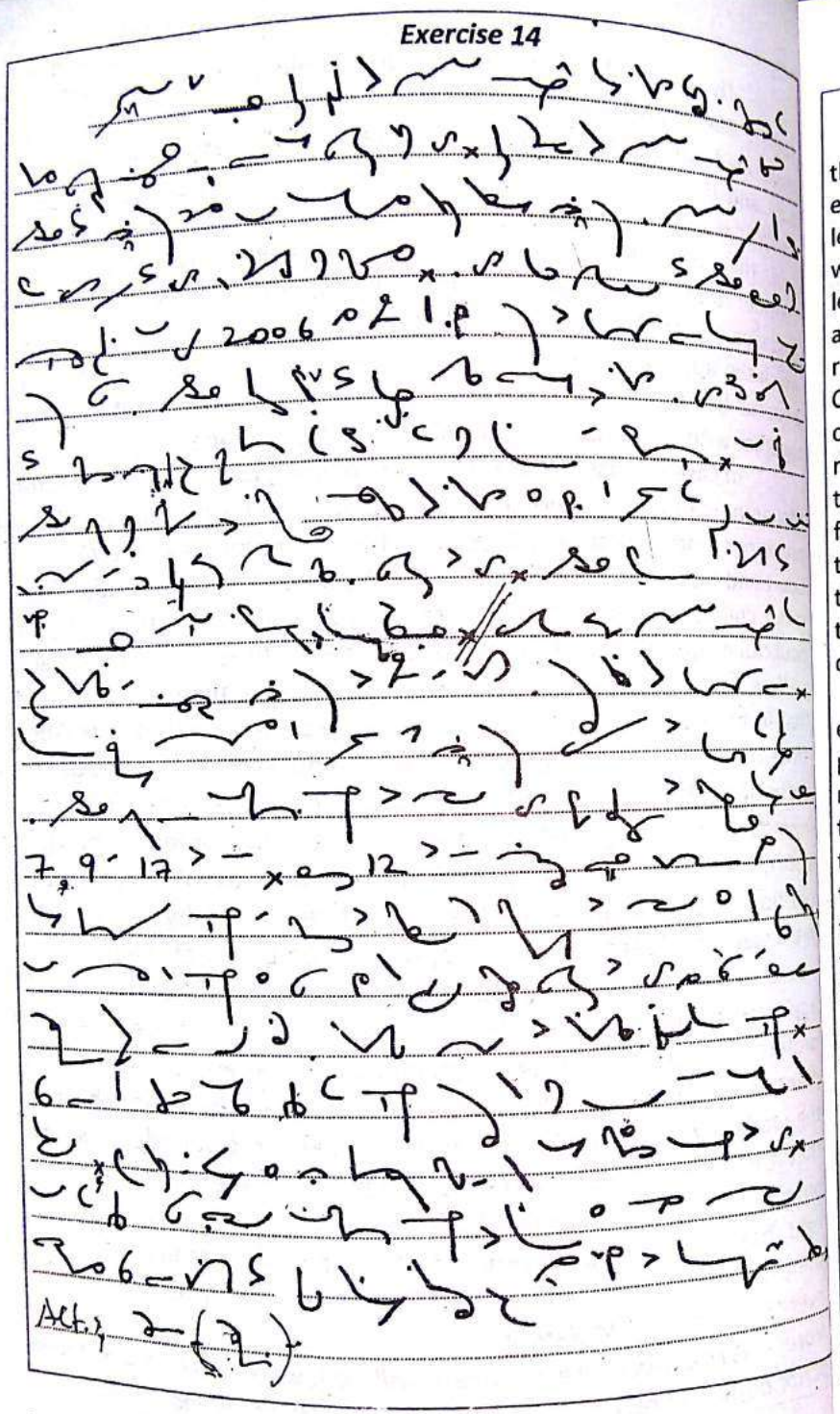
Exercise 13 *(80 w.p.m.)*

The girl had expressed a marked reluctance to stay with her father. The High Court was of the opinion that /the children had developed long standing affection towards their maternal grandfather, aunt and uncles. It will take a while before //they develop the same towards their step mother. The sex of the minor girl who would soon face the difficulties/// of attaining adolescence is an important consideration, though not a conclusive one. She will benefit from the guidance of her (1) maternal aunt, if custody is given to the respondent, which the appellant will be in no position to provide. Further, / there is a special bonding between the children and it is desirable that they stay together with their maternal grandfather, // uncles and aunt.

In case of custody of the minor children, the Family Law, i.e. the Mohammedan Law /// would apply in place of the Act. Considering the provisions under Section 353 of the Mohammedan Law, the (2) High Court had held that the preferential rights regarding the custody of the minor children rests with the maternal grandparents. / After making a doubtful proposition that in case of a conflict between personal law and welfare of the children the // former shall prevail, the High Court held that in the case at hand there is no such conflict. For/// the reasons afore-mentioned, the High Court by its impugned order set aside the order of the Family Court, Bangalore (3) which vacated the interim injunction issued against the appellant. It is this order of the High Court, which is / challenged before us by way of special leave petition which on grant of leave has been heard by us in // the presence of the learned counsel appearing on behalf of the parties. It was the contention of the appellant before /// us that the Act will apply to the present case because there is a conflict between the preferential guardian in (4) Mohammedan Law and the Act. It was pointed out that while deciding the custody of the minor children, the welfare / of the children had to be taken into consideration and that it was guaranteed by the Act. They have placed // their reliance on a case of Rajasthan. The Rajasthan High Court in the cited case held that where the provisions ///of personal law are in conflict with the provisions of Guardians and Wards Act, the latter shall prevail over the former. (5/400 words)

Note - Write Accurately, speed will follow. Transcribe Shorthand Script daily and rectify Mistakes by writing 25 times each outline.

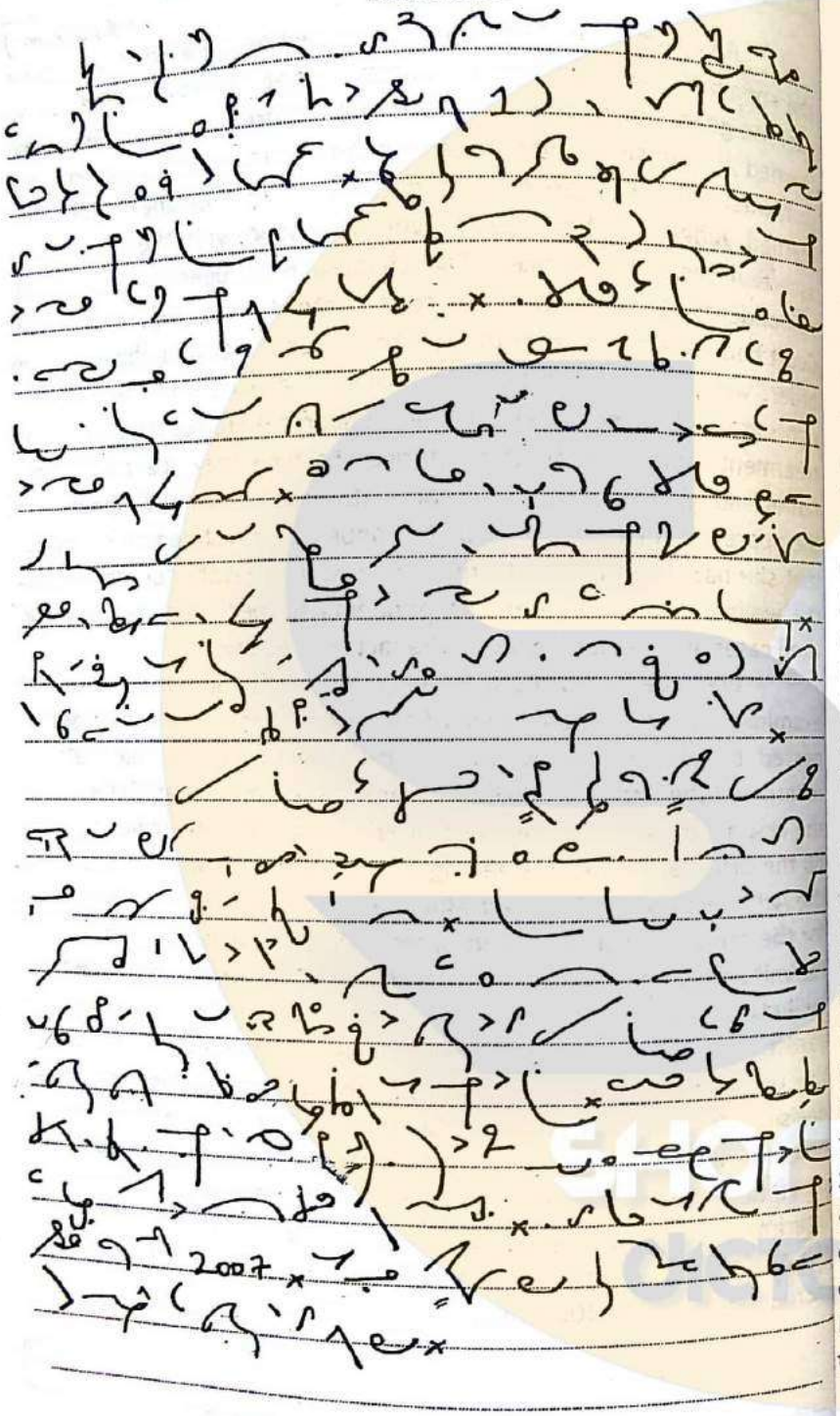
Exercise 14



Exercise 14 (80 w.p.m.)

Relying on the case, it was contended by the learned counsel for the appellant that there is a presumption that / parents will be able to exercise good care in the welfare of their children. It was argued by the learned // counsel on behalf of respondents that the impugned order warrants no interference. Before passing the impugned order, the learned Judge /// had spent over one hour with the children to ascertain their preferences. The children have been living with the respondents (1) since their mother's death in June, 2006 as the High Court had stayed the order of the Family / Court vacating the injunction order. While the respondents had been complying with the visitation rights granted to the appellant, the // children were not happy with the treatment meted out to them during the time they spent with their father and /// step-mother. In contrast, respondent no. 3, contrary to the apprehensions expressed by the appellant has stated on record (2) that she had no intention to marry and would devote her life towards the welfare of the children. Respondents further / asserted that the cited cases are not applicable to the facts of this case.

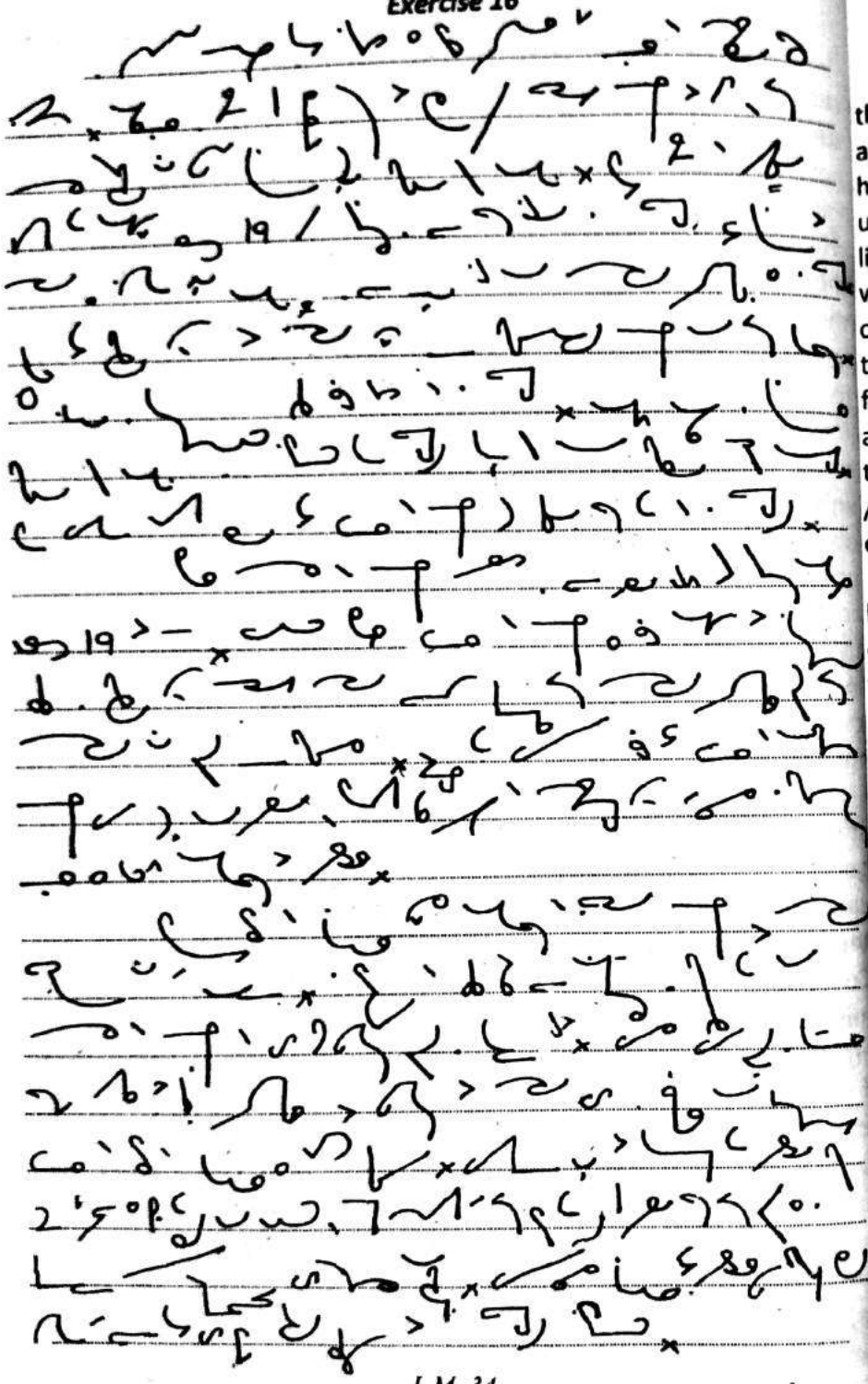
We have heard the learned counsel // for both the parties and examined the impugned order of the High Court and also the orders passed by the /// Family Court. After considering the materials on record and the impugned order, we are of the view that at (3) this stage the respondents should be given interim custody of the minor children till the disposal of the proceedings filed / under Sections 7,9 and 17 of the Act. Section 12 of the Act empowers courts to "make such order // for the temporary custody and protection of the person or property of the minor as it thinks proper." In matters /// of custody, as well settled by Judicial precedents, welfare of the children is the sole and single yardstick by which (4) the Court shall assess the comparative merit of the parties contesting for custody. This Court had observed in this decision /that custody orders by their nature can never be final; however, before a change is made it must be proved // to be in the paramount interest of the children. In that decision, while granting interim custody to the father as /// against the maternal grand-parents, this Court held that "the Division Bench appears to have lost sight of the factual position." (5/400 words)



Exercise 15 **(80 w.p.m.)**

At the time of death of their mother the children were left in custody of their paternal grand parents with / whom their father is staying and the attempt of the respondent no. 1 was to alter that position before the// application filed by them is considered by the Family Court. For this purpose it was very relevant to consider whether /// leaving the minor children in custody of their father till the Family Court decided the matter would be so detrimental (1) to the interest of the minors that their custody should be changed forthwith. The observations that the father is facing / a criminal case, that he mostly resides in U.S.A. and that it is alleged that he is having //an affair with another lady are, in our view, not sufficient to come to the conclusion that custody of the /// minors should be changed immediately. What is important for us to note from these observations is that the Court shall (2) determine whether, in proceedings relating to interim custody, there are sufficient and compelling reasons to persuade the Court to change/ the custody of the minor children with immediate effect. Stability and consistency in the affairs and routines of children is //also an important consideration as was held by this Court in another decision cited by the learned counsel for the /// appellant.

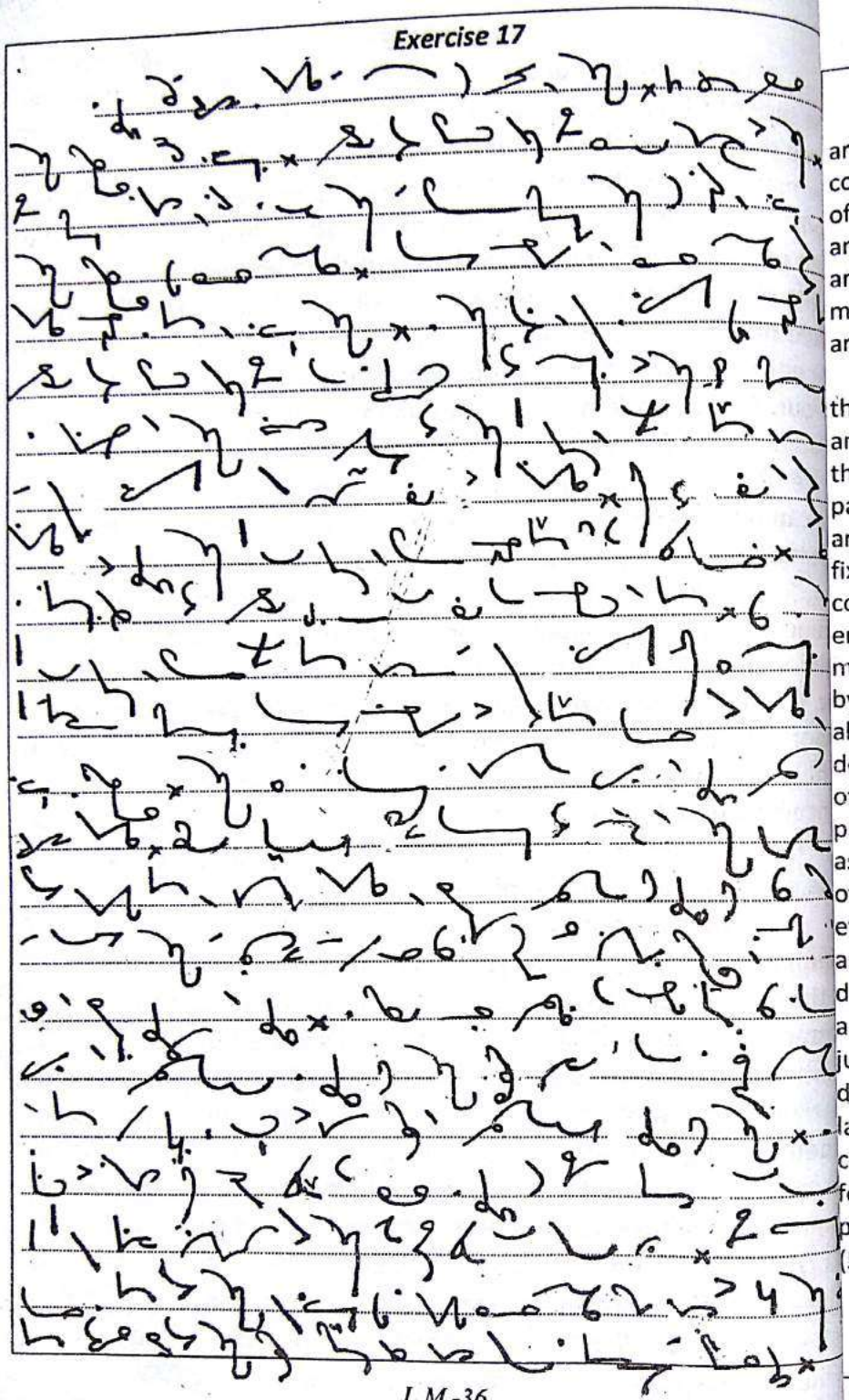
"We are convinced that the dislocation of Satpal, at this stage, from Allahabad, where he has grown up in sufficiently (3) good surroundings, would not only impede his schooling, it may also cause emotional strain and depression on him." After taking/ note of the marked reluctance on part of the boy to live with his mother, the Court further observed; "Under// these circumstances and bearing in mind the paramount consideration of the welfare of the child, we are convinced that child's /// interest and welfare will be best served if he continues to be in the custody of the father. In our (4) opinion, for the present, it is not desirable to disturb the custody of Master Satpal and, therefore, the order of / the High Court giving his exclusive custody to the father with visitation right to the mother deserves to be maintained." //The children have been in the lawful custody of the respondents from October, 2007. In the case of /// Rajpal Singh v. Sumesh Nagpal, it was argued before this Court by the Counsel that welfare of child should be seen. (5/400 words)



The learned counsel for the appellant has placed reliance on the case of Mohsin v. Reshama. In this case, the / High Court had set aside the order of the Civil Judge granting the custody of the child to her mother's // paternal aunt, while the father was not proven to be unfit. However, the High Court of Rajasthan held that in /// the light of Section 19 which bars the Court from appointing a guardian when the father of the minor is (1) alive and not unfit, the court could not appoint any maternal relative as a guardian, even though the personal law / of the minor might give preferential custody in her favour. As is evident, the afore-mentioned decision concerned appointment of // a guardian. No doubt, unless the father is proven to be unfit, the application for guardianship filed by another person /// cannot be entertained. However, we have already seen that the question of custody was distinct from that of a guardianship.(2)

As far as matters of custody are concerned, the Court is not bound by the bar envisaged under Section 19 / of the Act. In our opinion, as far as the question of custody is concerned, in the light of the // afore-mentioned decisions, the personal law governing the minor girl dictates her maternal relatives, especially her maternal aunt, shall be /// given preference. To the extent that we are concerned with the question of interim custody, we see no reason to (3) over-ride this rule of Mohammedan Law and, hence, a prima facie case is found in favour of the respondents.

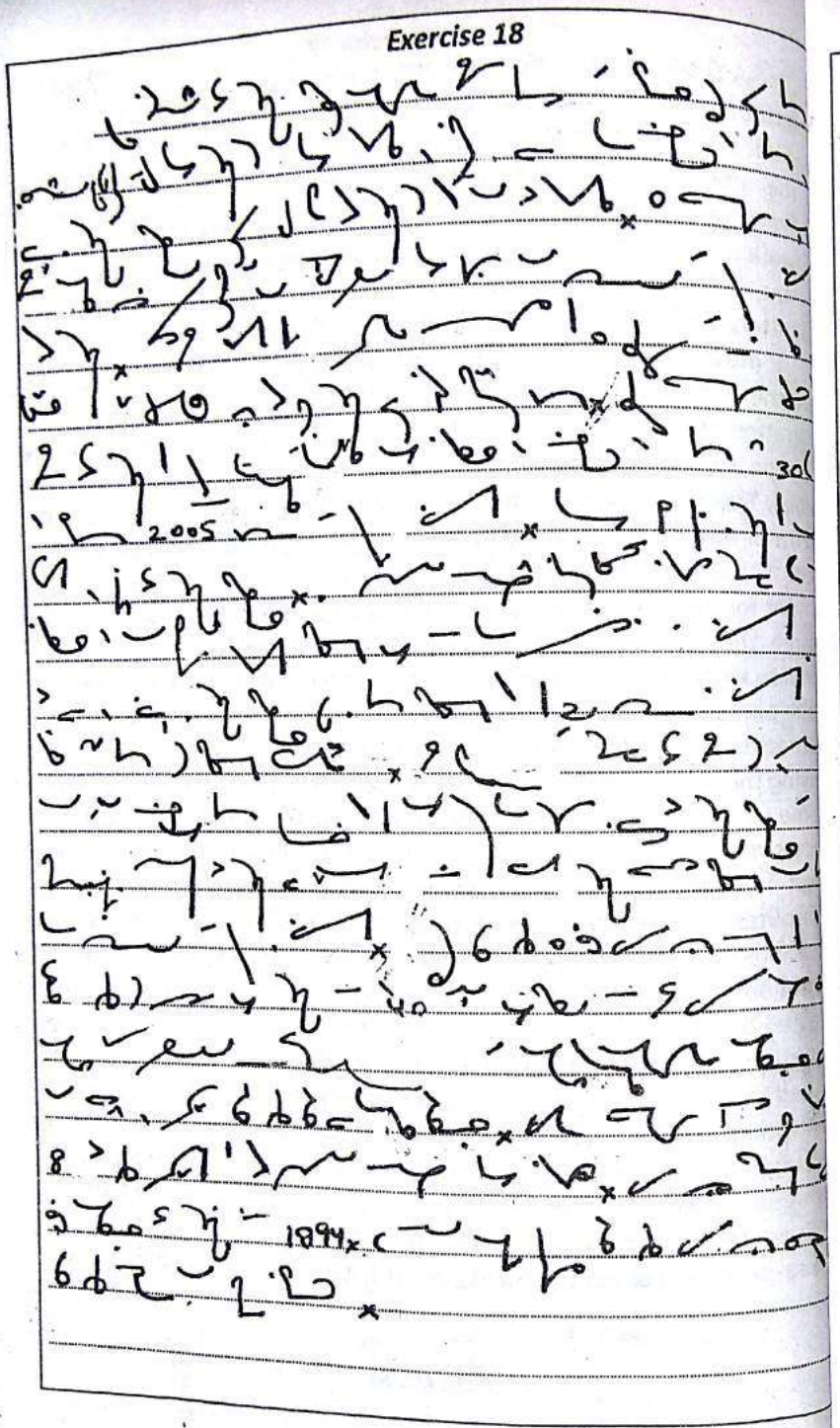
Further, / the balance of convenience lies in favour of granting custody to the maternal grandfather, aunt and uncle. A plethora of // decisions of this Court endorse the proposition that in matters of custody of children, their welfare shall be the focal /// point. Once we shift the focus from the rights of the contesting relatives to the welfare of the minor children, (4) the considerations in determining the question of balance of convenience also differ. We take note of the fact that respondent / no. 2, on record, has stated that she has no intention to get married and her plea that she had // resigned from her job as a technical writer to take care of the children remains uncontroverted. We are, hence, convinced /// that the respondents will provide sufficient love and care for the children till the final disposal of the guardianship application. (5/400)



Exercise 17 **(80 wp.m.)**

A Dispute arose between the parties and matter was referred to arbitration. Due to some reasons, arbitration proceedings were not / concluded. Respondent filed application before High Court seeking removal of the arbitrator. High Court directed appellant to appoint a new // arbitrator and further directed the arbitrator so appointed to conclude the arbitration proceedings within six months. After the expiry /// of six months, both the parties extended the time to conclude arbitration. The arbitrator failed to publish the award within (1) the extended time.

Respondent filed application before High Court for a declaration that the mandate of the arbitrator stood terminated. / A perusal of arbitration agreement revealed that the arbitrator had power to enlarge the time to make and publish the // award by mutual consent of the parties. Therefore, without the consent of both the parties to the dispute, arbitrator had /// no power to further extent the time beyond that which is fixed. It is an admitted position that the respondent (2) did not give any consent for extension of time. Thus, the arbitrator had no power to further enlarge the time / to make and publish the award and therefore his mandate had automatically terminated after the expiry of the time fixed // by the parties to conclude the proceedings. Arbitration is an efficacious and alternative way of dispute resolution between the parties. /// There is no denying the fact that the method of arbitration has evolved over the period of time to help (2) the parties to speedily resolve their disputes through this process and in fact the Arbitration and Conciliation Act recognized this / aspect and has elaborate provisions to cater the needs of speedy disposal of disputes. The present case illustrates that in // spite of adopting this efficacious way of resolving the disputes between the parties through the arbitration process lingered on for /// a considerable length of time which defeated the notion of the whole process of resolving the disputes through arbitration. The (3) contention of the appellant therefore cannot be justified that since the dispute was highly technical in nature, it had to / be dealt with elaborately by the arbitrator and that he was justified in being late. High Court correctly fixed the // time for the arbitration to be concluded within a period of six months from the appointment of the fourth arbitrator/// considering the time that was spent for the arbitration process prior to his appointment, being a technical and complex issue. (5/400 words)



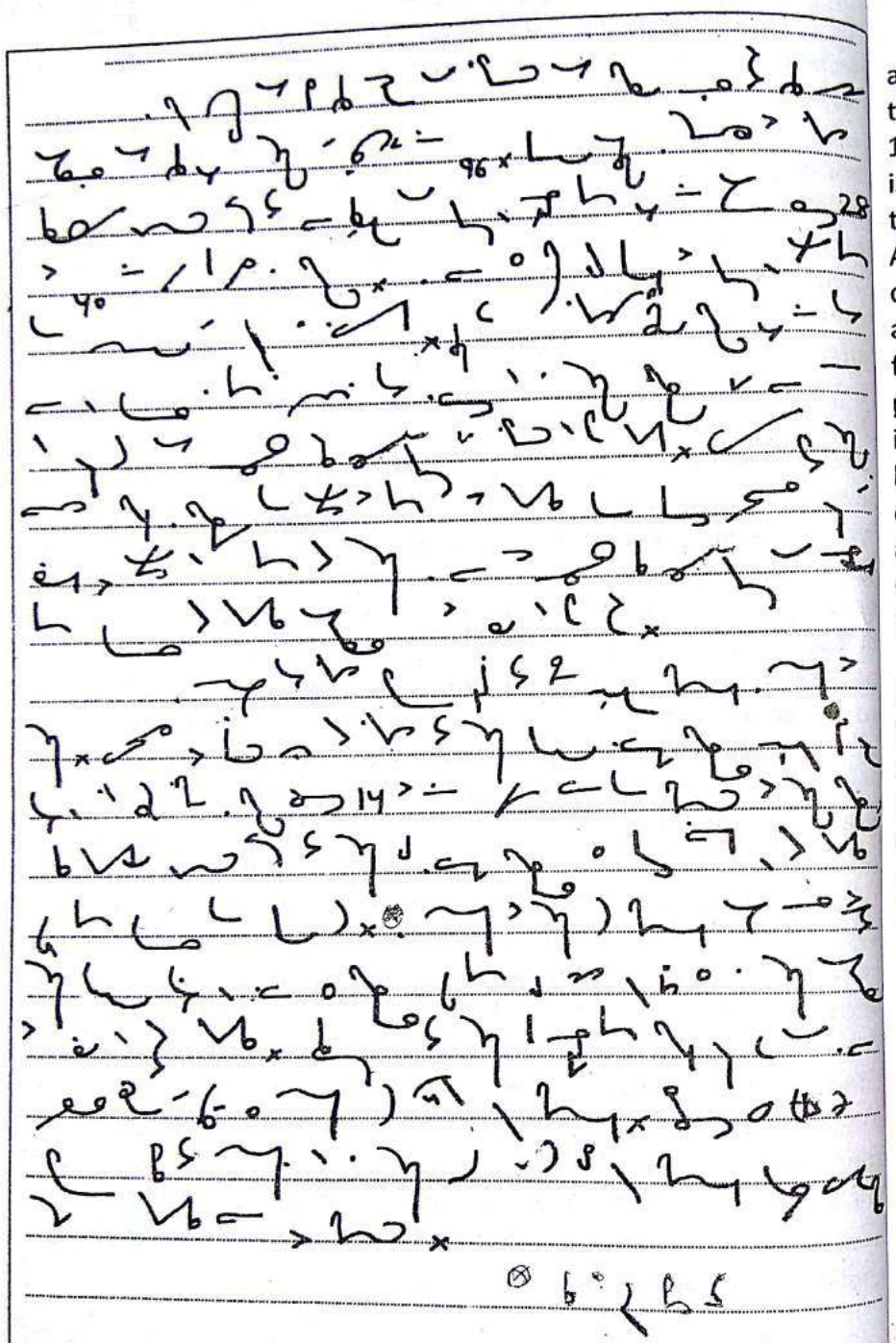
Exercise 18 *(80 w.p.m.)*

Even assuming that the arbitration process involved highly technical and complex issues, which was time consuming, even then, it was / open for the arbitrator or for the parties to approach the Court for extension of time to conclude the arbitration // proceeding which was not done either by the arbitrator or by any of the parties. As correctly noted by High /// Court in its impugned judgment, there was no cogent reason for the delay in making and publishing the award by (1) the arbitrator. He already had the relevant materials at his disposal and could base his findings on the observations made/ by the three arbitrators who were appointed prior to him.

It has been correctly observed by the High Court that the // arbitrator had become functus officio in the absence of extension of time beyond 30th of September, 2005 to /// make and publish the award. After the said date, the arbitrator had no authority to continue with the arbitration proceedings. (2) The learned counsel appearing on behalf of the appellant argued that in the absence of any statutory period prescribed under / the Act for rendering an award, the direction of the Court to conclude the arbitration proceedings within the time prescribed // by it, would not make an award passed beyond the time so prescribed, null and void. He further argued that /// the High Court was wrong in not extending the time fixed by it in the order, for early conclusion of (3) the arbitration proceedings and terminating the mandate of the arbitrator when neither the Act nor the arbitration agreement prescribed any / time for making and publishing the award.

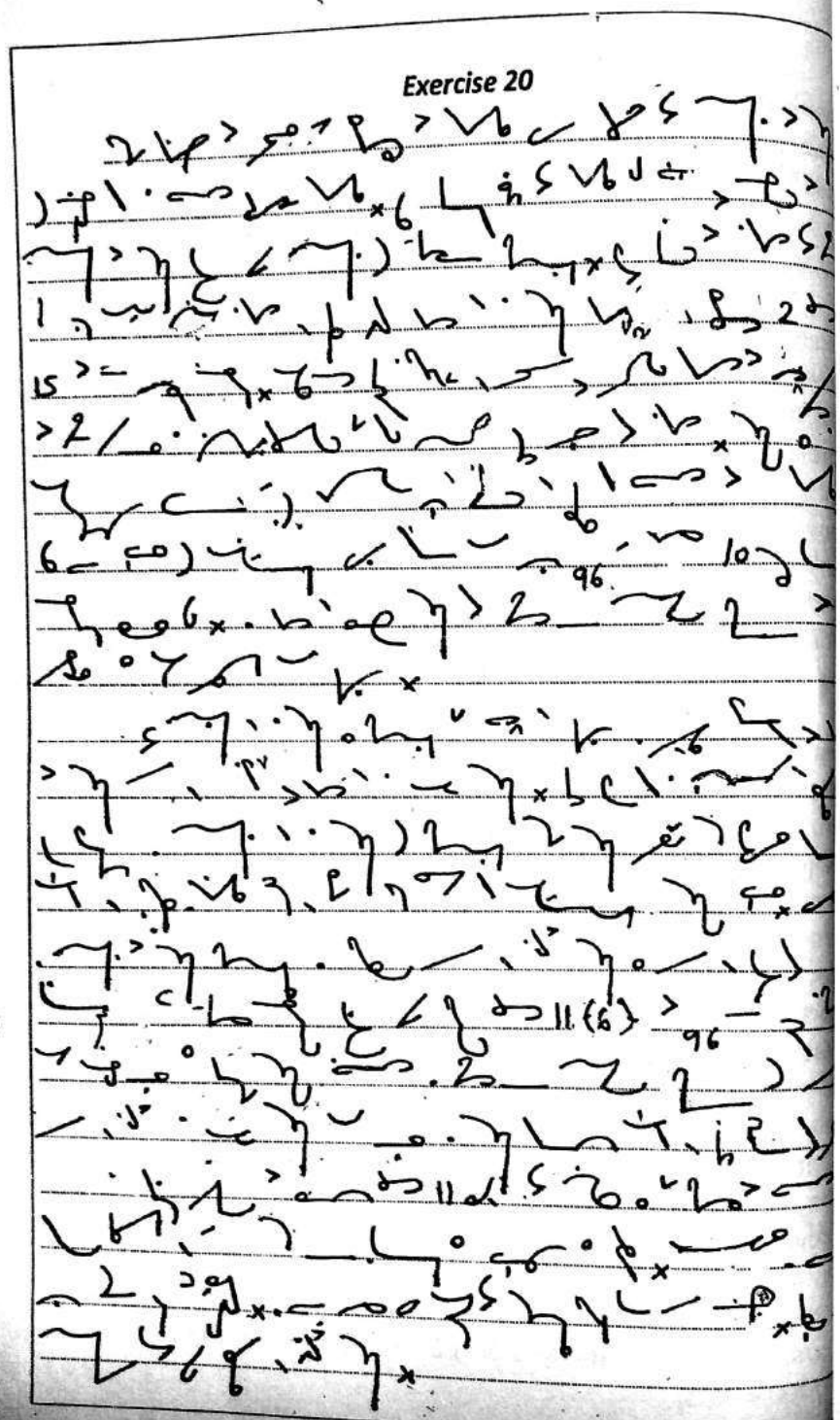
So far as this decision is concerned, we may keep it on record // that this decision was rendered under the Arbitration Act of 1940 and not under the present act /// with which we are only concerned. In view of our reasoning given hereinafter and in view of the facts involved (4) in this case, we do not find any ground to rely on this decision of this Court for the purpose / of this case. We have carefully gone through para 8 of the decision relied on by the learned counsel for // the appellants. We may not forget that we are concerned in this case with the Arbitration Act, 1894. /// Without going into the details of this decision, we may simply say that this decision cannot have any direct application. (5/400 words)

Note - Writing is good, Reading is better and Transcription is best.



The principles laid down in the said decision cannot have any application in the present case although the decision rendered/ in this case in the decision under the Arbitration and Conciliation Act, 1996. Taking into consideration the //arguments of the appellant, it is necessary to mention here that the court does not have any power to extend the /// time under the Act unlike Section 28 of the 1940 Act which had such a provision. The (1) Court has therefore been denuded of the power to enlarge time for making and publishing an award. It is true/ that apparently there is no provision under the Act for the Court to fix a time limit for the conclusion //of an arbitration proceeding, but the Court can opt to do so in the exercise of its inherent power on/// the application of either party. Where however the Arbitration agreement provide the procedure for enlargement of time and the parties (2) have taken recourse to it, and consented to the enlargement of time by the arbitrator, the Court cannot exercise its/ inherent power in extending the time fixed by the parties in the absence of the consent of either of them.//

The counsel for the appellant further contended that the High Court could not have terminated the mandate of the arbitrator. With/// reference to the contention made by the appellant that the arbitrator having concluded the proceedings could not be said to have (3) failed to act so as to attract the provision of Section 14 of the Act, which will call for termination /of the arbitration proceedings. It is pertinent to mention here that the arbitrator had not concluded the proceedings as had // been agreed to by the parties within the time fixed for doing so. It is an established statement that the said mandate of the arbitrator was /// terminated only because of the fact that the arbitrator having (4) failed to conclude his proceedings within time did not warrant to be continued as an arbitrator in the absence of the / consent of both the parties. It is clear that the arbitrator had extended the time provided to it without any // concrete reasons whatsoever and thus his mandate was liable to be terminated. Sub section 1(b) further states that the /// mandate of an arbitrator shall also stand to be terminated if he withdraws or the parties agree to the termination. (5/400 words)



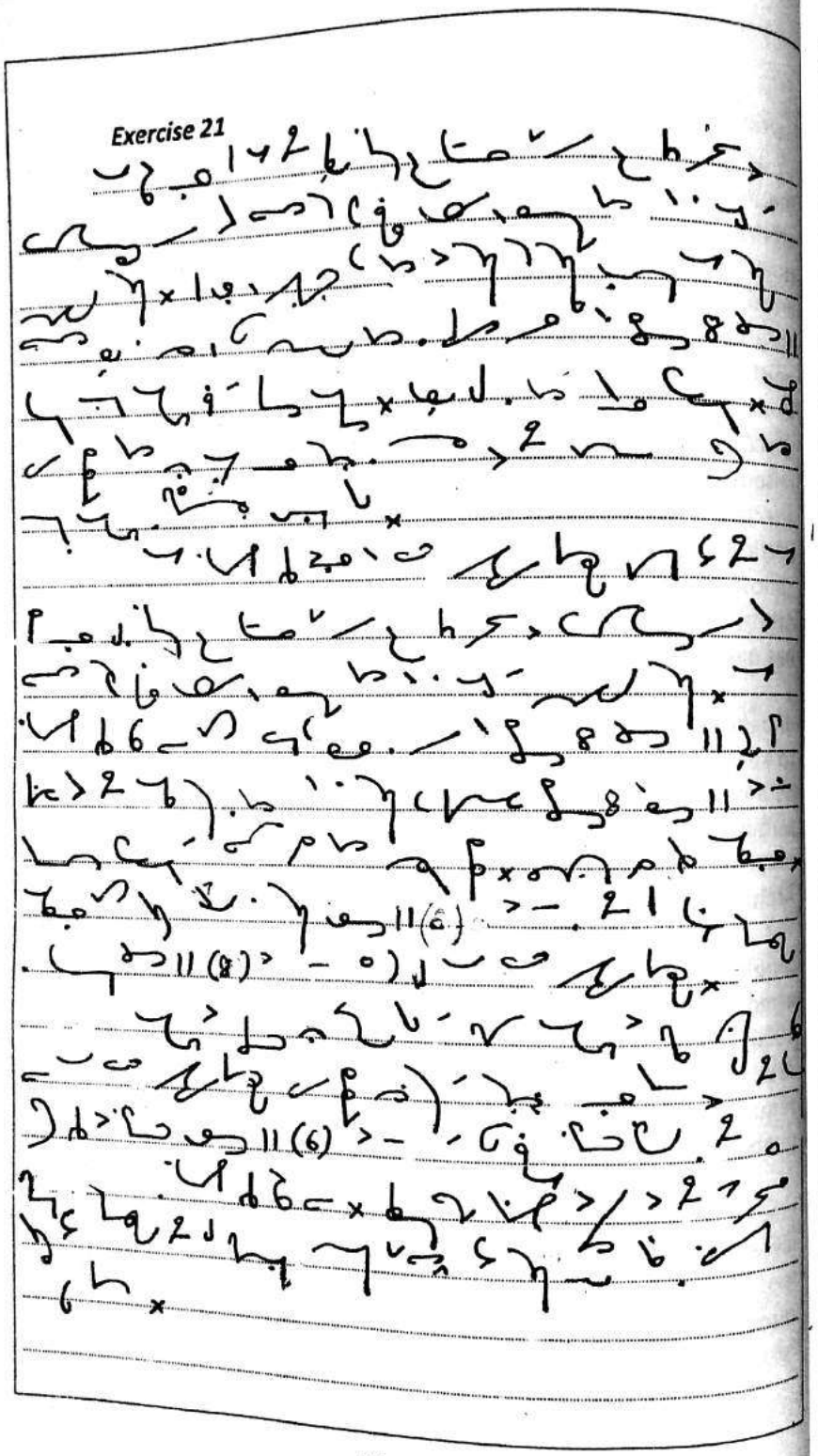
Exercise 20 **(80 w.p.m.)**

From the perusal of the records and the submissions of the parties, we observe that the mandate of the arbitrator/ was extended by an agreement between the parties. Thus, it can be construed that the parties had not agreed to // the extension of the mandate of the arbitrator failing which, the mandate was automatically terminated. However, the contention of the /// Appellant that the High Court had erred in not allowing the appellant to decide upon the appointment of an arbitrator (1) pursuant to sub-section (2) of Section 15 of the Act must be accepted. In this connection, it would be /appropriate to refer to the relevant portion of the impugned judgment of the High court, which gives an elaborate observation // on the above-mentioned issue raised by the appellant., Arbitration is an informal, quick and easy alternative mode of adjudication /// of disputes by agreement of the parties. This Court Clause was invoked way back in May 1996 (2) and almost 10 years have expired since then. The appointment of successive Arbitrator by the Chairman-cum-Managing Director of / the respondent has only resulted in delay.

When the mandate of an arbitrator is terminated on the ground of delay,// the rules applicable to the appointment of the arbitrator are to apply to the appointment of a new arbitrator. It /// would, however, be a mockery of justice, if every time the mandate of an arbitrator was terminated or the arbitrator (3) resigned or otherwise became unable to proceed, the parties were to start from scratch, by invoking the Arbitration Clause.

Once / the mandate of the arbitrator terminates, the person required to appoint arbitrator is required to fill up the vacancy with // utmost expedition, failing which the provision of section 11 (6) of the 1996 Act would be attracted. /// In the instant case, as per the Arbitration agreement the Chairman-cum-Managing Director was required to appoint a new arbitrator, (4) in case the arbitrator became unable to continue, whatever be the reason.

A bare reading of the scheme of Section / 11 shows that the emphasis is on the terms of the agreement being adhered to and/or given effect as closely // as possible. In other words, the Court may ask to do what has not been done. The court must first /// ensure that the remedies provided for are exhausted. It is not mandatory for the Chief Justice to appoint the arbitrator. (5/400 words)



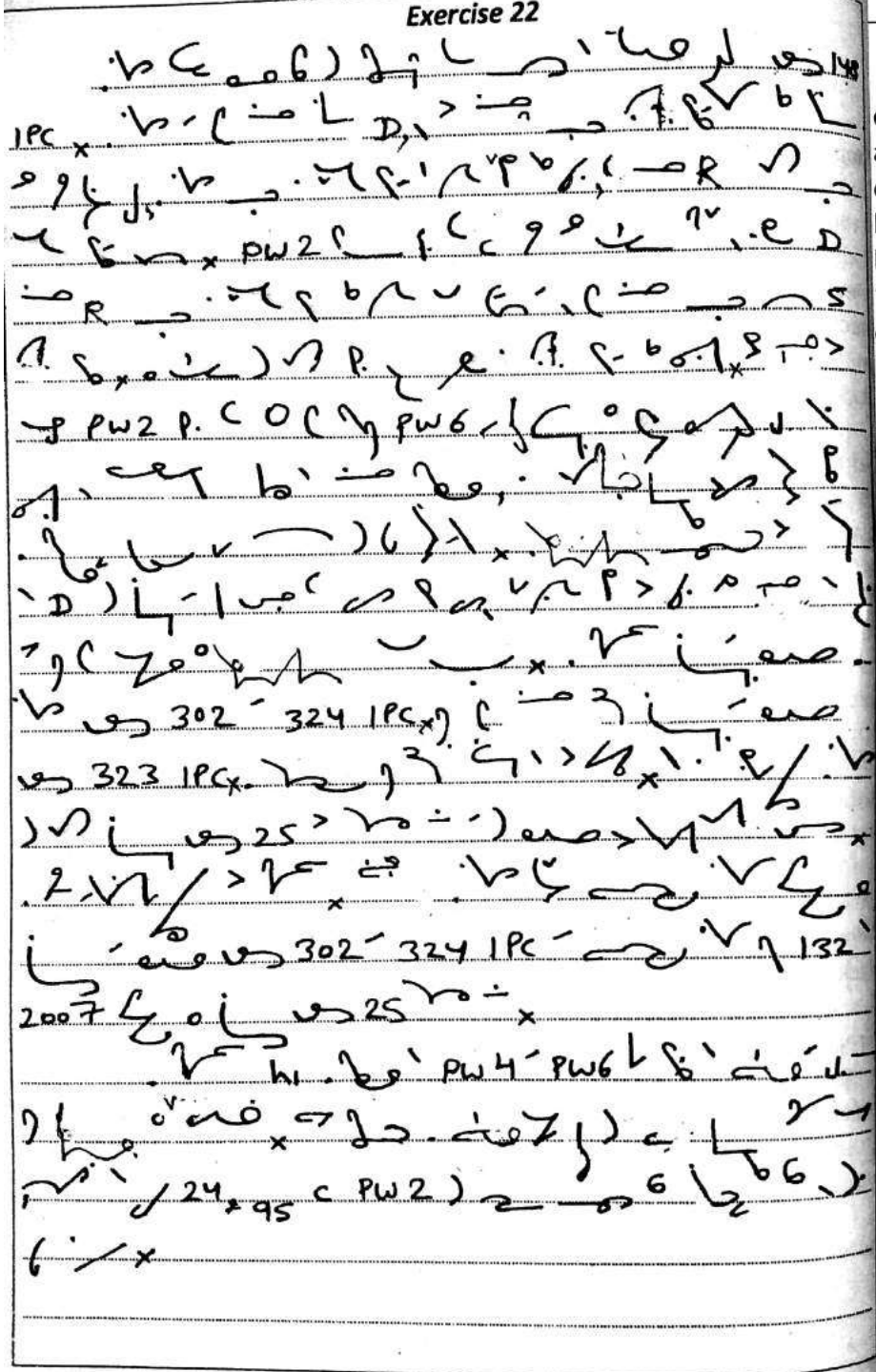
Exercise 21 **(80 w.p.m.)**

In all these cases at hand the High Court does not appear to have focused on the requirement to have / due regard to the qualifications required by the agreement or other considerations necessary to secure the appointment of an independent //and impartial arbitrator. It needs to reiteration that appointment of the arbitrator or arbitrators named in the arbitration agreement is /// not a must, but while making appointment the twin requirements of Sub section (8) of Section 11 have to be (1) kept in view, considered and taken into account. If it is not done, the appointment becomes vulnerable. In the circumstances, / we set aside the appointment made in each case, remit the matters to the High Court to make fresh appointments // keeping in view the parameters indicated above."

In the aforesaid decision of the case of Northern Railway Administration held that /// the High Court in the said case did not appear to have focused on the requirement to have due regard (2) to the qualification required by the agreement or other conditions necessary to secure the appointment of an independent and impartial / arbitrator. In the aforesaid decision, this Court also concluded that since the requirement of sub-section (8) of Section 11 // was not at all dealt with by the High Court in its order, the appointment of an arbitrator without dealing with /// Sub-Section 8 of Section 11 of the Act became vulnerable and accordingly, such appointment must be set aside. Similar (3) is the position in this case. In this case also, before appointing an arbitrator u/s 11(6) of the / Act, the High Court had failed to take into consideration the effect of Section 11(8) of the Act as // was done in Northern Railway Administration.

In view of the discussion made here-in-above and particularly, in view of /// the principles laid down by this Court in Northern Railway Administration, we set aside the impugned order and remand the (4) case back to the High Court for fresh decision of the application u/s 11(6) of the Act and / while considering the application afresh, the High Court is directed to take into consideration the aforesaid decision of this Court. // It is clear from the perusal of the judgment of the High Court and the records before us that the /// High Court had not terminated the mandate on the ground that the arbitrator could not pass the award within time. (5/400 words)

Note - Write fine outlines by Practice for quick and accurate reading.

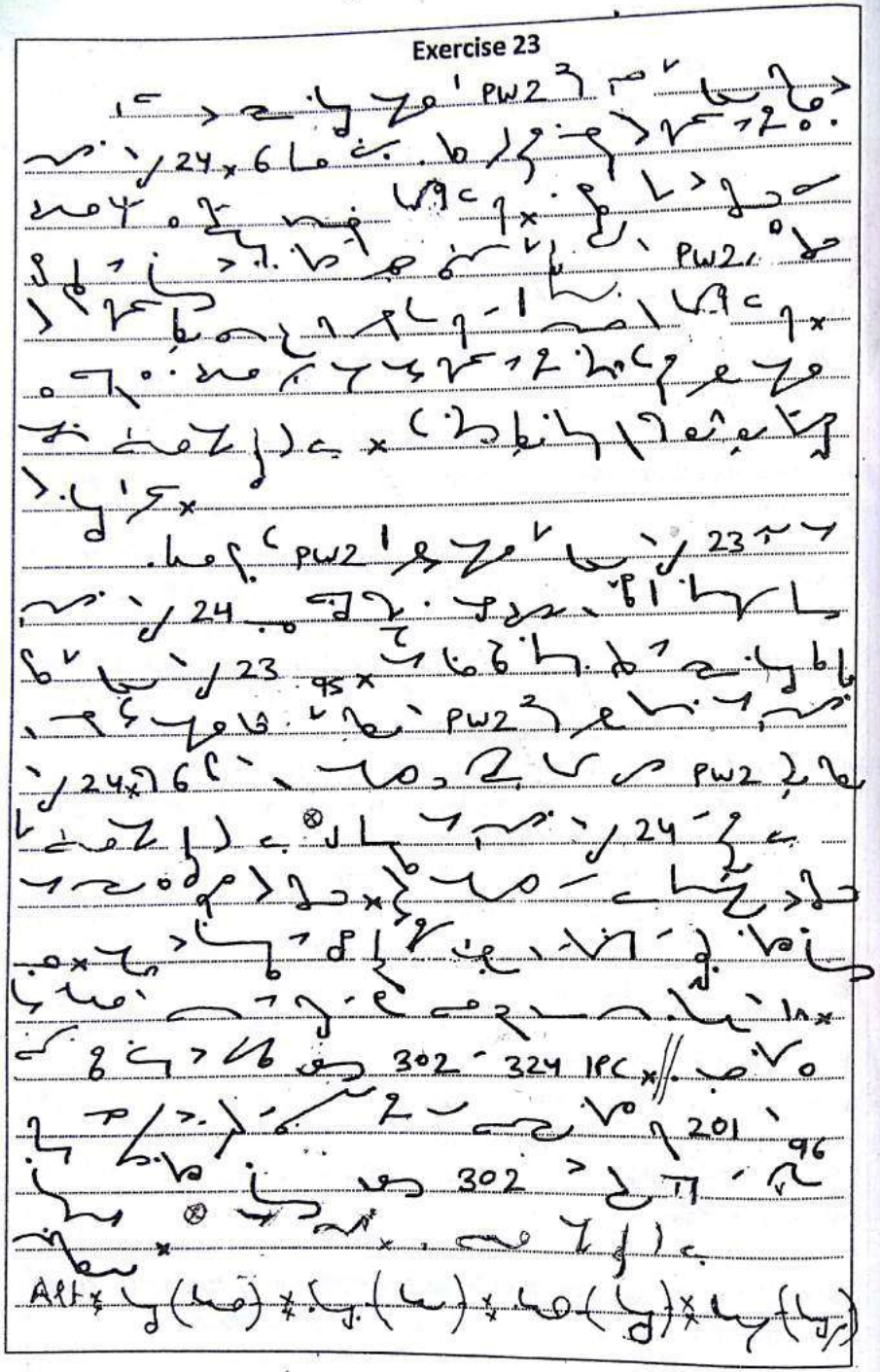


Exercise 22 **(80 w.p.m.)**

The appellant along with six others was prosecuted for commission of offences punishable u/s 148, I.P.C. / The appellant and other accused attacked 'D'; two of the accused gave lathi blows on his back and as // he fell down, the appellant gave a knife blow on left side of his chest; that accused 'R' also gave /// knife blows to him. PW-2 further stated that when he and his uncle tried to save 'D', accused 'R' (1) gave a knife blow on his left hand thumb and two other accused gave him 5 lathi blows. His uncle / was also stated to have received a lathi blow on his head. As to the cause of the incident, // PW-2 stated that as his other brother, PW-6, who had been elected as Village Sarpanch, did /// not pay heed to unreasonable demands of accused persons, an alteration took place between both the sides the previous evening, (2) but the matter was then patched up. The post-mortem examination of the body of 'D' was conducted and it / indicates that one stab wound on the left side of the chest as the cause of death, and the 3 // other injuries as post-mortem in nature. The trial Court convicted and sentenced the appellant u/s 302 /// and 324 I.P.C. Three other accused were convicted and sentenced u/s 323 (3) I.P.C. The remaining three were acquitted of all the charges. By a separate judgment, the appellant was also / convicted u/s 25 of the Arms Act and was sentenced to the period already undergone. The High Court // upheld the judgments of the trial court. Aggrieved, the appellant filed Criminal Appeal challenging his conviction and sentence u/s /// 302 and 324 I.P.C. and Criminal Appeal No. 132 of 2007 (4) challenging his conviction u/s 25 Arms Act.

The trial court doubted the presence of PW-4 and / PW-6 at the place of occurrence and did not accept their testimonies as eye witnesses. According to the // prosecution, the occurrence in which the deceased was killed took place shortly in the morning of June 24,/// 1995, when PW-2 was medically examined with his companion, that is to say, within an hour.

Note - Write the new word outlines correctly for 25 times and know their meaning or synonyms by right clicking on the words.



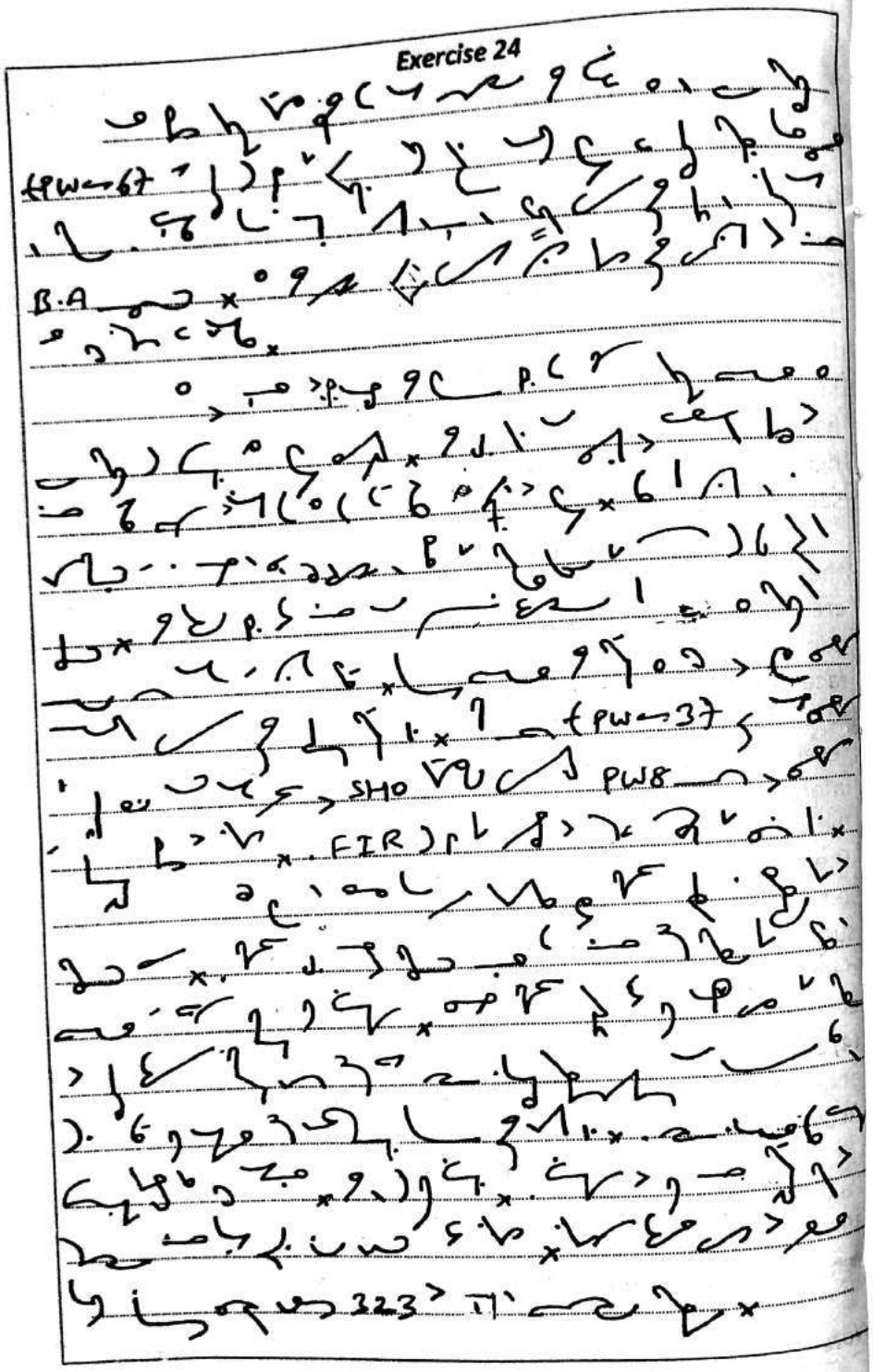
Exercise 23 **(80 w.p.m.)**

But, according to the medical evidence, injuries on PW-2 were caused on the evening previous to the morning of June 24./ This takes away the basis on which he was accepted by the trial court and the High Court as an // eyewitness notwithstanding his proclivity to mix up falsehood with truth. A substantial part of the prosecution story has been disbelieved /// and the conviction of the appellant rests solely on the testimony of PW-2 who, as observed by the (1) trial court, does not seem to have particular respect for truth and had mixed up falsehood with truth. His credibility / as an eye witness lay only in that the trial court and the High Court assumed that he had received // injuries in the same occurrence in which the deceased was killed. That assumption does not appear to be very sound and /// is not borne out by the evidences on record.

The defence plea that PW-2 had received the injuries on (2) the evening of June 23 and not in the morning of June, 24 gains credence from the fact that an / incident between the two sides had admittedly taken place on the evening of June 23, 1995. In the // face of this admitted position and the medical evidence, it is difficult to accept that the injuries found on the /// person of PW-2 were received by him in the morning of June 24. From this, either of two inferences (3) would logically follow-one, PW-2 was not present at the occurrence in which the deceased was killed in the / morning. The occurrence in which the deceased was killed did not take place in the morning of June 24 and // he was not killed in the manner as suggested by the prosecution. Both the inferences are equally damaging to the /// prosecution case. In view of the facts and the circumstances, it would be highly unsafe to uphold and sustain the (4) appellant's conviction for the offence of murder, and the prudent and safe course would be to give him the benefit / of doubt. Accordingly, he is acquitted of the charges u/s 302 and 324 I.P.C.//

The next appeal is directed against the judgment of the Punjab and Haryana High Court in Criminal Appeals Nos. 201 /// of 1996, confirming the appellant's conviction under section 302 of the penal code and life imprisonment. (5/400 words)

Note - Note down the legal words and master these with meaning.



Exercise 24 **(80 w.p.m.)**

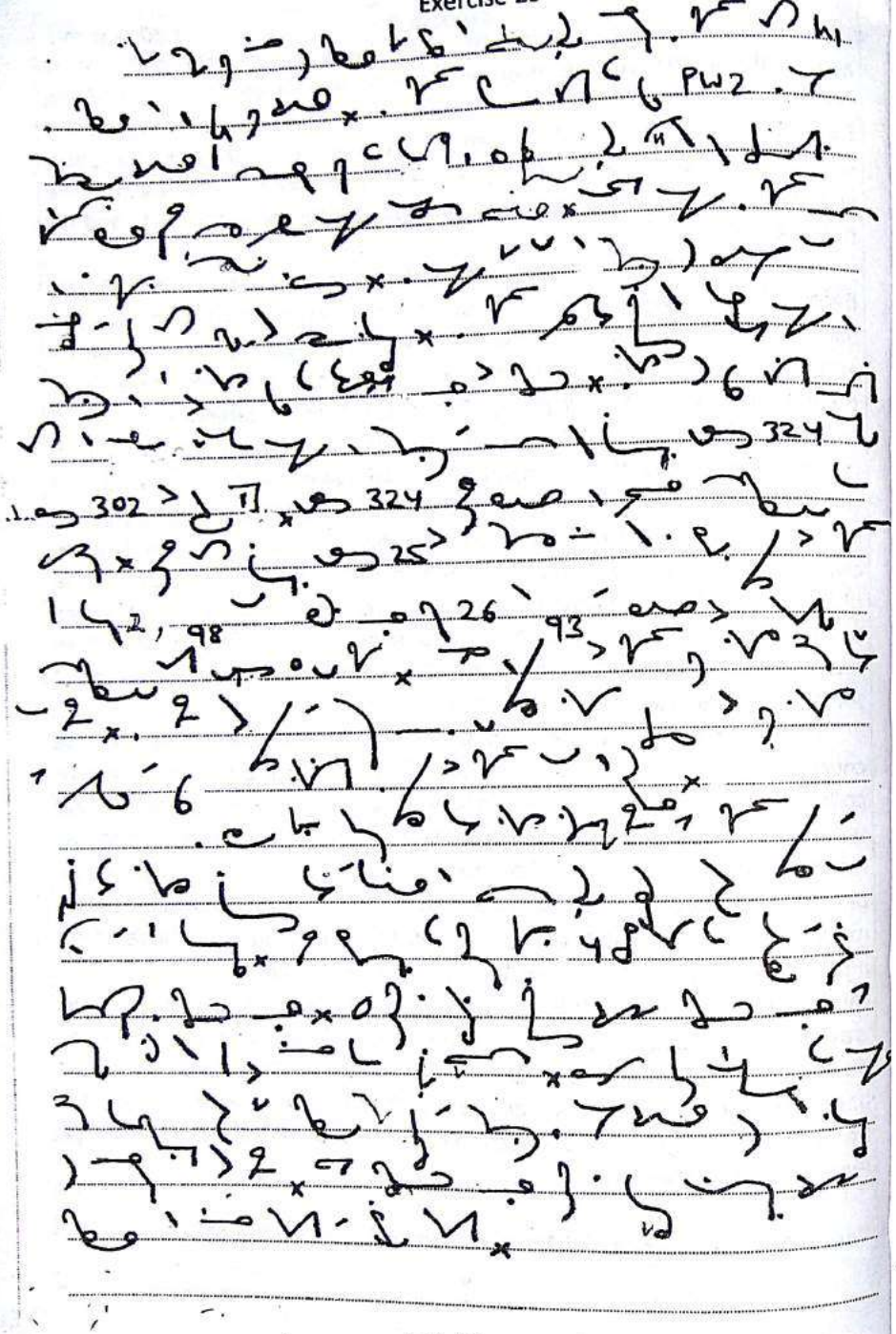
In his statement before the police he said that in the morning he along with his two younger brothers, /(PW-6) and the deceased was sitting on the chabutra of their baithak in their village, when deceased proceeded for // his house to bring the clothes for getting ready to go to Faridpur, where he was due to appear in /// the B.A examination. As he reached the chaupal, where the lane turned, he was waylaid by the accused (1) and his friend armed with knives.

As to the cause of the said incident he further stated that shortly before / the occurrence his younger brother was elected as the village Sarpanch. He did not pay any heed to the unreasonable // demands of the accused and this greatly annoyed them as they thought of themselves as the Chaudhary of the village./// This had led to an altercation and an exchange of hot words between the two sides on the previous evening (2) but the matter was then patched up by discussion. He finally stated that the accused in league with one another / had killed his brother by giving him knife and lathi blows. After the occurrence he brought his friend to the civil // hospital, Kanpur where he was declared 'brought dead'. Dr. Kumar (PW-3) who was in the hospital on duty /// sent information in that regard to the S.H.O., P.S. whereupon PW-8 came to the hospital (3) and took down the statement of the appellant. The F.I.R. was delivered at the residence of the area / Magistrate on the same day.

What is, however, of significance for our purpose is that the trial court disbelieved a // substantial part of the prosecution story. The trial court did not accept the prosecution case that accused were present at /// the place of occurrence and, accordingly, directed their acquittal. As regards, the trial court pointed out that the three incised (4) wounds on the person of the deceased that were attributed to him were, according to the medical evidence, post-mortem / in nature, that is to say, those three injuries were inflicted after he was already dead. The medical evidence, thus,/ clearly eliminated the participation of his friend in the case. He too was, therefore, acquitted. The acquittal of the // three accused brought down the number of the remaining accused for the shared common intention with the appellant. Apparently, that /// was one of the reasons for their conviction simply under Section 323 of the Code of Criminal Procedure.(5/400 words)

Note - Regular Practice and Transcriptions will give positive results.

Exercise 25

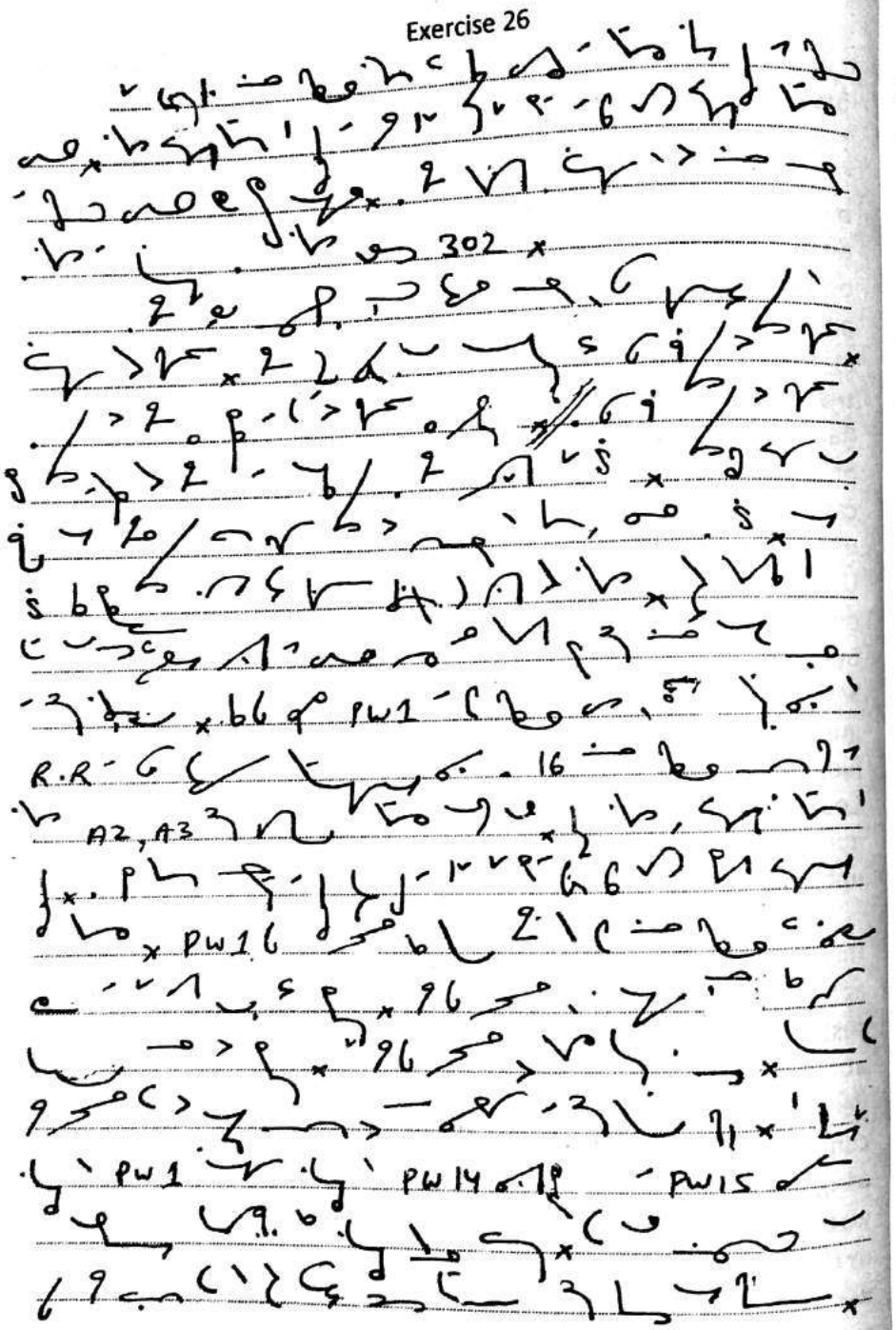


Exercise 25 **(80 w.p.m.)**

Apart from the three accused whose presence at the place of occurrence was not accepted, the trial court also doubted /the presence of two out of the three eye witnesses. The trial court further held that even PW-2, the// only remaining eye witness, had mixed-up truth with falsehood but his testimony was not liable to be discarded wholly /// since he had himself received injury in the same occurrence. In regard to the injury, the trial court came to (1) a truly amazing conclusion. The injury on the hand of Ramesh was certainly in existence and it was also proved / by the medical evidence. The trial court resolved the contradiction by fastening the injury to Ramesh too on to the // appellant even though that was not the case of the prosecution. The appellant was, thus, held guilty also of causing /// the knife injury to Ramesh and came to be convicted under Section 324 in addition to (2)section 302 of the Penal code. Under section 324, he was sentenced to rigorous imprisonment for one / year. He was also convicted under section 25 of the Arms Act by a separate judgment of the trial // court dated February 2, 1998 in Sessions case no. 26 of 1993 and sentenced /// to the period of imprisonment already undergone as under-trial. Against the two judgments of the trial court, three appeals (3) were filed in the High Court. The High Court by the judgment and order coming under appeal dismissed all the / three appeals and the revision and, thus, upheld the judgments of the trial court in all aspects.

The Senior Advocate, //appearing for the appellant assailed the High Court and the trial court judgments and contended that the appellant's conviction for the ///offence of murder was not sustainable both in law and on facts. He submitted that there were at least four (4) circumstances that falsified and completely demolished the prosecution case. First, there was a patent contradiction between the prosecution case and / the motive assigned by it to the accused for committing the crime. Secondly, it was undeniable that injuries were fabricated // both on the person or the deceased and Ramesh, the only eye witness whose evidence was accepted by the High ///Court. According to the prosecution case, there was a fierce enmity between the persons of accused party and complainant party. (5)

Exercise 26



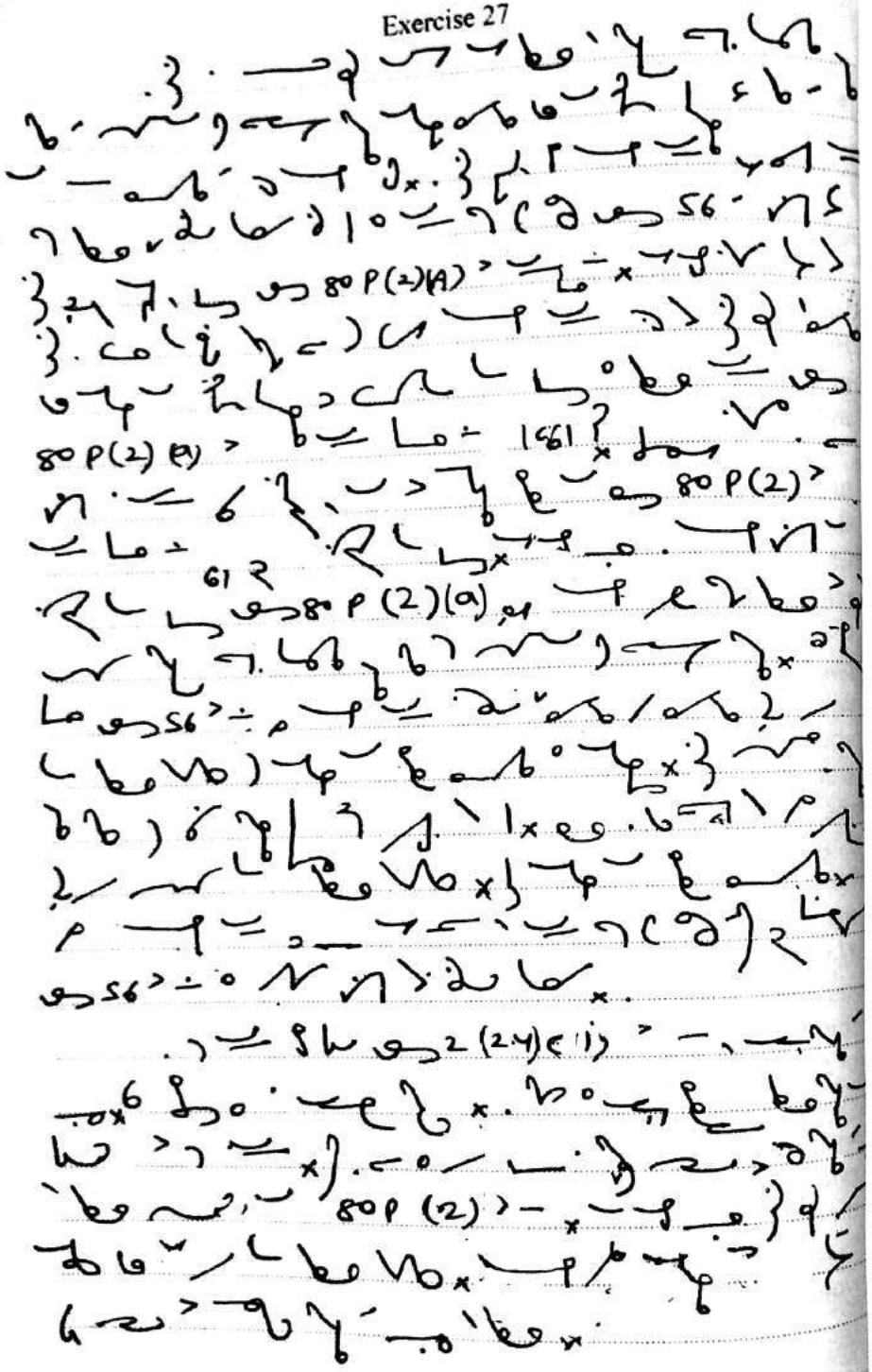
Exercise 26 ***(80 w.p.m.)***

On the fateful day, accused persons armed with dangerous weapons and bombs attacked the deceased and the prosecution witnesses. Appellant / hurled bomb on deceased and he died on the spot and others also hurled bombs and prosecution witnesses suffered splinter injuries. // The High Court upheld the acquittal of all the accused except the appellant and convicted the appellant u/s 302. ///

The High Court has not exercised the caution that was expected to while dealing with the judgment of acquittal by (1) the trial court. High Court was not justified in interfering with the well considered judgment of the trial court. The judgment / of the High Court is set aside and that of the trial court is restored.

The well considered judgment of // the trial court has been upset by the High court and in its judgment; the High Court relied on the complaint. /// There is hardly any consideration in the High Court's judgment, more particularly of the mix up of timings as regards (2) the complaint. In the complaint it is specifically alleged that the Telugu Desham Party was led by the appellant. Both / the parties, had fought in connection with using the road and the witness himself and his party people were accused // in that case and were absconding. It is then suggested, PW-1 and other persons went to cart the /// paddy hay of R.R. and while they were bundling the hay, the 16 accused persons came there and the (3) appellant, A-2, A-3 were holding bombs in their hands. It was the appellant who hurled a bomb on / deceased. The said bomb exploded and deceased fell down and died on the spot; then the others also started hurling // the bombs. PW-1 then refers to his being hacked by other accused persons with a hunting sickle and on /// the right knee with the spear. He then refers to an injury caused on his little finger because of the (4) spear. He then refers to the police firing a gun. After that he refers that all the injured came to / the Government Hospital and were being treated. On seeing the evidence of PW-1 in the light of evidence of // PW-14, Head Constable and PW-15, Circle Inspector, the falsity of his evidence becomes clear. Though in /// his Examination-in-Chief, he claimed that all of them along with the woman folk were taken in the tractor. (5/400 words)

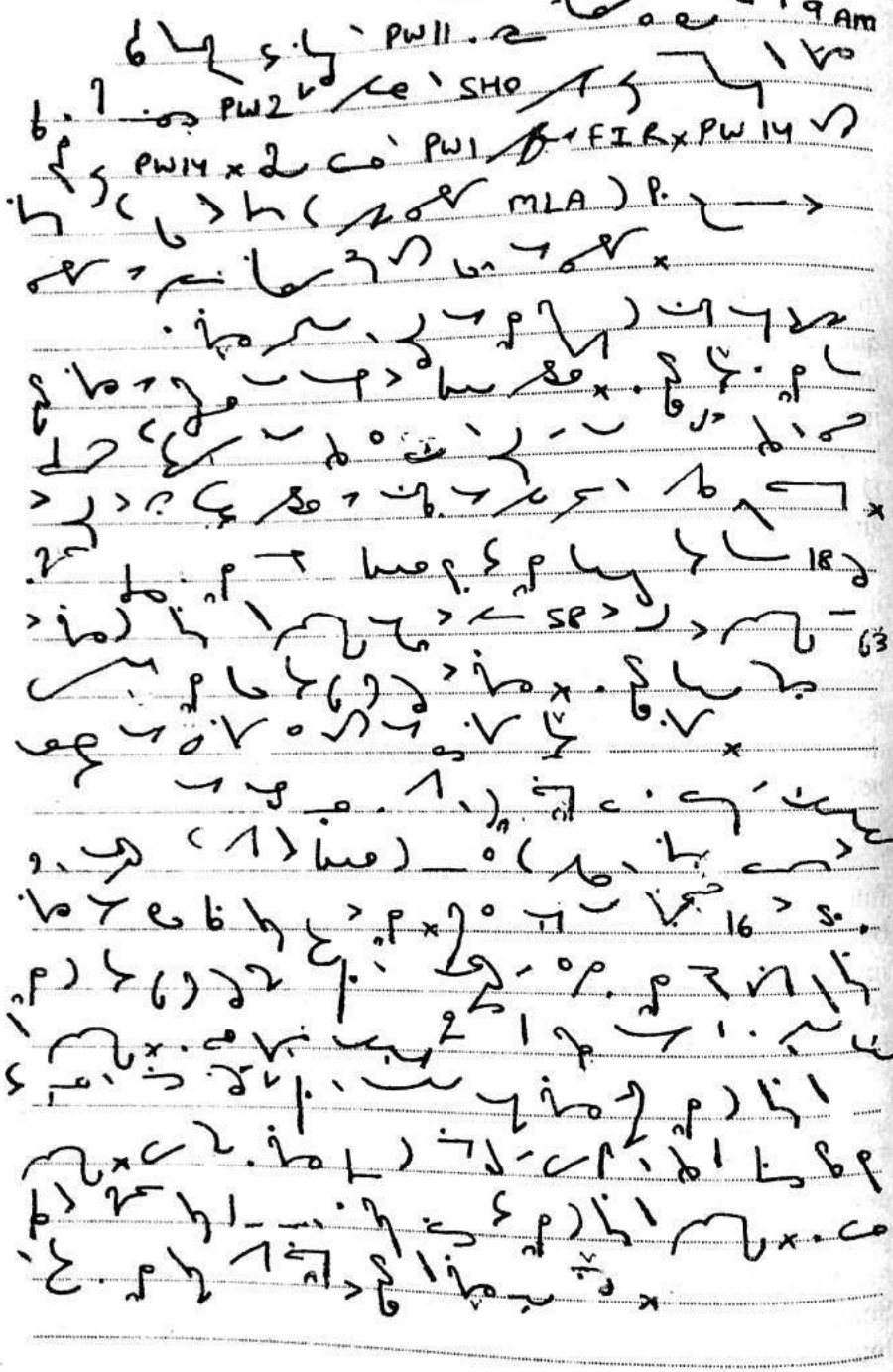
Exercise 27



Exercise 27 (80 w.p.m. - 5 minutes)

The assessee, a co-operative society, engaged in the business of providing credit facilities to its members and marketing their agricultural / produce, invested the surplus funds in short-term deposits with the Banks and in Government securities, and earned interest thereon. // The assessee showed the said interest income under the Head "Income from business" but the Assessing Officer assessed it as /// "income from other sources" u/s 56 and held that the assessee would not be entitled to deduction u/s ***(1/80)*** 80 P(2)(a) of the Income Tax Act. In the instant appeal filed by the assessee, the question for / consideration before the Court was: Whether the interest income earned by the assessee-Society on surplus funds invested in short-term // deposits would qualify for deduction as business income u/s 80P(2)(a) of the Income Tax Act, /// 1961? Dismissing the appeals, the Court HELD: An income which is attributable to any of the activities ***(2/160)*** specified in s.80 P(2) of the Income Tax Act, 1961 would be eligible for deduction. In the / instant case, the interest held not eligible for deduction u/s 80P(2)(a) is not the interest // received from the business of the Society, namely, providing credit facilities to its members or marketing their agricultural produce. What /// is sought to be taxed u/s 56 of the Act is the interest income arising on the surplus, *which* ***(3/240)*** *surplus was not required for business purposes,* and was invested in specified securities as 'investment'. Assessee markets the produce of / its members whose sale proceeds at times were retained by it. Since the fund created by such retention was not // required immediately for business purposes, it was invested in specified securities. Such interest income would come in the category of "Income /// from other sources" and, therefore, would be taxable u/s 56 of the Act, as rightly held by the Assessing ***(4/320)*** Officer.

The word "income" has been defined u/s 2(24)(i) of the Act to include profits and / gains. This sub-section is an inclusive provision. The Parliament has included specifically "business profits" into the definition of the // word "income". Therefore, the Court is required to give a precise meaning to the words "profits and gains of Business" // mentioned in s.80P (2) of the Act. In the instant case, assessee-Society regularly invests funds/// not required for business purposes. Interest on such investments, cannot fall within the meaning of the expression "profits and gains of business". ***(5/400)***

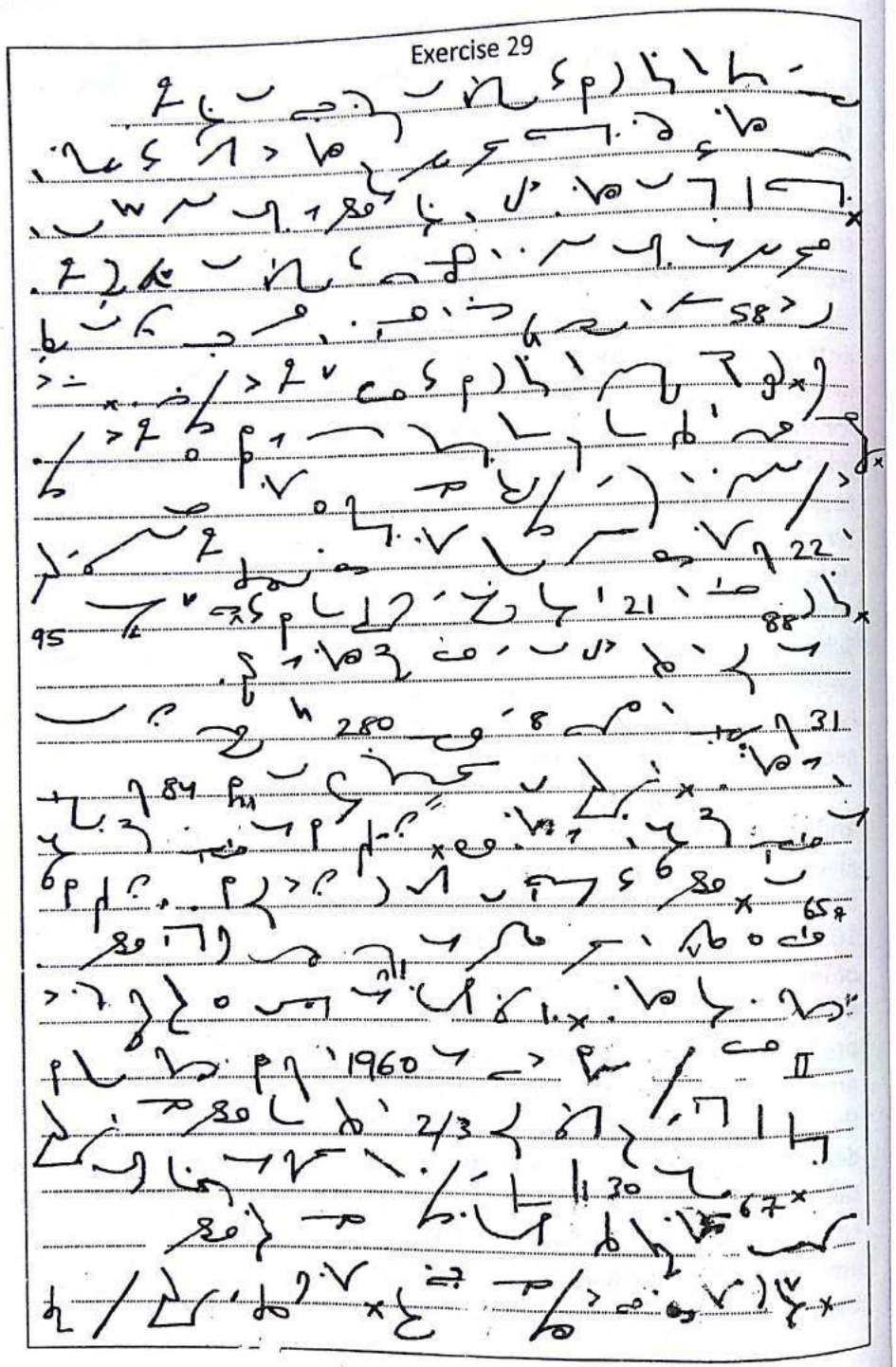


Exercise 28 ***(80 w.p.m.)***

On this backdrop, when the evidence of PW-11, the Medical Officer is seen that at 9 AM itself, the / doctor examined PW-2 on the requisition of S.H.O. (Rural), who was accompanied by Police Constable // who was PW-14. There is no question of PW-1 registering the F.I.R. PW-14 also /// admitted that even by the time they reached the Hospital, M.L.A. was stated to have come to the (1) Hospital and the legal advisors were also found in the Hospital.

A compromise relating to shares in the suit property / was entered into between the plaintiff-appellants and the predecessors-in-interest of the defendant-respondents. The plaintiffs filed a // suit for declaration that they were in possession as owner of share and in joint possession of half of the /// share of the land along with the respondents and the entries in the revenue record of rights should be corrected. The (2) trial court dismissed the suit accepting the defendants' plea that the suit having been filed after 18 years of the/ compromise, was barred by limitation in view of the Article 58 of the Schedule to the Limitation Act, 1963 // where-under the suit have been filed within three years of the compromise. The plaintiffs having remained unsuccessful in the /// first appeal as also in the second appeal, filed the appeal.

In the instant case, the right to sue accrued (3) when a clear and unequivocal threat to infringe that right by the defendants was given, as they refused to admit / the claim of the appellants, only seven days before filling of the suit. Therefore, as noted in paragraph 16 of // the plaint, the suit was filed within three years from the date of infringement and, as such, the suit cannot /// be held to be barred by limitation. The courts below including the High Court had proceeded entirely on a wrong (4) footing that the cause of action arose on the date of entering into the compromise and, therefore, the suit was / barred by limitation. Whether or not the compromise decree was acted upon and whether delivery of possession had taken place // has to be decided by the trial court before it could come to a proper conclusion that the suit was /// barred by limitation. The question of filling the suit before the right accrued to the plaintiffs by compromise could not arise. (5/400 words)



L.M.-60

Exercise 29 **(80 w.p.m.)**

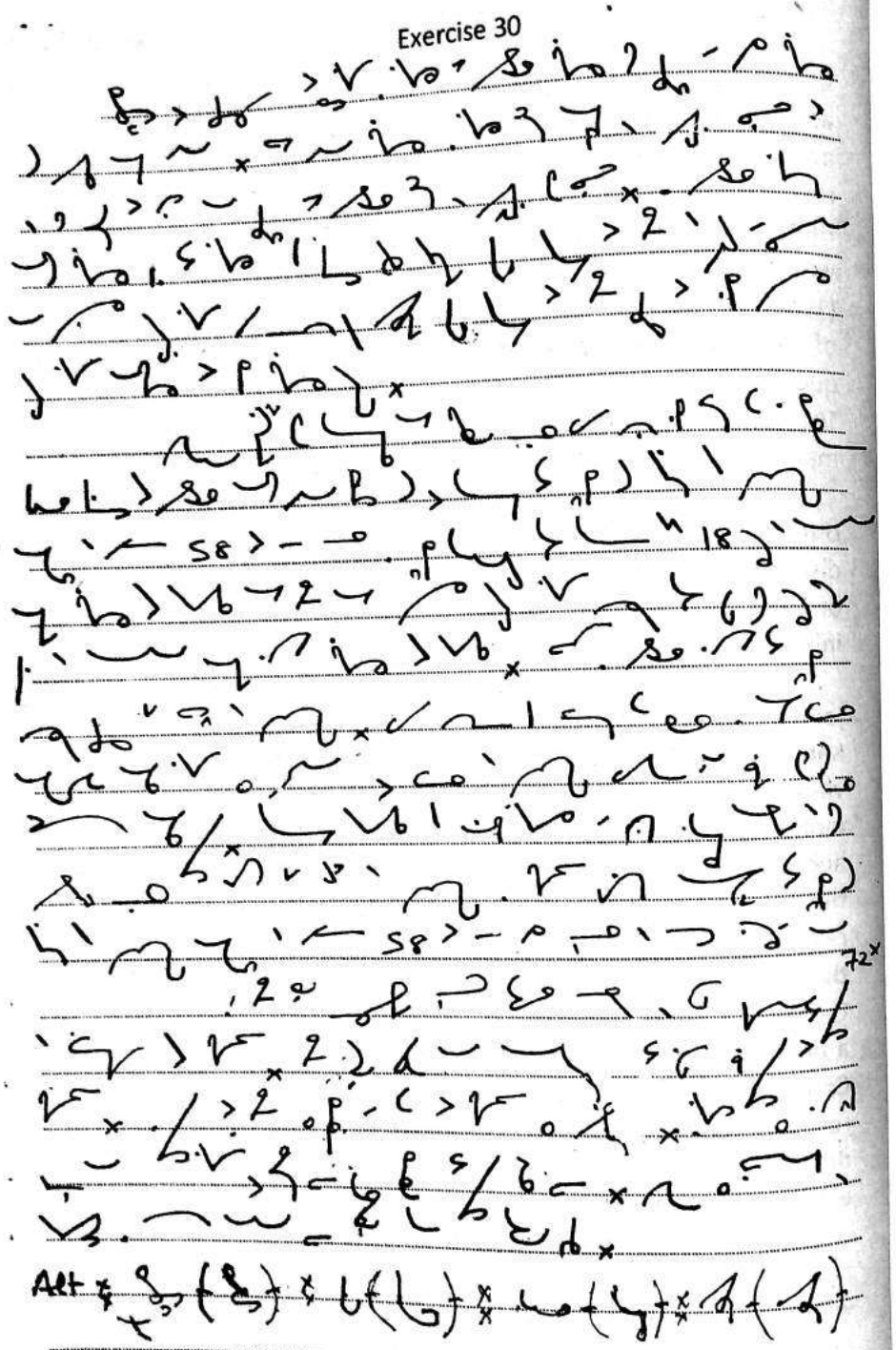
The High Court fell in grave error in holding that the suit was barred by time, and ignored to appreciate/ that the right of the appellants to have the revenue record corrected arose when the appellants came to know about the // wrong entry and the respondents failed to join the appellants in getting it corrected. The High Court was not justified in /// holding that mere existence of a wrong entry in the revenue records does not, in law, gave rise to a (1) cause of action within the meaning of Article 58 of the Schedule of the Act. The Impugned judgment of / the High Court on the question that the suit was barred by limitation cannot be sustained. Therefore, the judgment of // the High court is set aside and the matter remitted back to it for decision on merits expeditiously.

Next appeal /// is directed against the final judgment and order of a learned Judge of the Punjab and Haryana High Court dismissing (2) a second appeal being Regular Second Appeal No. 22 of 1995, inter alia, on the ground that the /suit for declaration and injunction filed on 21st of August, 1988 was barred.

The plaintiff and the appellants // were the owners and in joint possession of share in the entire land measuring about 280 Kanals and 8 /// Marlas of Khewat No. 31 Khatoni No. 84 situated in village Ramnagar under Panchkula. The appellants and the (3) two individuals were co-owners in the said total land. Since the appellants and the two individuals were co-owners in / the said land, the said share of the land was already under mortgage with the respondents. In 1965, // the respondents got their names mutated in the relevant record of rights as owners of the area purchased by them /// as indicated in the aforesaid sale deed. The appellants filed a pre-emption suit being Pre-emption Suit No. 37 (4) of 1960 in the Court of the Subordinate Judge, Class-II, Panchkula against the respondents for possession of 2/3rd / share sold to them and got it decreed in their favor by the trial court by a judgment and decree // dated 30th of November, 1967.

The respondents appealed against the aforesaid decision before the Appellate Court, namely, /// District Judge, Panchkula who dismissed their appeal. Feeling aggrieved against the judgments of the courts, a second appeal was filed. (5/400 words)

L.M.-61

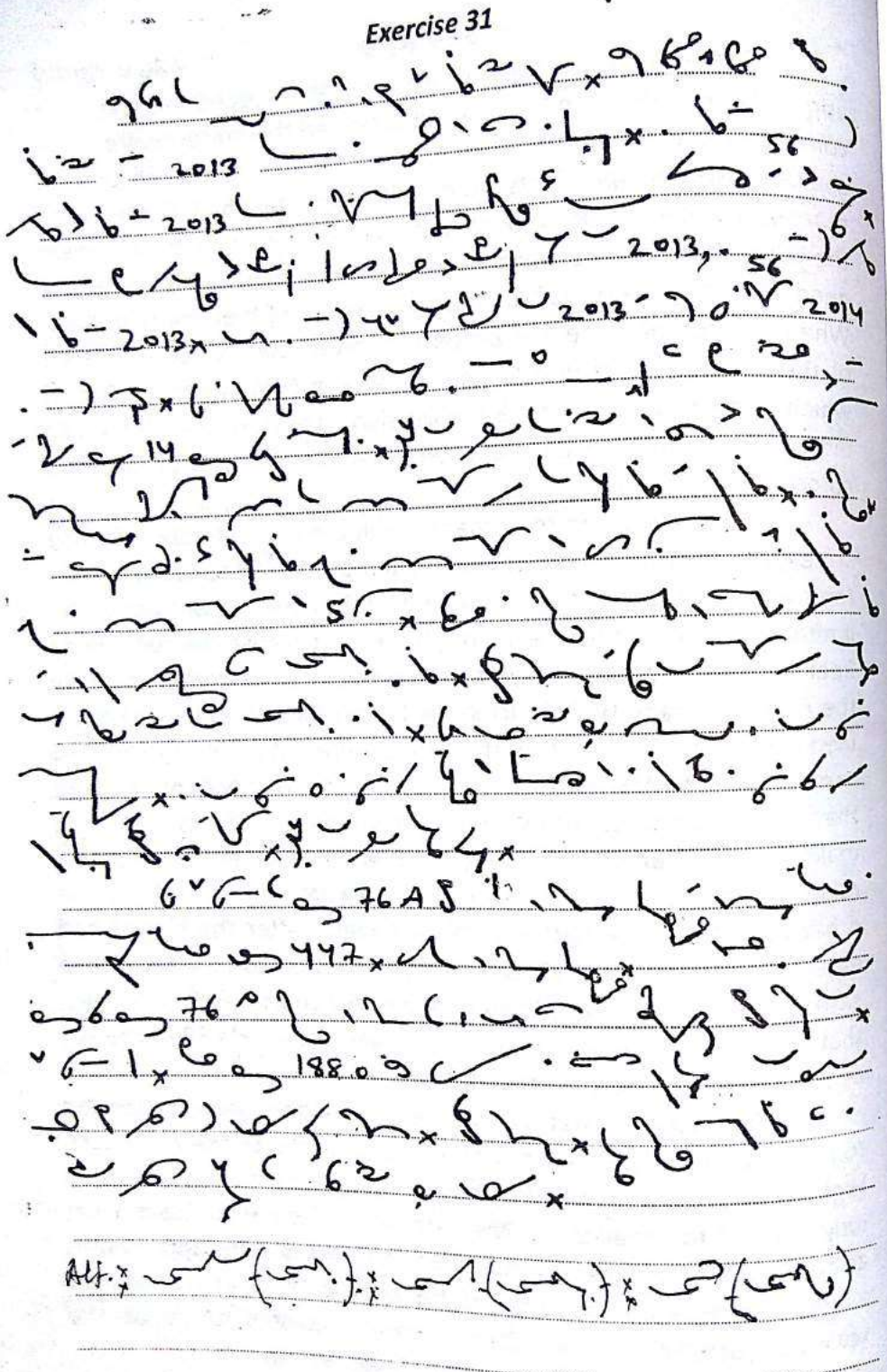


Exercise 30 **(80 w.p;m.)**

Subsequent to the dismissal of the second appeal, the appellants and the respondents compromised their dispute and such compromise was / reduced into writing. According to the written compromise, the appellants were entitled to retain half of the 2/3rd share // of the land in dispute and the respondents were to retain the other half. The respondents admitted in their compromise /// deed that the appellants had taken possession of their share of land. When this compromise was presented before the Division (1) Bench of the High Court of Punjab and Haryana in Letters Patent Appeal which came to be registered, the Division / Bench of the High Court disposed of the said Letters patent Appeal in terms of the said compromise petition.

Leaving // aside the other facts in the present case, we may state here that a specific defence taken by the respondents /// in their written statement was to the effect that the suit was barred by limitation in view of Article 58 of (2) the Act because the suit having been filed after about 18 years of entering into the compromise by the / parties in the High Court in the Letters Patent Appeal, must be filed within three years from the date of entering // into the alleged compromise by the parties. Accordingly, the respondents alleged that the suit must be dismissed on the ground /// of limitation. We make it clear that since the only question involved in this appeal is relating to the question (3) of limitation, we have not considered the other aspects of the matter in this judgment. After the parties had entered / appearance and led evidence in support of their respective cases also on the point of limitation, the trial court held,// inter alia, that the suit was barred by limitation in view of Article 58 of the Act as the /// cause of action arose in 1972.

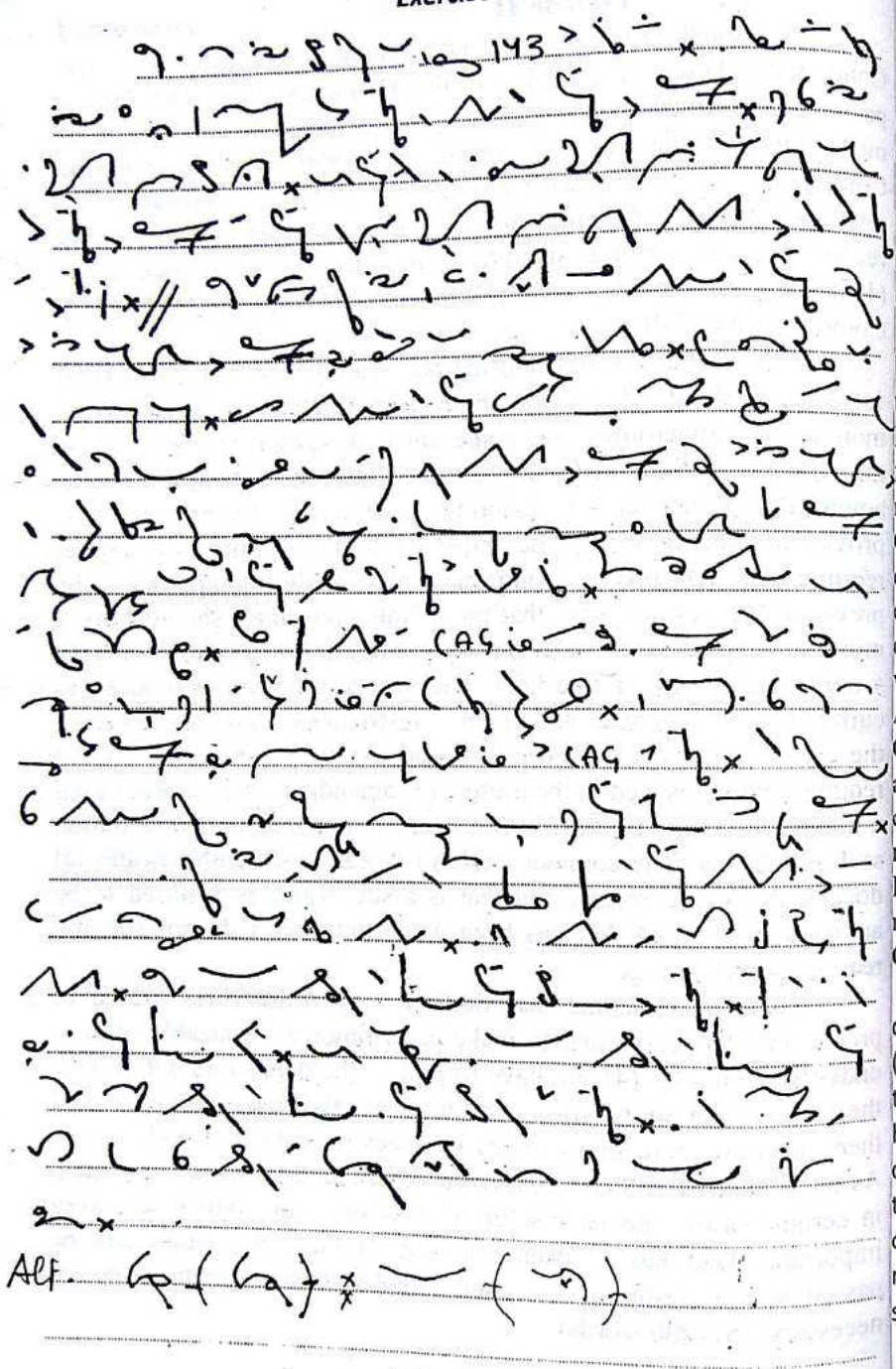
The High Court has not exercised the caution that was expected to (4) while dealing with the judgment of acquittal by the trial court. High Court was not justified in interfering with the / well considered judgment of the trial court. The judgment of the High Court is set aside and that of the // trial court is restored. The appellant is allowed to go in appeal to the higher court if he is not /// satisfied with the judgment of this Court. Leave is granted to pursue the matter in any Court for final decision. (5/400 words)



Sir, thank you for giving me the opportunity to speak on the Companies (Amendment) Bill. Sir, this House and the / other House passed the Companies (Amendment) Act, 2013 after an exercise of more than a decade. The // Companies Act, 1956 was replaced by the Companies Act, 2013 after a prolonged discussion, deliberations /// with the industry, chambers and all the stakeholders. After several recommendations by the Standing Committee – it went twice to the (1)Standing Committee – only in 2013, the 1956 Act was replaced by Companies Act, 2013./

Now, the Act was notified only partially in 2013, and from 1st April, 2014 the Act // was implemented. Within a period of six months, the Government has come out with several amendments to the Act and /// there are nearly fourteen Sections, which have been amended. I do not see any reason for amendment of some of (2) the provisions like removing the threshold limit for minimum capital requirement for private companies and public companies. The previous Act / clearly says that the private companies should have a minimum capital of one lakh and the public companies should // have a minimum capital of five lakh. This was a provision introduced to curb the shell companies and to put /// restrictions while incorporating the companies. This has been removed and then there is no capital requirement envisaged in the present (3) amendment for incorporating a company. Then, the next amendment is not making the common seal mandatory. The common seal is / a seal which authenticates all documents of a company and that is a seal which is required to be authenticated // and that has been made optional. I do not see any reason for this change.

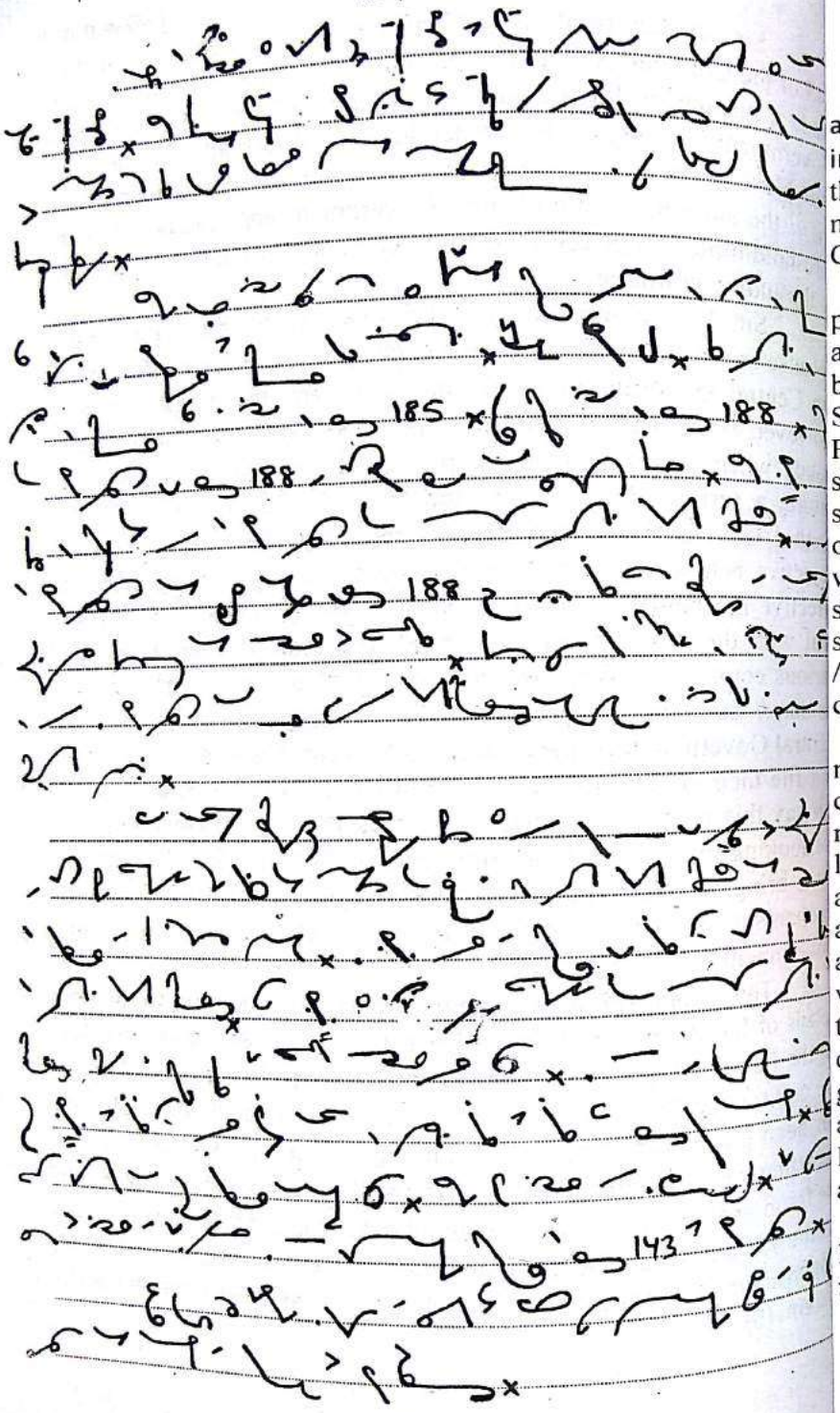
Then, I welcome that Section /// 76A has been added to protect the depositors and to make the offence a cognizable offence under Section 447. (4) We have to protect the depositors. Of course, the original section, which is section 76, has the provision to / protect them but now more transparency has been brought in. I welcome it. As far as section 188 is // concerned, where an agreement to be filed, in certain cases 'special resolution' was necessary which was very important. That has /// been removed. If these provisions can be passed with an ordinary resolution, I feel that this amendment is not necessary. (5) (400 words)



Sir, an important amendment has been brought in to section 143 of the Companies Act. The present / Act, before amendment, has made it mandatory for the auditors to report all frauds to the Central Government. Through this // amendment, a threshold limit has been laid. Now, fraud up to a certain threshold limit only will be informed by /// the auditors to the Central Government and frauds below the threshold limit will be reported to the company by the (1) auditors and to the audit committee.

Sir, I welcome the proposed amendment, but with a rider, because reporting of frauds, / irrespective of the amount involved, to the Central Government would not serve any meaningful purpose. However, some aspects need to // be looked into. One, reporting of frauds where key management personnel are involved is, by very nature, a serious thing /// and therefore should be reported to the Central Government irrespective of the amount involved. Two, the objective behind the provision (2) could not be achieved unless an effective mechanism is evolved at the Central Government level to deal with the information / on fraud received from the auditors of various companies. What is happening now and even earlier is this. As far // as audit reports and CAG comments are concerned, the Central Government or the concerned Ministry has to go through /// it and file their comments and lay them before both the Houses. But I can say this from my experience (3) that the Central Government is not looking into the various comments of the CAG and the auditors. By / bringing this reporting provision, you should strengthen the mechanism to go through fraud and take action within the Central Government.///

The proposed amendment should also require to disclose details of frauds reported to the Government that are more serious in (4) the Board's Report. The Board Report should also contain whatever the auditor reported. Sir, the entire responsibility of detecting fraud / has been given to the auditors. Auditing of a company is not a fraud-detecting job. Now, in this Bill, // the entire responsibility of detecting the fraud or the major responsibility of detecting the fraud has been put on the /// auditors. The company management should also have this responsibility and they must be liable to improve their internal control system. (5)

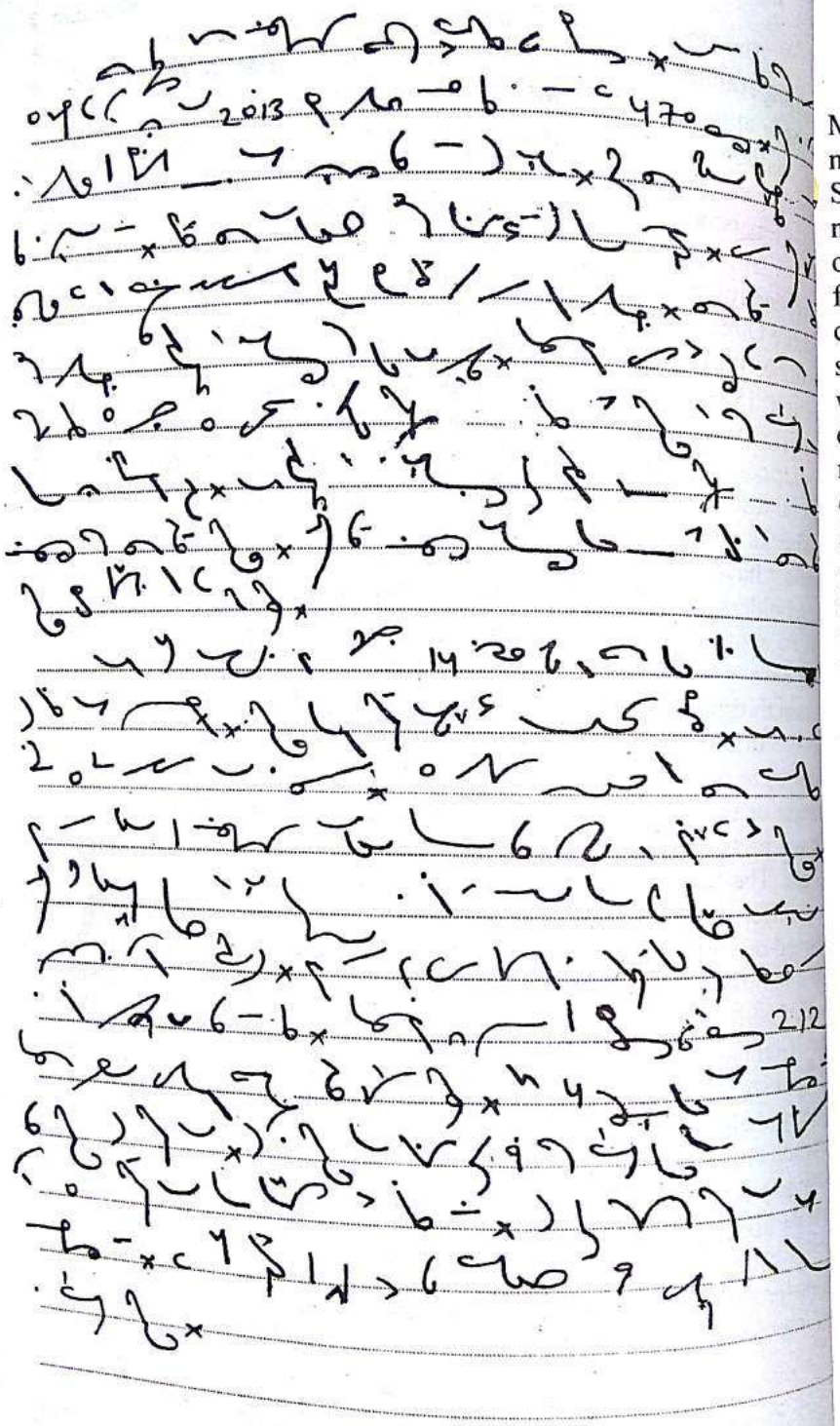


The Institute of Chartered Accountants has already issued auditing standards and the fraud reporting methodology is incorporated in those auditing / standards. Sir, detecting the fraud has been left with the auditors which responsibility must also be entrusted to the management // or its various officers like the Managing Director, the Chief Financial Adviser, the Administrator, etc.

Sir, the next amendment, which /// is important, is diluting the provision relating to loan to Directors, that is, wholly owned subsidiaries and the Directors have (1) been exempted. I do not know why that has to be done. It is related to loans to directors, that / is, an amendment to Section 185. Then, there is proposed amendment to Section 188. // Provision for special resolution under Section 188 should also be seen in similar context. Sir, SEBI continues /// to provide for the requirement of special resolution for material related party transactions. The requirement of special resolution (2) in the situations envisaged under Section 188 would have made companies more transparent and encourage shareholders democracy / in the governance of the Corporates. It may still be appropriate to modify the clause to require the special resolution // in case where related party transactions involve an amount above a certain threshold limit.

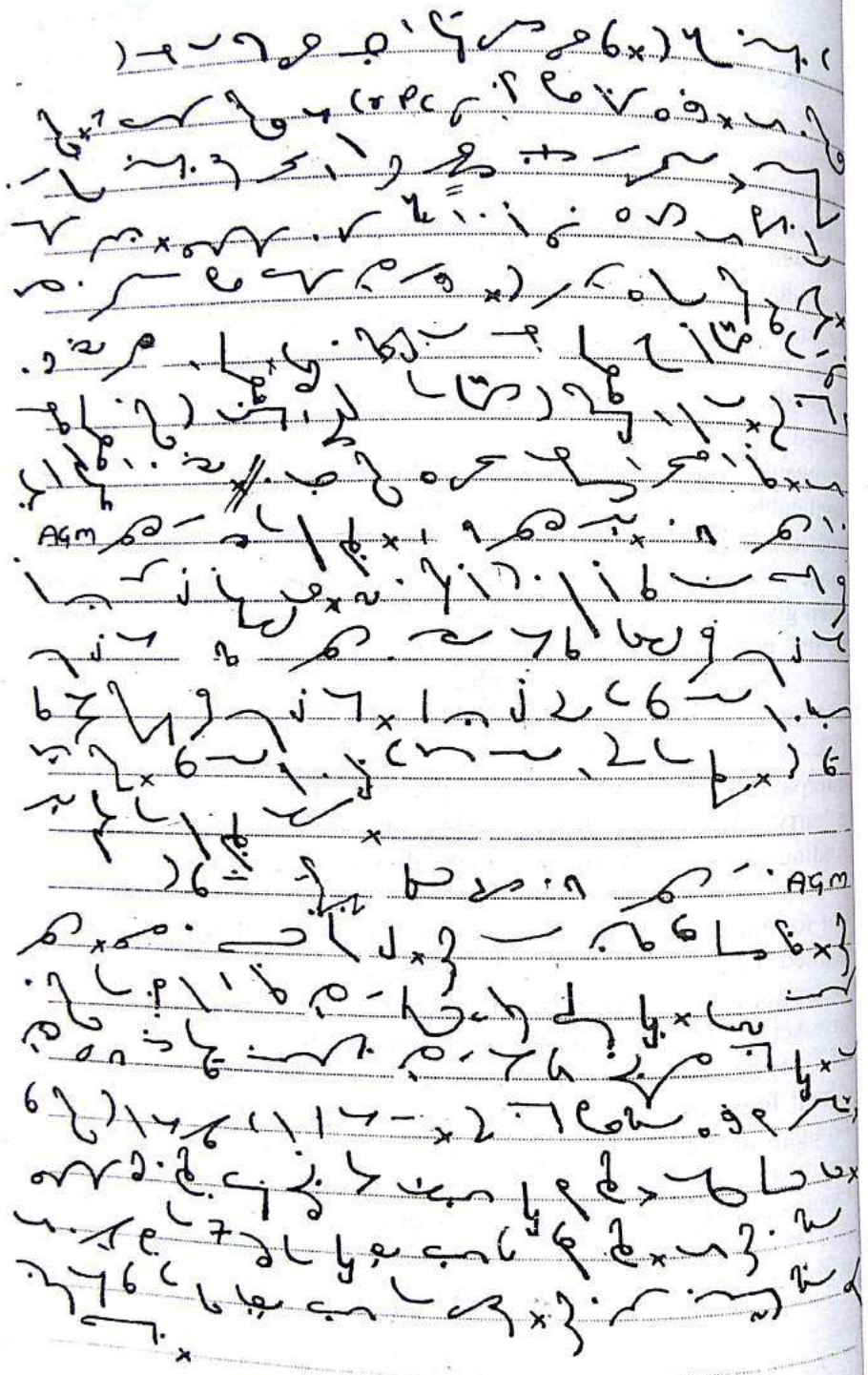
In order to encourage transparency, explanatory /// statement as required to be given under Rules to the shareholders should also state the criteria or the basis for the (3) management for considering a particular related party transaction in the ordinary course of business and at arm's length. The SEBI / requirements and provisions under Companies' Law also differ on definition of 'related party transaction'. While SEBI has aligned recently the // criteria for material related party transaction, there are a number of differences on the corporate governance requirements as well. The /// Government should evolve a mechanism so that SEBI and the Companies' Law requirements converge in regard to listed companies and (4) companies with significant public interest. This would greatly help in easing business in India as well. Sir, the other amendments / are consequential. I welcome some of the amendments and I request the Government to look into the provisions of Section // 143 and the special resolution.

With these few words, I support the Bill and hope that the hon. Minister /// will look into the suggestions and consider them seriously in the interest and benefit of the people of this country. (5)



Mr. Deputy Chairman, I am extremely grateful to the hon. Members who have spoken. In fact, it is very rare, / as I said, that law made in 2013 has to be reviewed, because it is an Act with // 470 Sections. Therefore, a lot of representations had started coming in the moment this Act was notified. There /// were some drafting oversights, because it is a long Act. Plus, some inconveniences were felt when the Act was (1) being implemented. We, therefore, held consultations with all stakeholders and we were able to identify several points which required to / be revisited. Some of those points were revisited by virtue of notifications or even under rules. For example, one of // the issues that my friend from the Opposition, has raised is with regard to a large number of private limited /// companies and the provision of very onerous nature being made applicable to them. Now, by virtue of a notification, it was (2) possible to give private limited companies exemptions from some of those provisions. And, therefore, those exemption notifications have been given / and the pain of some of those provisions has been diluted by that particular process.

Now, I was, initially, able // to shortlist fourteen amendments and then two more have been added after the Bill was passed in the Lok Sabha./// Provisions have to be brought in line with the international standards. Now, the question asked is: Why are we in (3) a hurry? As rightly mentioned by some hon. Members, people are finding it extremely inconvenient after this legislation to comply / with all the provisions. And, therefore, they are finding out devises of not forming a company and going in for // other devices, including a limited liability partnership. People are thinking whether it will be a better option to do business /// rather than a company registered under this Act itself. For example, you look at sub-section (6) of section 212. (4) For some reason we have to be careful of this whole process. About four years ago, even in / the Customs Act this provision was brought in. So, a provision for bail which was considered very onerous even for // anti-terrorism law is brought in for violation of the Companies Act. So, it was earlier brought in under the Customs /// Act. When I had pointed it out to the then hon. Finance Minister, he withdrew it being an onerous provision. (5)

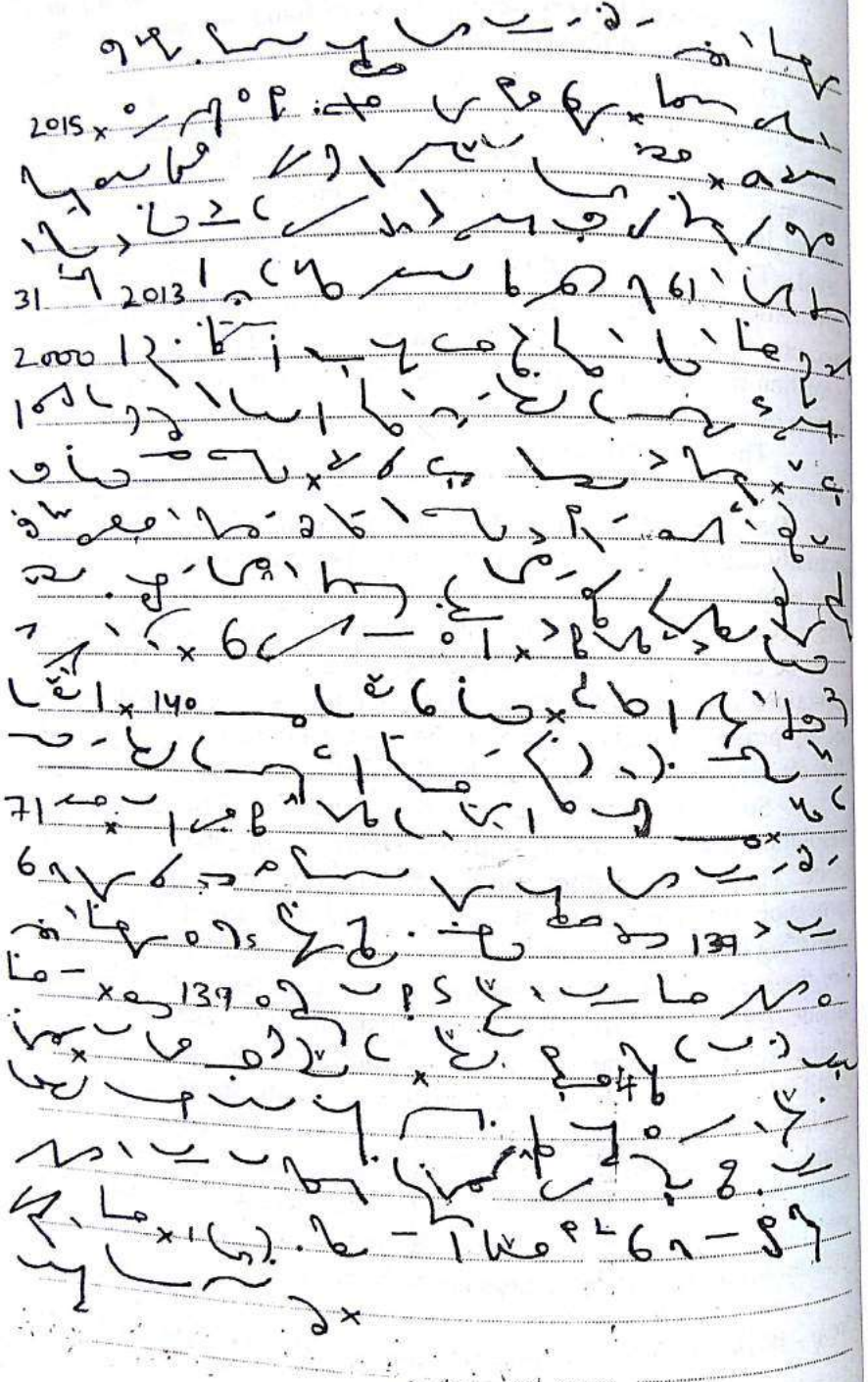


So, except in very serious cases of fraud, we cannot use this. So, I have amended that provision. And the / normal provisions under the Cr.P.C. will apply as far as bail is concerned. Now, the provisions are being // amended, were referred to by Shri Rahman Khan, are relating to the mandatory capital limit. Similarly, the whole idea of /// a company seal has also now started becoming almost a relic as far as global laws are concerned. So, our (1) law is being brought to this level. The third amendment relates to deposits. If there is a prohibition in accepting deposits and if company violates that and still accepts deposits, a / provision was enacted but punishment for violation was forgotten to put in. So, that gap has to be filled up by // virtue of an amendment.

The next provision is with regard to inspection of records of companies. Now, AGM /// resolutions are meant for public display. But, Board resolutions are not. A Board resolution of a company may actually contain (2) confidential things. You have a private company or a public company, its entire corporate strategy may be contained in the / Board's resolution, the manner in which its financial strategy may be contained in that, its intellectual property strategy may be // contained in it. It may contain saying that this is going to be the name of my product, this is /// going to be the patent that I am going to ask for, etc. So, those are not available for public display (3) anywhere.

So, this Act obliterated the distinction between a Board resolution and an AGM resolution. Hence, a correction / had to be done. There was another lapse that has taken place. There was a provision for setting up of // past losses and depreciation before declaring dividend. If you have accumulated losses, first you account for those accumulated losses and /// only then the shareholders get dividend. Now, this provision was put under the rules without putting it in the Act. (4) So, the gap, as far as drafting is concerned, has to be rectified. Similarly there is a transferring equity shares / for which unclaimed dividend has to be transferred to the Investor Education Fund. Now, the rule is that for seven // years if dividend is not claimed then that is to be transferred. Now, there was a drafting error into this /// that even 'if it is not claimed for one year'. There was a little ambiguous drafting which has to be corrected.(5)

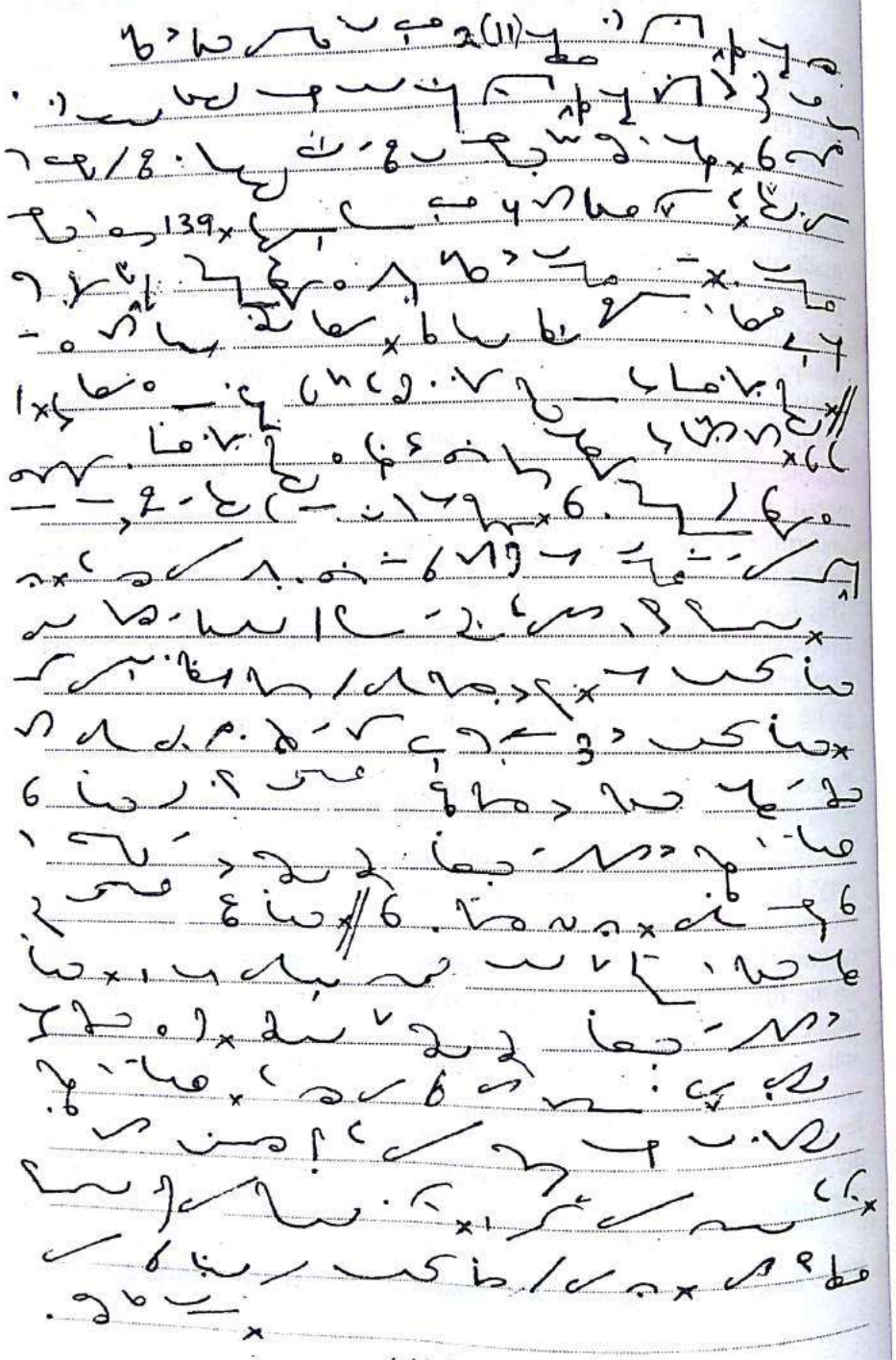
Note - Write dictations again and again till these are mastered.



Exercise 36 ***(80 w.p.m.)***

Sir, I support the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Bill, 2015. / As our leader has said, the Congress Party fully supports this Bill. At the same time, we have to bring // up certain deficiencies which are there to be rectified in future amendments. First of all, I would like to bring /// to the attention of the Government that we are bound by the United Nations General Assembly which, as early as (1) 31st October, 2003, had made that on the basis of recalling its Resolution No. 61 of 4th / December, 2000, it established an *ad hoc* committee to go into the question of these types of evasion of taxation // throughout the world. It happened for three years by having different types of meetings and finally, they came forward with /// the United Nations Convention against Corruption. I would just quote the beginning of the Preamble. I quote, "Concerned about the (2) seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values / of democracy, ethical values and justice jeopardising sustainable development and the rule of law". This is where the Government has // it. All the States' Parties of the Convention have signed it. 140 countries have signed this Convention. On that /// basis, different levels of discussions were going on and finally, they came out with different topics and chapters, so to (3) say, covering about 71 articles. In different ways, States' Parties have to follow it in their own countries. I /find that this particular Bill which is coined as the Black Money Bill (Undisclosed Foreign Income and Assets) and Imposition // of Tax Bill is very, very fragile and it is only an extension of Section 139 of the /// Income Tax Act. Section 139 is very clear in stating that the filing of Income Tax Return is (4) compulsory. In various cases, they are saying that. Finally, Sub-clause (4) provides that any asset including financial interest in / any entity located outside India or signing authority in any account located outside India is required to file a return // of income in prescribed form compulsorily, whether or not he has the income chargeable to tax. But, if you see /// the present Act, it defines as to why this particular Act has been brought out in India after many years. (5)

Note: Daily Transcriptions will minimize the repeated Mistakes.



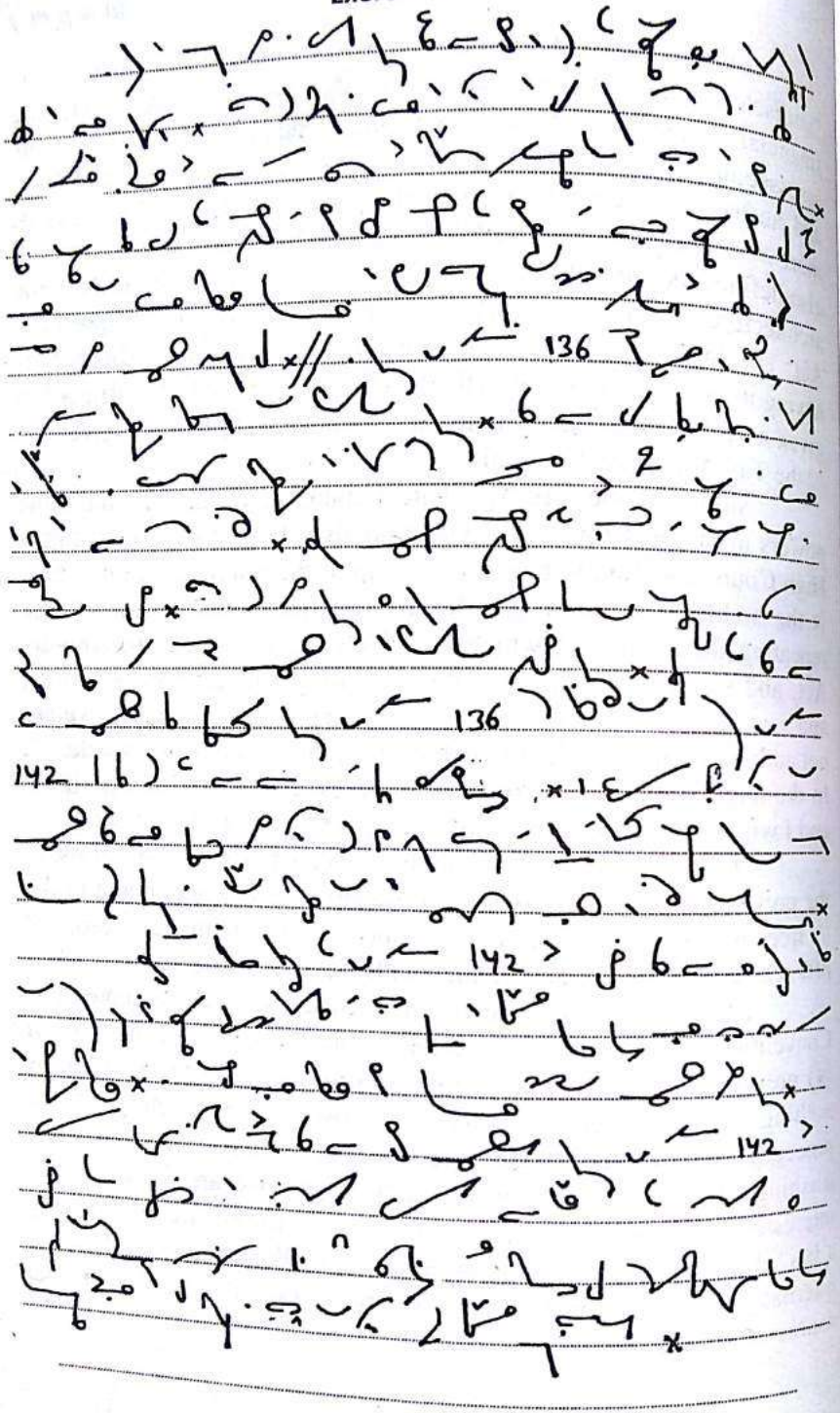
On the basis of the definition, we can find in clause 2 (11) "undisclosed asset located outside India" means an / asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect // of which he is a beneficial owner, and he has no explanation about the source of investment. This is, more /// or less, expansion of section 139. If we go further, clause 4 also defines like that. Finally, we (1) can very easily find out how the architecture of this Bill is repeated on the basis of the Income-tax / Act. The Income-tax Act is also having the Assessing Officer. It is having its own hierarchy of officers who // go into it. If the officer has given a verdict, then, about that, there is an appeal provision given for /// the Tax Appellate Tribunal.

Similarly, the Tax Appellate Tribunal is vested with the same powers in this Bill for the (2) violation also. Then, they can go to the High Court, and finally they can end up in the Supreme Court. This / is the architecture on which this Bill is made. That means we are repeating the same Act which is already there // in the Income-tax Act, and we are culling out certain portions, and defining it further, and saying that we /// want to stop the black money. Actually, we are not addressing the problem which we have promised to the people. (3) In the international Convention also we have shown such a position, and I will quote from article 3 of the international / Convention:

"This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the // freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention."

This is the /// promise you have made. We have accepted this Convention. But now we have not mentioned anything on the topic of (4) prevention, investigation; only the prosecution is there. There is nothing on the freezing, seizure, confiscation and return of the proceeds / of offences. That means, we just want to make a white washing of our own enactments, telling that we are // very much interested in abolishing black money, and, therefore, we are bringing a law. But really we are making that /// law. We are just evading our international commitment which we made. One has to disclose the source of his income. (5)

Exercise 38

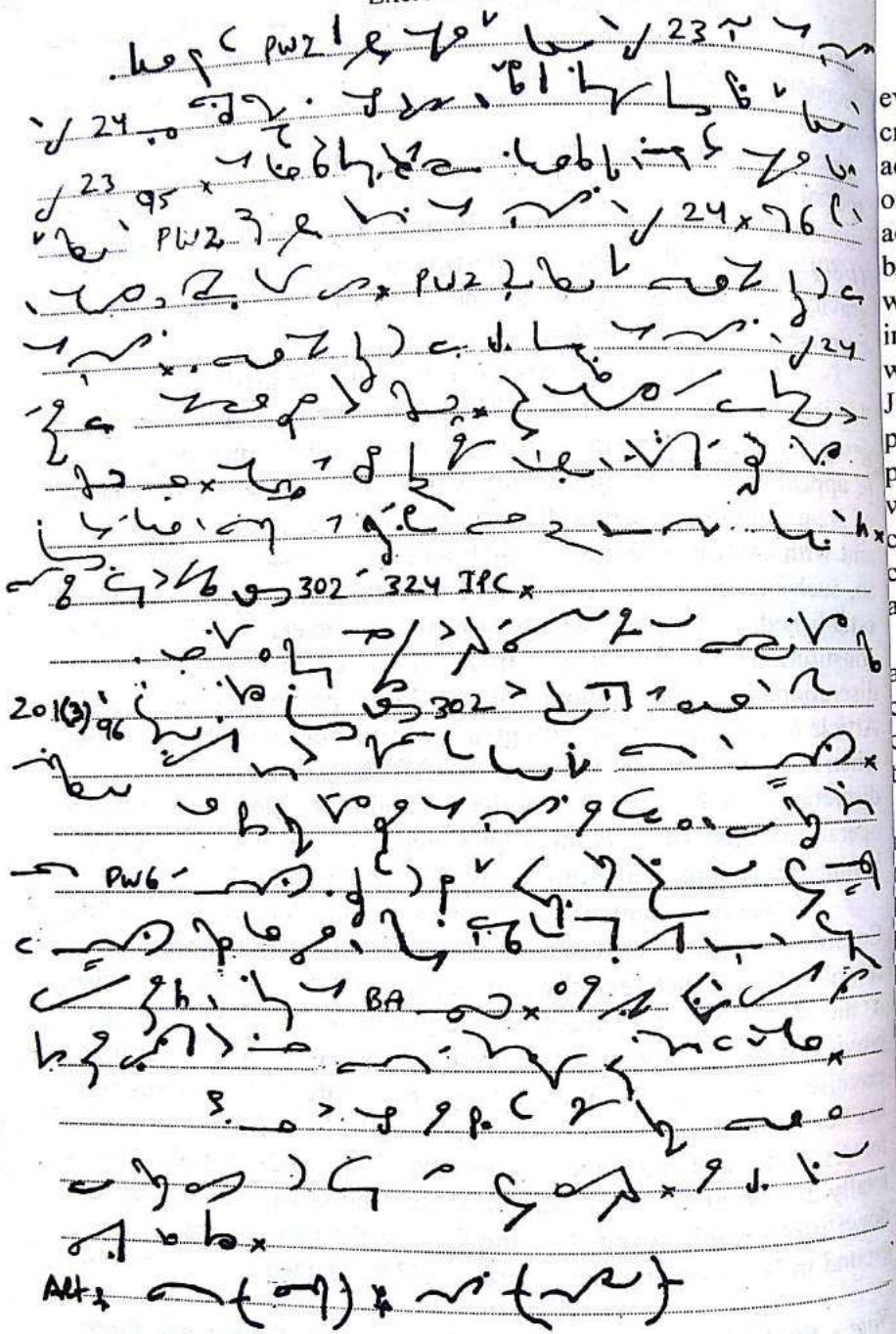


The object of keeping such a wide power with this Court has been to see that injustice is not perpetuated / or perpetrated by decisions of courts below. More so, there should be a question of law of general public importance // or a decision which shocks the conscience of the court are some of the prime requisites for grant of special /// leave. Thus, unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done ***(1/80)*** and that the case in question presents features of sufficient gravity warranting review of the decision appealed against, such exercise / should not be done.

The power under Article 136 cannot be used to short circuit the legal // procedure prescribed in overriding power. This Court generally does not permit a party to by-pass the normal procedure of /// appeal or reference to the High Court unless a question of principle of great importance arises. It has to be ***(2/160)*** exercised exceptionally and with caution and only in such an extra-ordinary situation . More so, such power is / to be exercised taking into consideration the well established principles which govern the exercise of overriding constitutional powers. It is // true that this Court when exercises its discretionary power under Article 136 or passes any order under Article /// 142, it does so with great care and due circumspection. But, when we are settling the law in ***(3/240)*** exercise of this court's discretion, such law, so settled, should be clear and become operational instead of being kept vague, / so that it could become a binding precedent in all similar cases to arise in future."

It has been canvassed before // us that under Article 142 of the Constitution, this Court is competent to pass any order to do /// complete justice between the parties and grant decree of divorce even if the case may not meet the requirement of ***(4/320)*** statutory provisions. The instant case presents special features warranting exercise of such power. We are fully alive of the fact / that this court has been exercising the power under Article 142 of the Constitution for dissolution of marriage // where the Court finds that marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if /// the facts of the case do not provide a ground in law on which the divorce could be granted. ***(5/400)***

Note - Study the writing of Legal Phrases, Nasal Sounds and Proper Nouns for accurate writing and transcription.



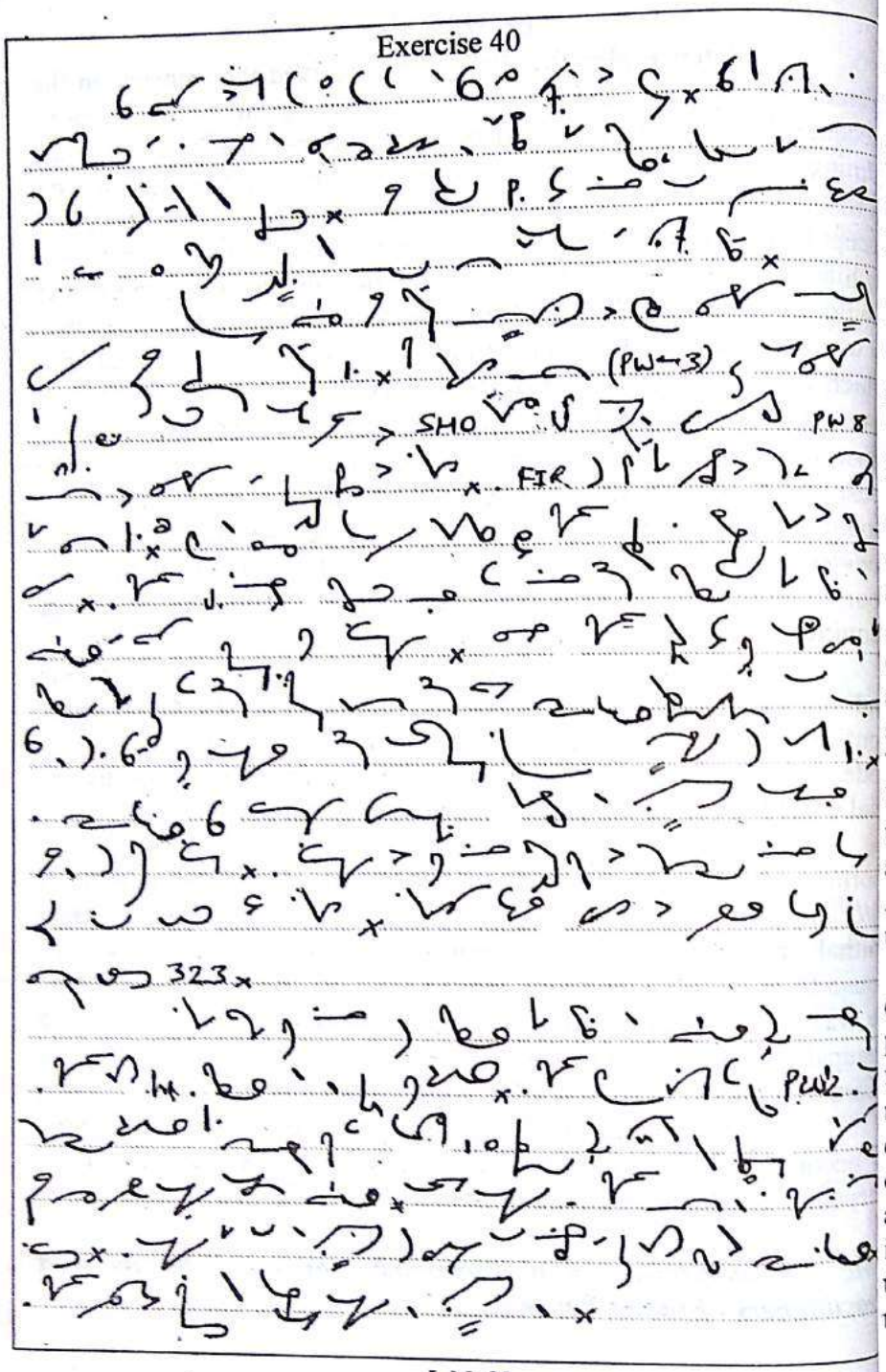
The defence plea that PW-2 had received the injuries on the evening of June 23 and not in / the morning of June, 24 gains credence from the fact that an incident between the two sides had admittedly // taken place on the evening of June 23; 1995. In the face of this admitted position and /// the medical evidence, it is difficult to accept that the injuries found on the person of PW-2 were (1) received by him in the morning of June 24. From this, either of two inferences would logically follow-one, / PW-2 was not present at the occurrence in which the deceased was killed in the morning. The occurrence in // which the deceased was killed did not take place in the morning of June 24 and he was not /// killed in the manner as suggested by the prosecution. Both the inferences are equally damaging to the prosecution case. In (2) view of the facts and the circumstances, it would be highly unsafe to uphold and sustain the appellant's conviction for / the offence of murder, and the prudent and safe course would be to give him the benefit of doubt. Accordingly, // he is acquitted of the charges u/s 302 and 324 IPC.///

The next appeal is directed against the judgment of the Punjab and Haryana High Court in Criminal Appeals Nos. 201 *(3)* of 1996, confirming the appellant's conviction under section 302 of the penal code and the / sentence of life imprisonment awarded to him by the trial court for having committed the murder of Kamlesh.

In his // statement before the police he said that in the morning he along with his two younger brothers, Ram Kumar (PW-6)/// and Kamlesh (the deceased) was sitting on the chabutra of their baithak in village, Keshopur when Kamlesh proceeded for (4) his house to bring the clothes for getting ready to go to Faridpur, where he was due to appear in / the B.A examination. As he reached the chaupal, where the lane turned, he was waylaid by the accused (Karam) // and Rampal who were armed with knives.

As to the cause of the incident he stated that shortly before the /// occurrence his younger brother Suresh was elected as the village Sarpanch. He did not pay any heed to his demands. (5)

Note - Stenography is a Profession not loved by its own Practitioners - Francis Becon

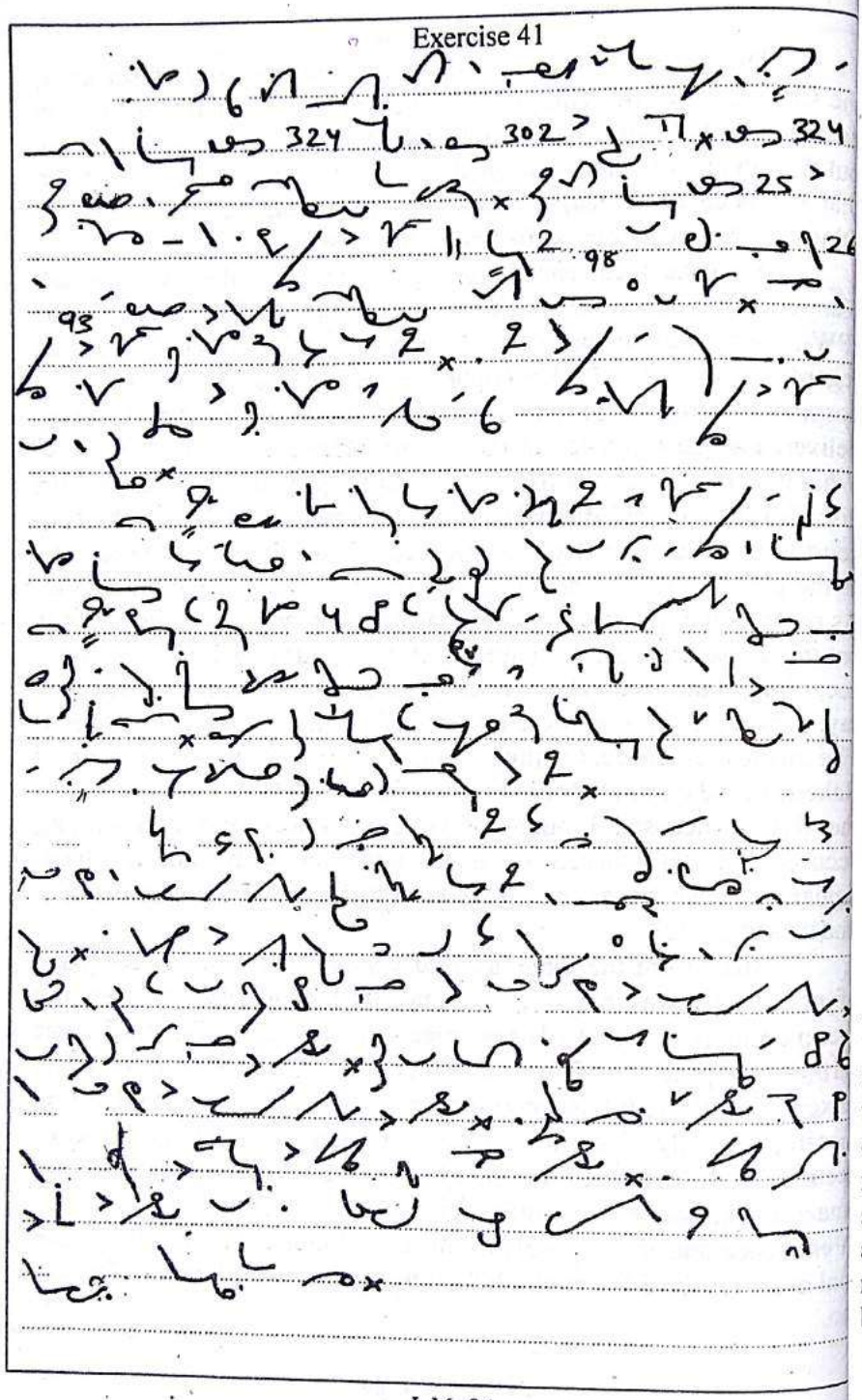


This greatly annoyed them as they thought of themselves as the Chaudhary of the village. This had led to an / altercation and an exchange of hot words between the two sides on the previous evening but the matter was then // patched up by discussion. He finally stated that the accused in league with one anther had killed his brother Dinesh /// by giving him knife and lathi blows.

After the occurrence he brought Kamlesh to the civil hospital, Kanpur where he (1) was declared 'brought dead'. Dr. Pawan Kumar (PW-3) who was in the hospital on duty sent information / in that regard to the SHO, PS Keshopur whereupon PW-8 came to the // hospital and took down the statement of the appellant. The FIR was delivered at the residence of the /// area Magistrate on the same day. What is, however, of significance for our purpose is that the trial court disbelieved (2) a substantial part of the prosecution story. The trial court did not accept the prosecution case that accused were present / at the place of occurrence and, accordingly, directed their acquittal. As regards, the trial court pointed out that the three // incised wounds on the person or the deceased that were attributed to him were, according to the medical evidence, post-mortem /// in nature, that is to say, those three injuries were inflicted after Mahesh was already dead. The medical evidence, (3) thus, clearly eliminated the participation of Rakesh in the case. He too was, therefore, acquitted. The acquittal of the three / accused brought down the number of the remaining accused for the shared common intention with the appellant. Apparently, that // was one of the reasons for their conviction simply under Section 323.

Apart from the three accused whose /// presence at the place of occurrence was not accepted, the trial court also doubted the presence of two out of (4) the three eye witnesses. The trial court further held that even PW-2, the only remaining eye witness, / had mixed-up truth with falsehood but his testimony was not liable to be discarded wholly since he had himself received injury in the same occurrence. In regard to the injury, the trial // court came to a truly amazing conclusion. The injury on the hand of Rakesh was certainly in existence and it /// was also proved by the medical evidence. The trial court resolved the contradiction by fastening the injury to Rakesh too.

Exercise 41

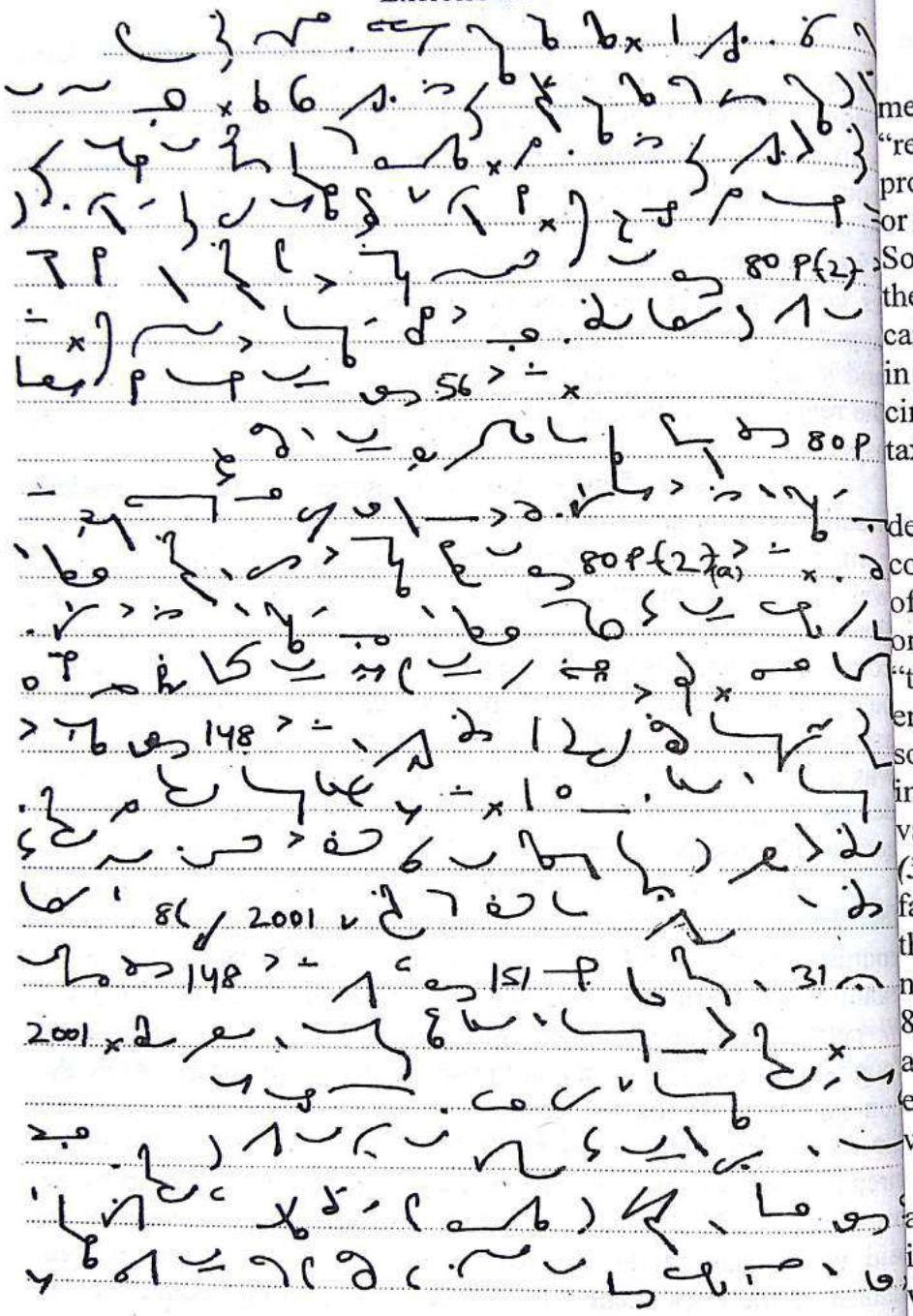


Exercise 41

The appellant was, thus, held guilty also of causing the knife injury to Rakesh and came to be convicted under / Section 324 in addition to section 302 of the Penal code. Under section 324,// he was sentenced to rigorous imprisonment for one year. He was also convicted under section 25 of the /// Arms Act by a separate judgment of the trial court dated February 2, 1998 in Sessions case *(1)* No. 26 of 1993 and sentenced to the period of imprisonment already undergone as under-trial. Against / the two judgments of the trial court, three appeals were filed in the High Court. The High Court by the judgment and // order coming under appeal dismissed all the three appeals and the revision and, thus, upheld the judgments of the trial /// court in all aspects.

Mr. Sahai, Senior Advocate, appearing for the appellant assailed the High Court and the trial court (2) judgments and contended that the appellant's conviction for the offence of murder was not sustainable both in law and on / facts. Mr. Sahai submitted that there were at least four circumstances that falsified and completely demolished the prosecution case. First, // there was a patent contradiction between the prosecution case and the motive assigned by it to the accused for committing /// the crime. Secondly, it was undeniable that injuries were fabricated both on the person or the deceased and Rakesh, the only (3) eye witness whose evidence was accepted by the High Court.

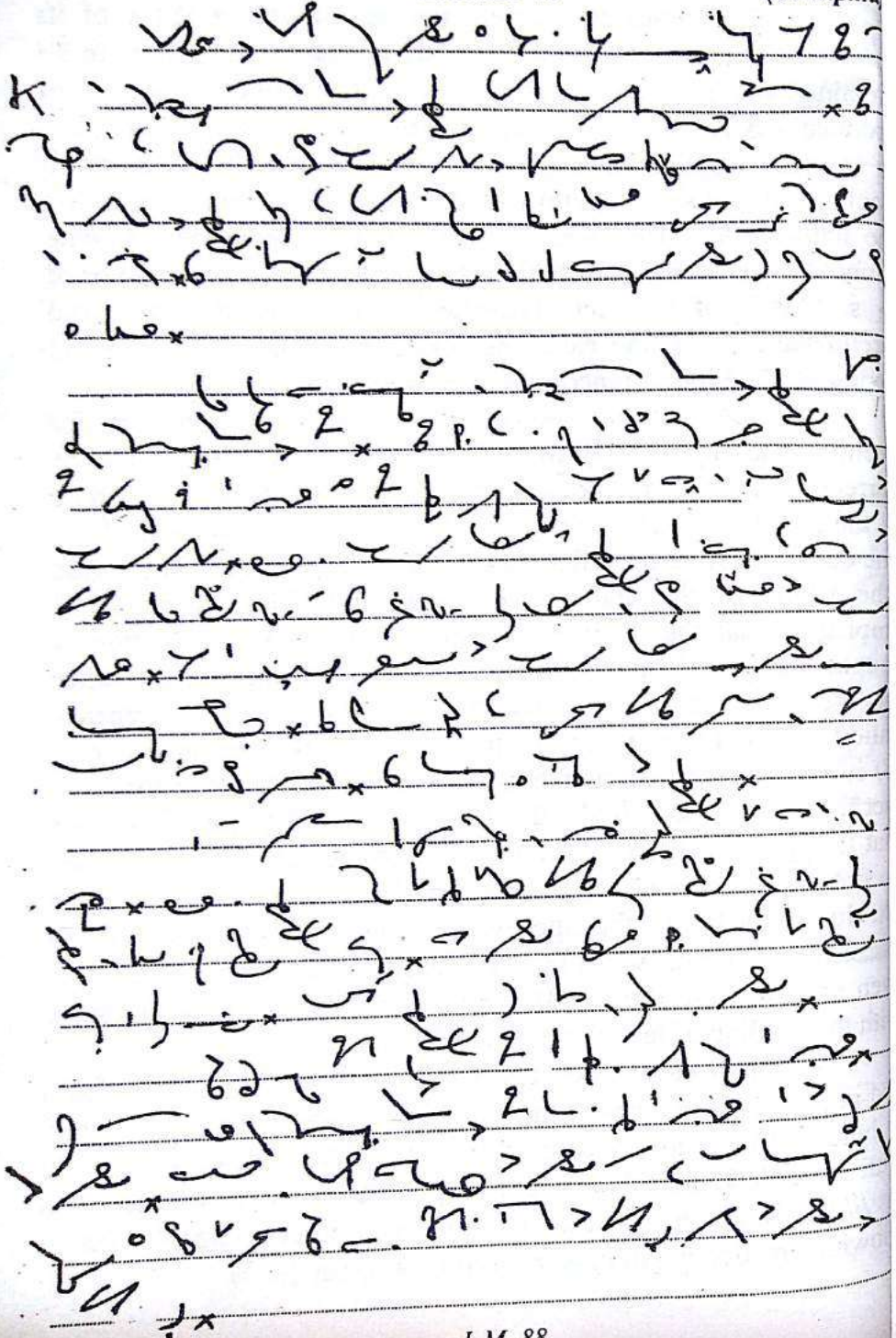
At the time when the plea was raised before the / High Court that the impugned orders are vitiated on account of the non-supply of enquiry report, it would have // been appropriate for the High Court to examine the averments made in the writ petition. A perusal of the writ /// petition would show that the petitioner has failed to lay any foundation to establish that any prejudice has been caused (4) by the non-supply of the enquiry report. No prejudice was actually caused to the respondent. There was no failure / of justice in the facts and circumstances of this case by non-supply of the enquiry report to the respondent. // The punishment imposed on the respondent cannot be said to be disproportionate to the gravity of the charges proved against /// the respondent. The charges related to the conduct of the respondent in a financial institution whereby he procured pecuniary benefits for himself. (5/400 words)



Further, assessee markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this / "retained amount" which was payable to its members, from whom produce was bought, which was invested in short-term deposits // or securities. Such an amount, which was retained by the assessee Society, was a liability and it was shown in /// the balance-sheet on the liability-side. Therefore, to that extent, such interest income cannot be said to be attributable *(1)* either to the activity mentioned in s. 80P(2) of the Act. Therefore, looking to the facts and circumstances / of the case, the Assessing Officer was right in taxing the said interest income, u/s 56 of the // Act.

To say that the source of income is not relevant for deciding the applicability of s. 80P of /// the Act would not be correct because weightage needs be given to the words "the whole of the amount of *(2)* profits and gains of business" attributable to one of the activities specified in s.80P(2)(a) of the / Act. The words "the whole of the amount of profits and gains of business" emphasise that the income in respect // of which deduction is sought must constitute the operational income and not the other income which accrues to the Society. /// As regards validity of the notice u/s148 of the Act to re-open the assessment, *(3)* it essentially concerns factual aspect. The Tribunal is the final fact finding Authority under the Act. It has given a / finding of fact that though the written communication of the sanction, which has no prescribed format, was received by the // Assessing Officer on 8th June, 2001 but, the approval or sanction for reopening of assessment in terms of s. 148 /// of the Act read with s.151 existed even prior to 31st May, 2001. There is *(4)* no reason to interfere with this finding of fact given by the Tribunal.

In the instant matter, the question /"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that // the income by way of interest on deposits held with scheduled banks, bonds and other securities was chargeable to tax /// u/s 56 under the head `Income from other sources' without allowing any deduction in respect of cost of funds.*(5)*

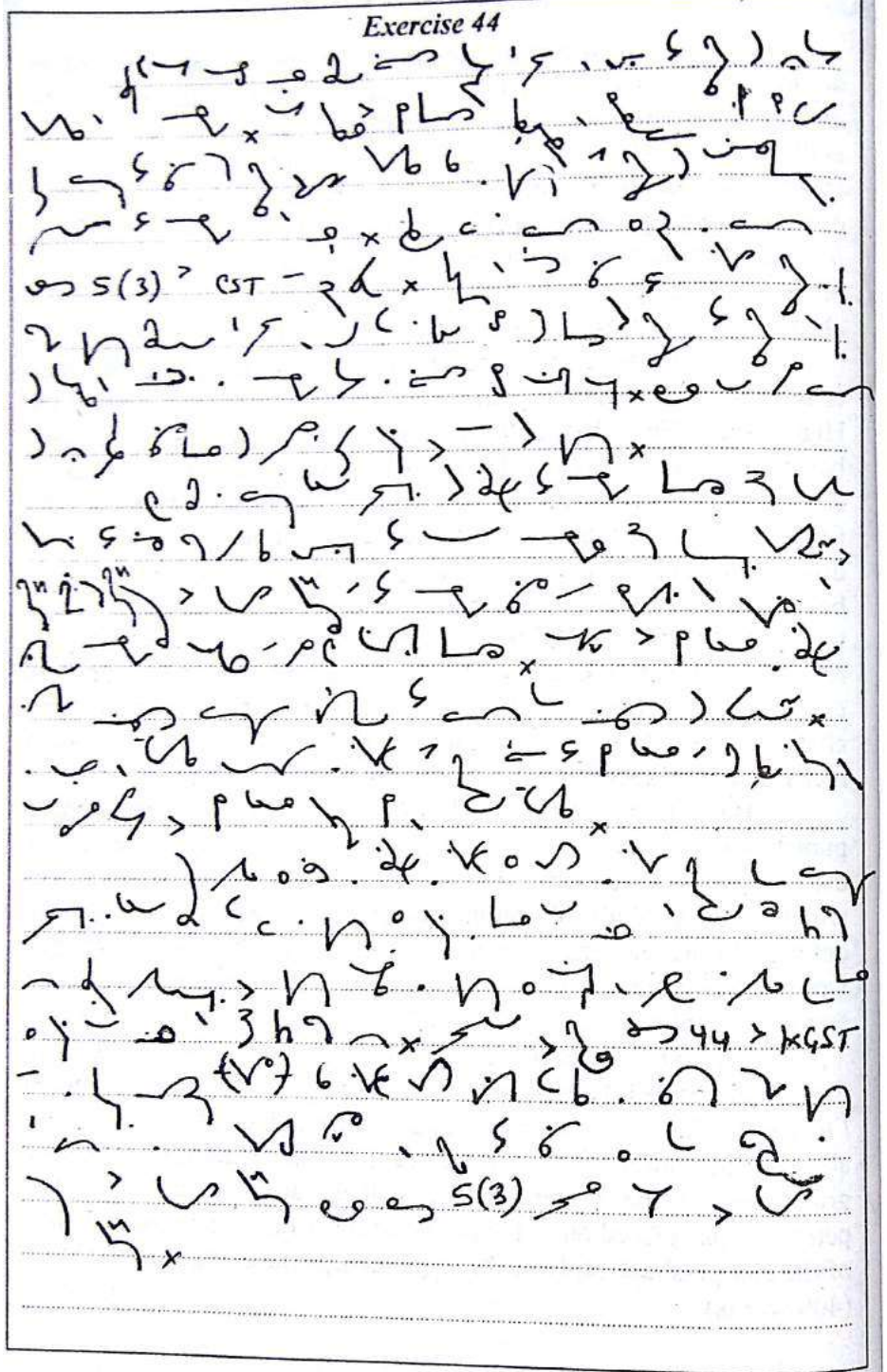


Pursuant to the aforesaid order, the respondent has filed an additional counter affidavit, in which he has emphasized the desirability / of remanding the matter back to the disciplinary authority for re-determination of the matter. He has emphasized that failure // to supply the enquiry report to the delinquent deprives him of making a proper representation to the disciplinary authority, before /// that authority arrives at its own findings with regard to the guilt or otherwise of an employee. This admittedly not *(1)* having been done, clearly the respondent was prejudiced in submitting his defence.

Even if this Court concludes not to remand / the matter back to the disciplinary authority, at least it has to be remanded back to the High Court. He // has stated that a number of points were raised before the High Court which have not been considered on merits, /// as the High Court decided the writ petition only on the ground of non-furnishing of the enquiry report. Since *(2)* the Enquiry Officer and the disciplinary authority had concluded that some of the charges have been partially proved and others / completely proved it was necessary to supply the findings of the enquiry reports. Only on knowing the reasoning of the // Enquiry Officer, could the respondent give an effective explanation. It is further pointed out that with regard to the charges relating /// to Maharajganj, the entire amount has been recovered. This fact is noticed by the disciplinary authority.

But quite illegally, it *(3)* still proceeded to impose punishment, on the ground of proved misconduct. Since the disciplinary authority arrived at the decision on / the basis of charges which were partially // completely proved it was not possible to defend, during personal hearings. According to the respondent, this was stated by him /// at the personal hearing, but it was ignored. In fact the disciplinary authority was adamant to punish the respondent.

All *(4)* these issues could have been highlighted if the High Court had decided the writ petition on merits. Therefore, matter needs / to be remanded back to the High Court for a decision on merits, on all the issues raised by the // respondent. In our opinion, the aforesaid grievances of the respondent are without any factual basis. The petitioner has placed on /// the record of this Court the translated copy of the charge-sheet, reply of the respondent to the charge-sheet. (5)
(400 words)



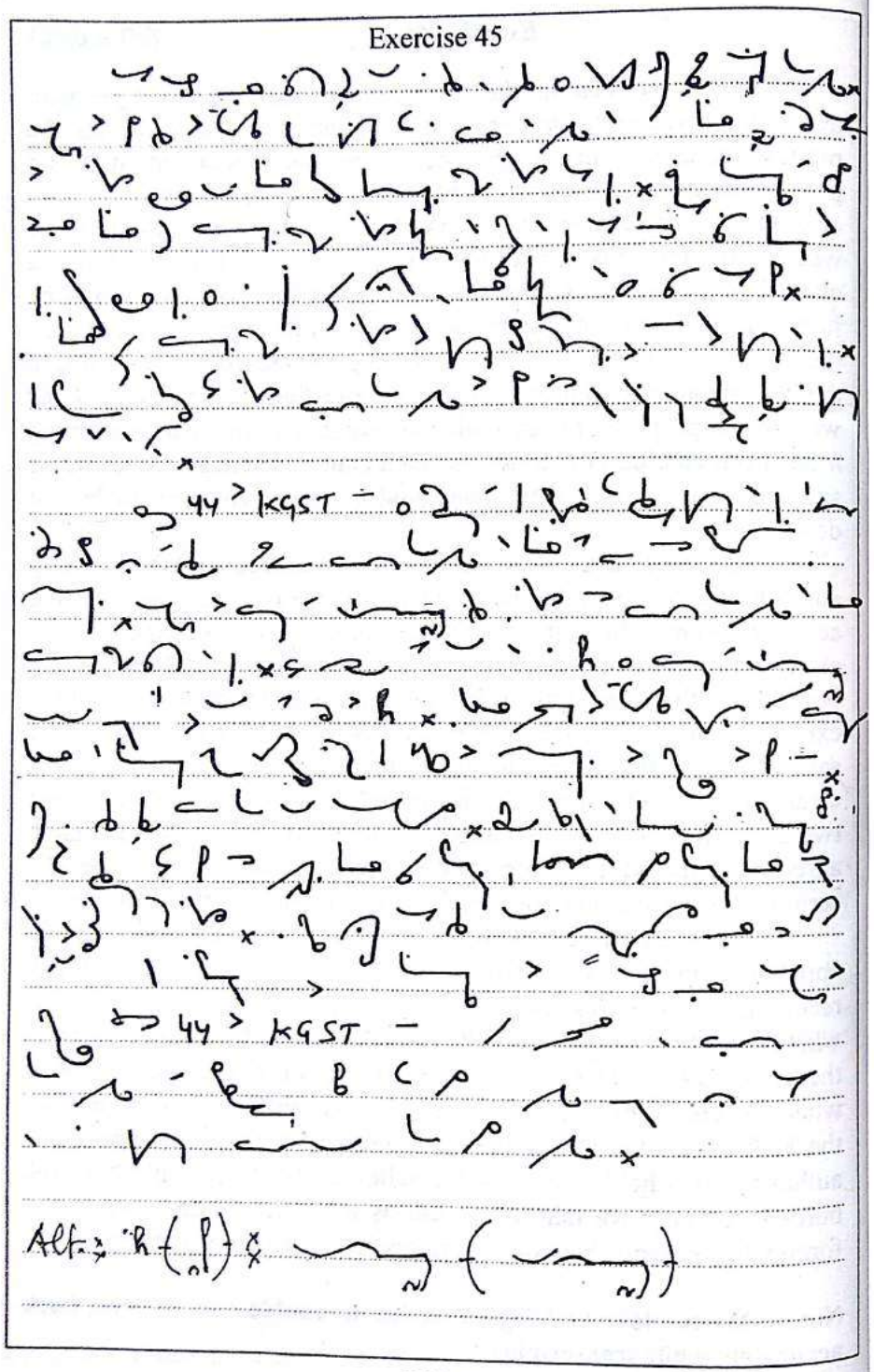
It is true that in the instant case, there is no agreement available on record to indicate that the purchase / was made for the purpose of export. In the absence of the said document, it is not possible to specifically // state as to whether it was clear that the sale or purchase between the parties i.e. the dealer and /// the purchaser was inextricably linked with the export of goods. It is only when a claim is established, the claim /// u/s 5(3) of the CST Act would be justified. At the time of auction sale when (1) the appellant purchased the tea from the dealer, there is nothing on record to show that a definite stand was / taken by the purchaser that the purchase of tea was for the purpose of occasioning an export for which an agreement // has been entered into. Since, no such claim was made at that stage, sales tax was realised which was paid /// to the government by the dealer.

However, there is a clear finding recorded by the assessing authority that the export (2) documents were verified by him with the accounts from which it is indicated that the entire exports were effected pursuant / to the prior contract or prior orders of the foreign buyers and that the export sales are supported by bills // of lading, export invoices and such other valid documents. In the light of the said findings, the assessing authority allowed /// the exemption, clearly holding that the claim for exemption was genuine. The next two authorities, namely, the appellate authority and (3) the Tribunal, agree with the said findings and there does not appear to be any serious challenge to the said / findings before the said two authorities.

So far as the refund is concerned, the assessing authority, the appellate authority as // also the Appellate Tribunal have clearly recorded a finding that when a dealer has paid the tax in excess of /// what is due from him, it has to be refunded to the dealer in as much as the dealer is (4) entitled to receive a refund, if tax is paid in excess of what was due from him. Referring to the / provisions of Section 44 of the KGST Act, the Deputy Commissioner (Appeals) i.e. appellate // authority, also held that it is the seller or the dealer on whom the burden lies to prove that the /// sale is for fulfilling an order of the foreign buyer, since Section 5(3) refers only to the foreign buyer. (5)

Note - Write clear and legible script to enable you to read back accurately while transcribing.

Exercise 45

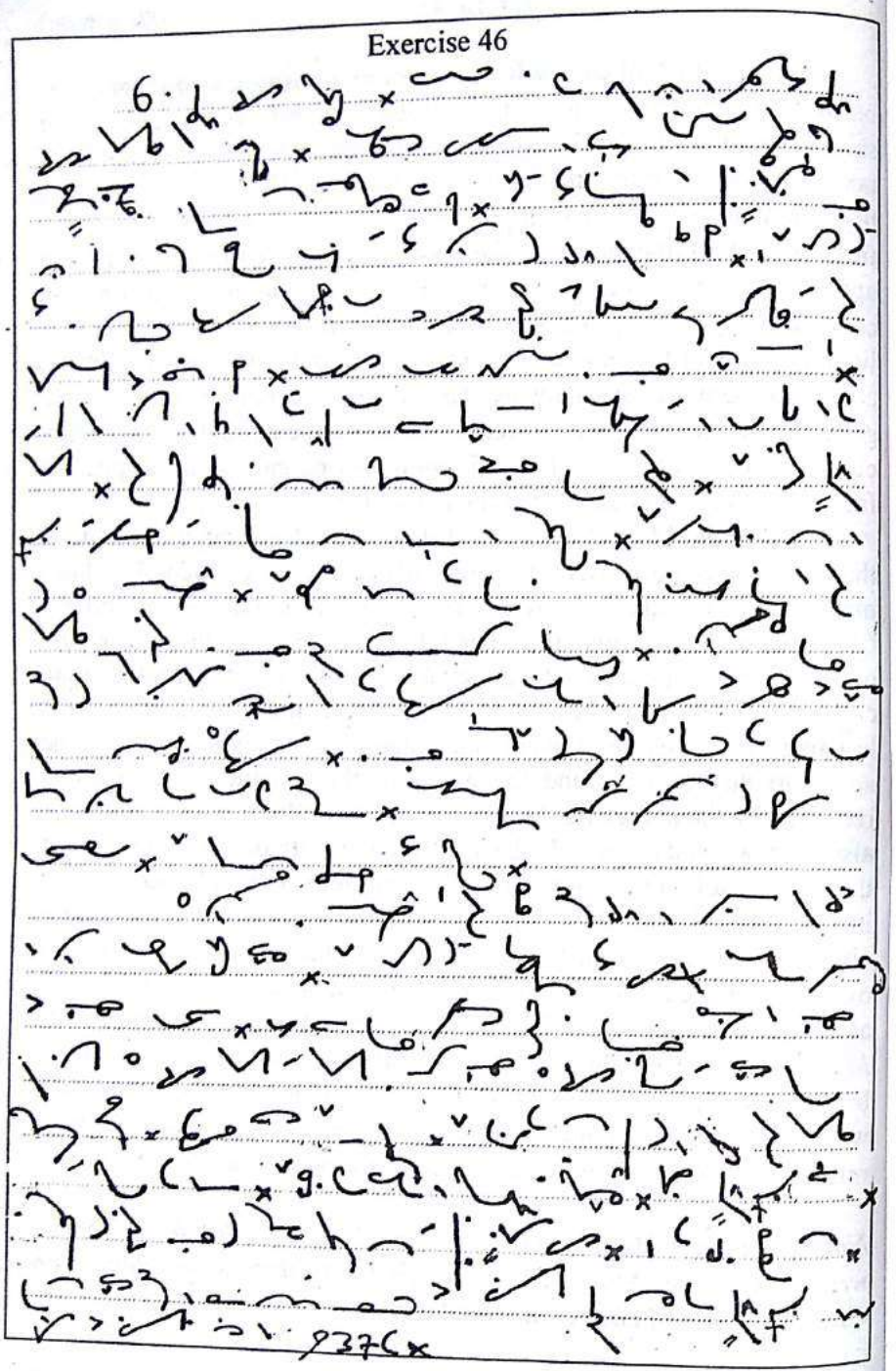


In the instant case seller was not in a position to discharge his burden and, therefore, he is not entitled / for refund. In view of the said position, all the authorities have held that a question of refund of tax // would not arise in the case of the appellant, since no tax had been demanded from the appellant for the /// tea. Considering the facts and circumstances of the case, tax was collected from the appellant at the time of purchase (1) of tea in the occasion sale conducted by the tea planters since tea is a commodity which was liable to / tax at the time of first sale in the State. The tax which was collected from the appellant by the // dealer has been remitted to the government by the dealer of tea. It further appears that the appellant claimed for /// refund of the said amount to be paid to it, despite the fact that it is not a dealer in (2) the eye of law.

Section 44 of the KGST Act is very clear and it stipulates / that it is only the dealer of tea on whom the assessment has been made and it is only he // who can claim for refund of tax and the Court cannot overlook the mandate. In view of the clear and unambiguous /// position, the appellant cannot claim for refund of tax collected from the seller of tea. When the meaning and the (3) language of a statute is clear and unambiguous, nothing could be added to the language and the words of the / statute. The findings recorded by the authorities below are clearly findings of fact and have also been arrived at on // the basis of the mandate of the provisions of the State Act. Therefore, the decision does not call for any /// interference. There is no possibility of taking a proactive stance although it is clear that the State cannot retain the (4) tax which is overpaid, but at the same time such overpaid tax cannot be paid to the assessees or appellants. / The principles laid down in the decision in *Mafatlal's case* would also not be applicable to the facts of the // instant case in view of the provisions of Section 44 of the KGST Act, which refers to /// claim for refund and specifically states that such refund could be made only to a dealer claiming for such refund. (5)

Note - Audio CDs are the best and cheapest solution for Speed writing practice. Study the Script first and then write them from CDs yourself and check your mistakes.

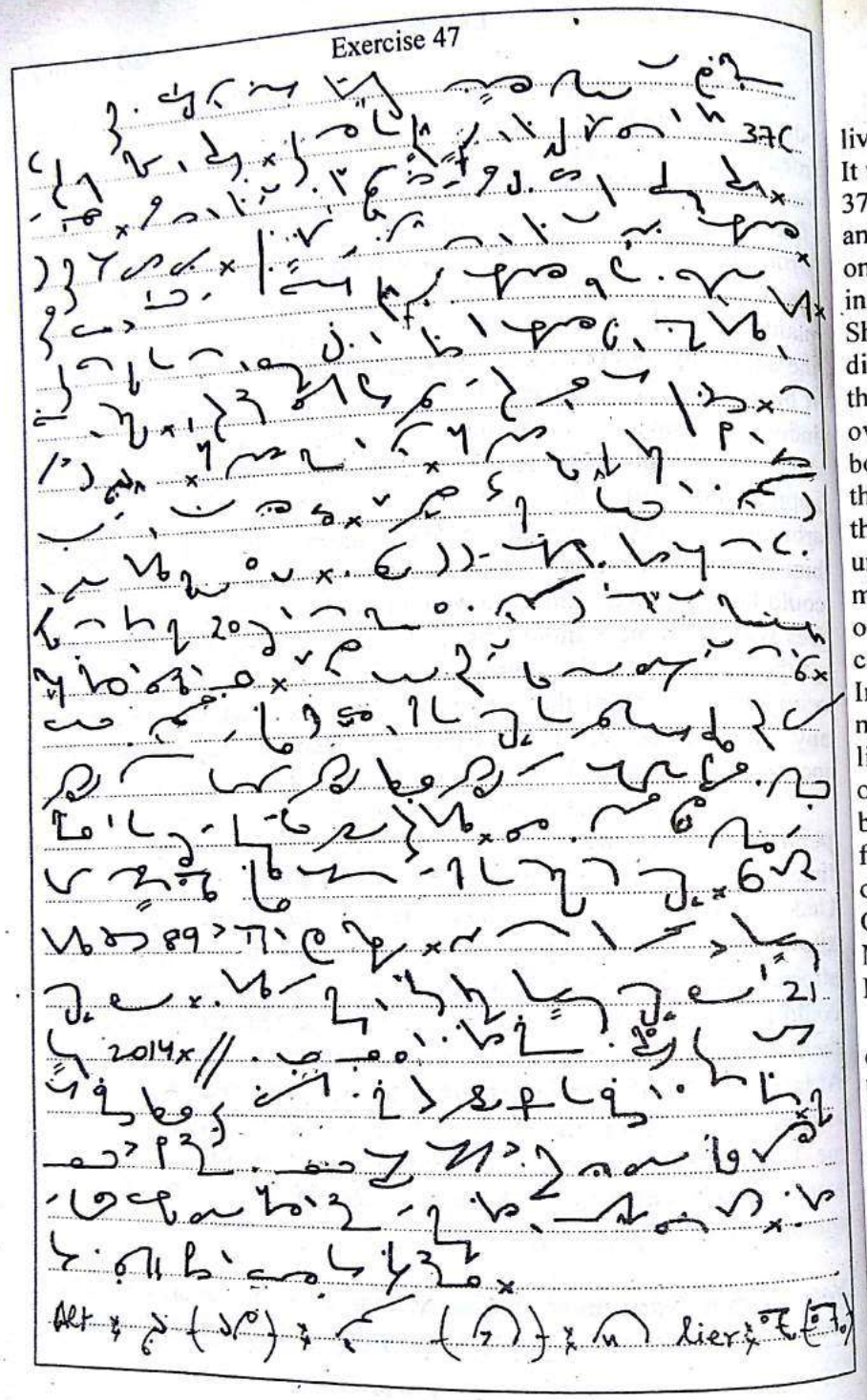
Exercise 46



This is a dispute between brothers. In our opinion, an effort should be made to resolve the dispute between the / parties by mediation. In this connection, we would like to quote the following passages from Mahatma, Gandhi's book 'My // Experiments with Truth':- "I saw that the facts of Dada Abdulla's case made it a very strong indeed, and that /// the law was bound to be on his side. But I also saw that the litigation, if it were persisted (1) in, would ruin the plaintiff and the defendant, who were relatives and both belonged to the same city. No one / knew how long the case might go on. Should it be allowed to continue to be fought out in Court, // it might go on indefinitely and to no advantage of either party. Both, therefore, desired an immediate termination of the /// case, if possible. I approached Tyeb Sheth and requested and advised him to go to arbitration. I recommended him to (2) see his counsel. I suggested to him that if an arbitrator commanding the confidence of both parties could be appointed, / the case would be quickly finished. The lawyer' fees were so rapidly mounting up that they were enough to devour // all the resources of the clients, big merchants as they were. The case occupied so much of their attention that /// they had no time left for any other work. In the meantime mutual ill-will was steadily increasing. I became (3) disgusted with the profession.

As lawyers the counsel on both sides were bound to rake up points of law in / support of their own clients. I also saw for the first time that the winning party never recovers all the // costs incurred. Under the Court Fees Regulation there was a fixed scale of costs to be allowed as /// between party and party, the actual costs as between attorney and client being very much higher. This was more than (4) I could bear. I felt that my duty was to befriend both parties and bring them together. I strained every / nerve to bring about a compromise. At last Tyeb Sheth agreed. An arbitrator was appointed, the case was argued before // him, and Dada Abdulla won. But that did not satisfy me. If my client were to seek immediate execution of the /// award, it would be impossible for Tyeb Sheth to meet the whole of the awarded amount, of Rs. 37,000/-. (5)

Note - Devote your mind and concentrate on Dictation matter while writing, for better and accurate transcription of the Shorthand Script.



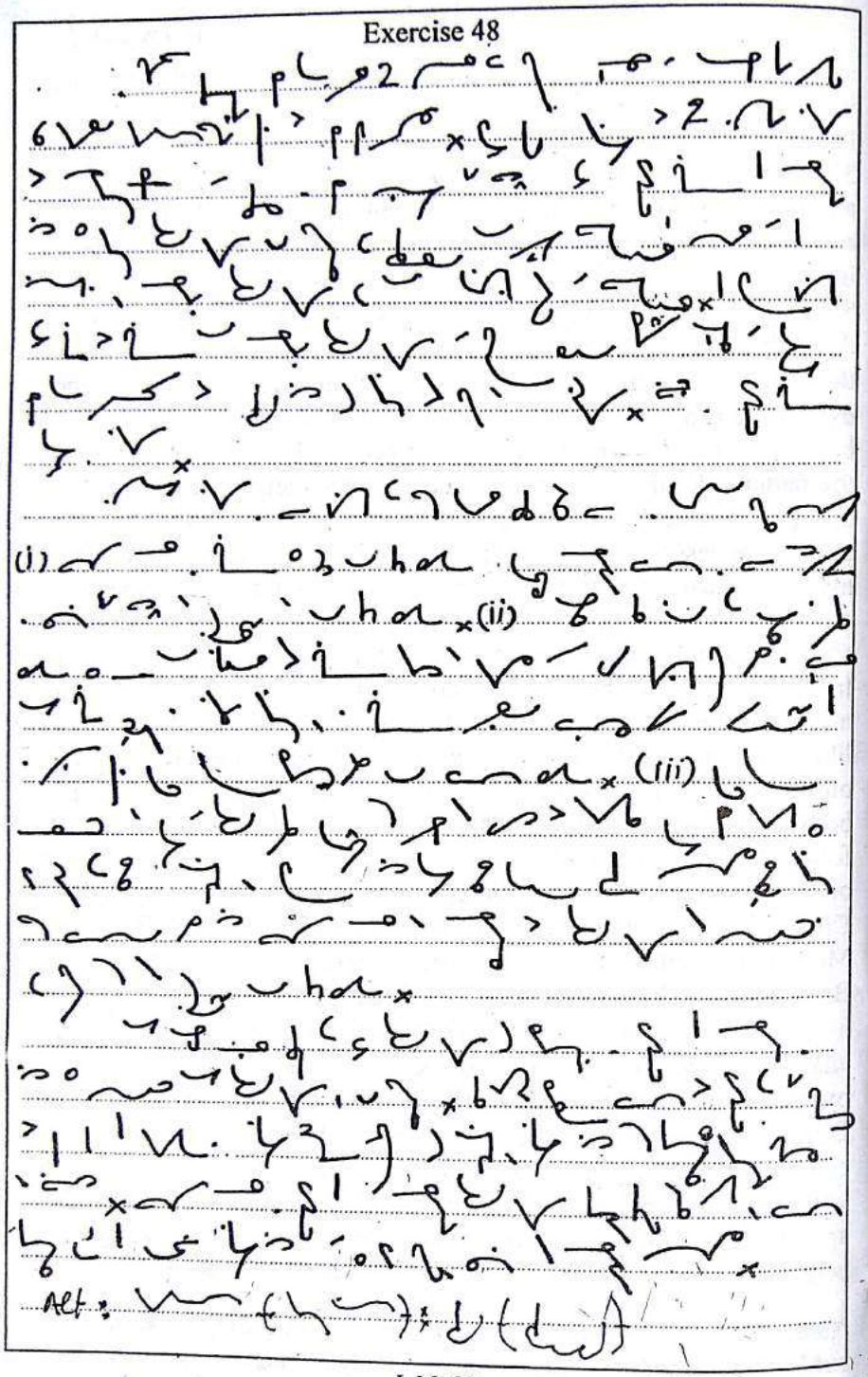
Exercise 47 **(80 w.p.m.)**

There was an unwritten law among the Porbandar Memons living in South Africa that death should be preferred to bankruptcy./ It was impossible for Tyeb Sheth to pay down the whole sum of about 37,000 and costs. He // meant to pay not a pie less than the amount, and he did not want to be declared bankrupt. So, /// there was only one way. Dada Abdulla should allow him to pay in moderate installments. He was equal to the (1) occasion, and granted Tyeb Sheth installments spread over a very long period. It was more difficult for me to secure / the concession of payment by installments than to get the parties to agree to arbitration. But both were happy over // the result, and both rose in the public estimation. My joy was boundless. I had learnt the practice of law. /// I had learnt to find out the better side of human nature and to enter men's hearts. I realized that (2) the true function of a lawyer was to unite parties driven as under. The lesson was so indelibly burnt into me / that a large part of my time during the twenty years of my practice as a lawyer was occupied in // bringing about private compromises of hundreds of cases. I lost nothing thereby-not even money, certainly not my soul." In /// our opinion, the lawyers should advise their clients to try for mediation for resolving the disputes, especially, where relationships, like (3) family relationships, business relationships, are involved, otherwise, the litigation drags on for years and decades often ruining both the parties. / Hence, the lawyers as well as litigants should follow Mahatma Gandhi's advice in the matter and try for arbitration or // mediation. This is also the purpose of Section 89 of the Code of Civil Procedure. Let the matter be referred /// to the Bangalore Mediation Centre. The parties are directed to appear before the Bangalore Mediation Centre on 21 February, 2014. (4)

The next case is of an appellant-contractor, a partnership firm, engaged in the construction business, who was awarded a / contract by the respondent-State Government for construction of a Dam. During the execution of the said work, the Executive // Engineer in-charge of the project, made certain additions, alterations and variations in respect of certain items of work and directed /// the appellant to carry out the same also. The appellant filed a consolidated statement of claims for the additional works. (5)

Note - Shorthand writing is not a gimmick. It is a Linguistic/phonetic subject with a universal Script for all world languages.

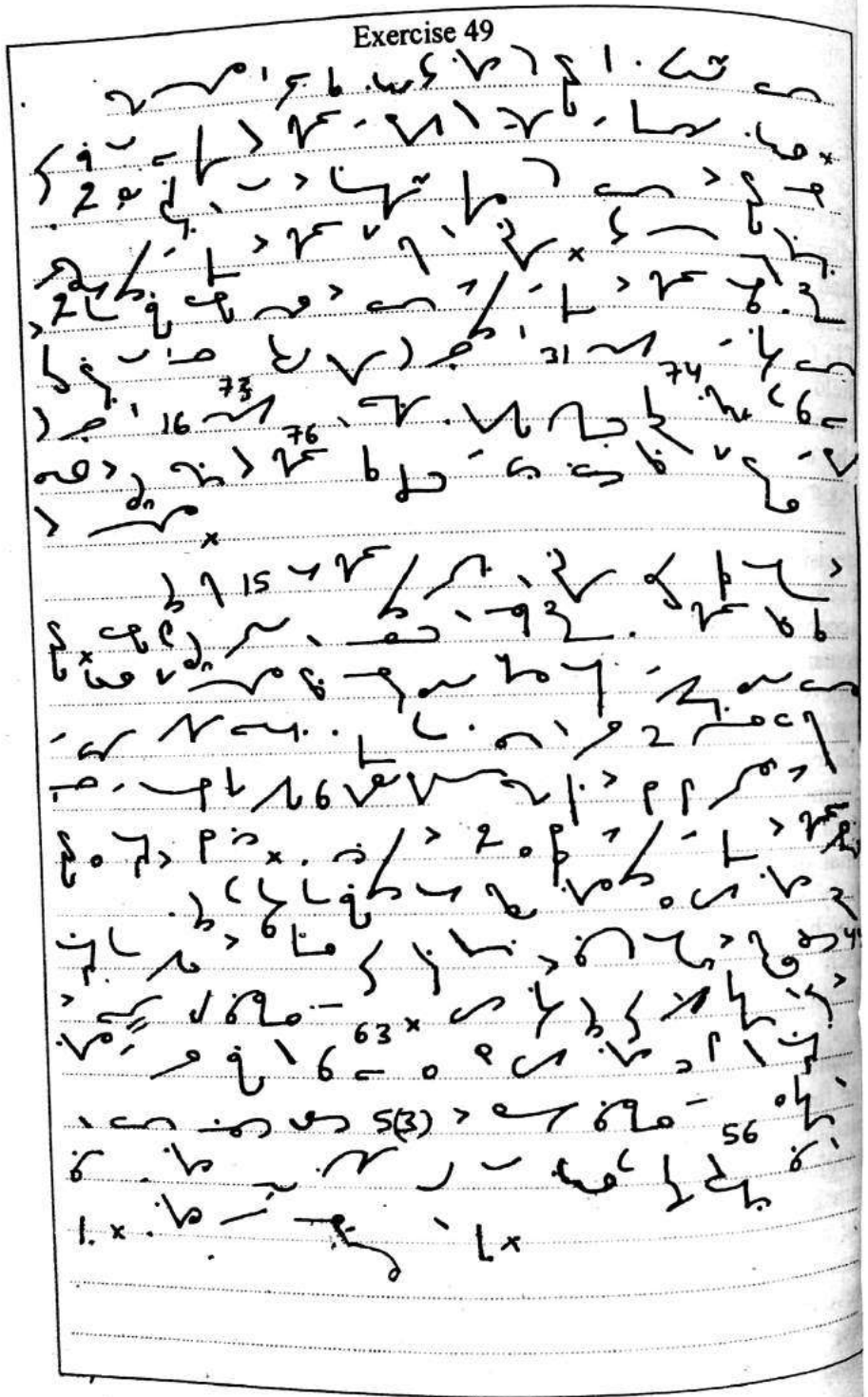
Exercise 48



The trial court decreed the suit for Rs. 2 lacs with proportionate costs and interest at the rate of 6% / per annum from the date of the suit till realization. However, the Division Bench of the High Court allowed the // appeal of the employer-State Government and dismissed the suit mainly on the ground that the plaintiff-contractor had accepted /// the amount as per final bill "under protest" without disclosing any real grievance on merits and it amounted to accepting (1) the final bill without any valid objection and grievance. It further held that the conduct of the contractor in accepting the / final bill and thereafter sending statutory notice and filing the suit for recovery of the differential amount was barred by // the principle of estoppel. Aggrieved, the plaintiff contractor filed the appeal.

Allowing the appeal, the Court held that "From various/// decisions of this Court, the following principles emerge: (i) Merely because the contractor has issued "No Due Certificate", if there (2) is acceptable claim, the court cannot reject the same on the ground of issuance of "No Due Certificate"; (ii) Inasmuch / as it is common that unless a discharge certificate is given in advance by the contractor, payment of bills are // generally delayed, therefore, such a clause in the contract would not be an absolute bar to a contractor raising claims /// which are genuine at a later date even after submission of such "No-claim Certificate".; (iii) even after execution of full (3) and final discharge voucher or receipt by one of the parties, if the said party is able to establish that / he is entitled to further amount for which he is having adequate materials, he is not barred from claiming such // amount merely because of acceptance of the final bill by mentioning "without prejudice" or by issuing 'No Due Certificate'.

In /// the instant case, it is true that when the final bill was submitted, the plaintiff had accepted the amount as (4) mentioned in the final bill but "under protest". It is also the specific claim of the plaintiff that on / the direction of the Department, it had performed additional work and, therefore, was entitled to additional amount or damages as // per the terms of agreement. Merely because the plaintiff had accepted the final bill, it cannot be deprived of its /// right to claim damages if it had incurred additional amount and is able to prove the same by acceptable materials. (5)

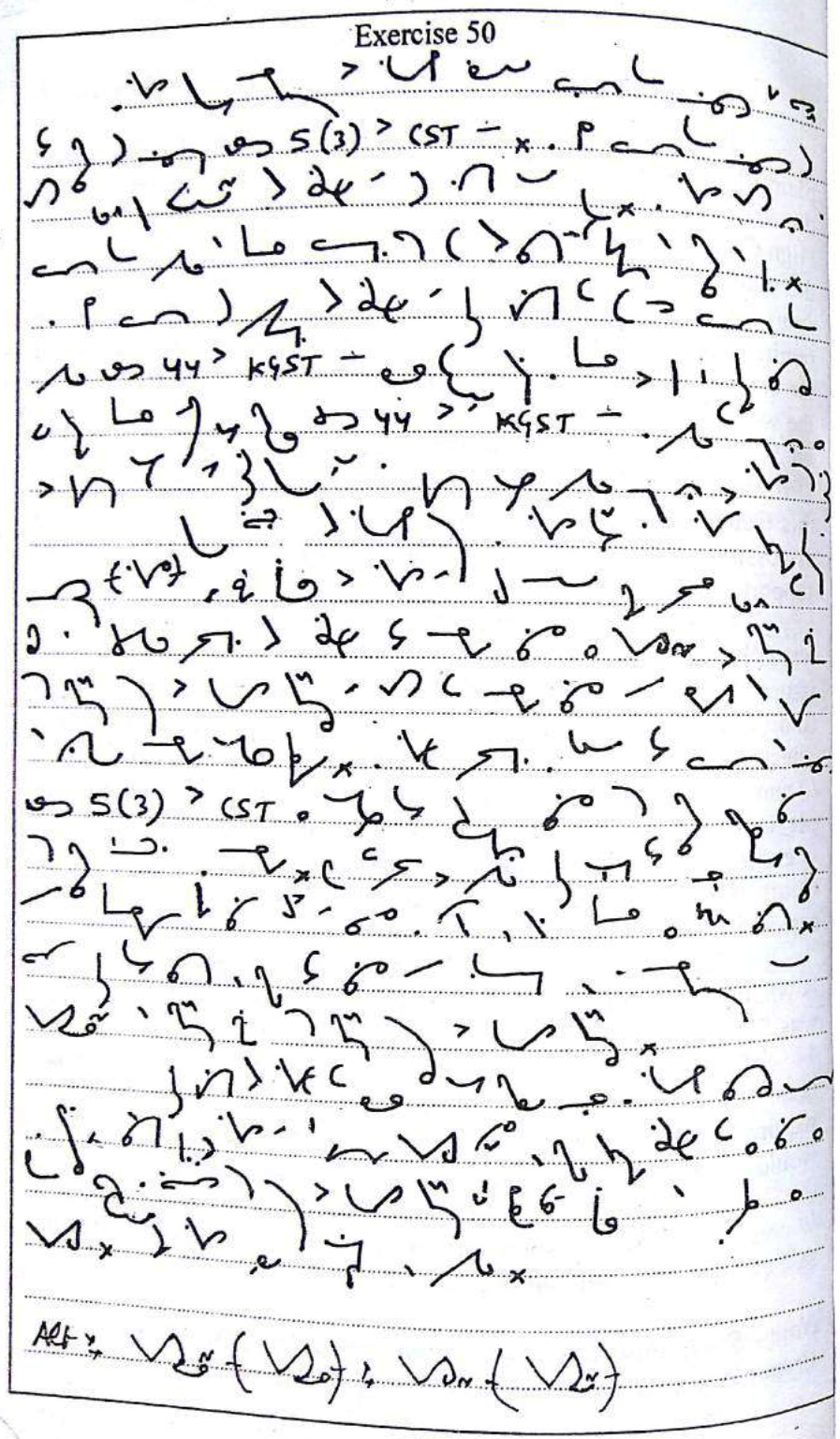


From the materials on record, it is evident that the appellant or plaintiff had a genuine claim which was considered / in great detail by the trial court and supported by oral and documentary evidence. The High Court has not adverted // to any of the factual details or claim of the plaintiff except reversing the judgment and decree of the trial /// court on the principle of estoppel. Though the matter could be remitted to the High Court for consideration in respect (1) of merits of the claim and the judgment and decree of the trial court, inasmuch as the work had been completed / in August, 1973, final bill was raised on 31 March, 1974 and additional claim was raised // on 16 March, 1976, to curtail the period of litigation, it would be appropriate that this Court scrutinizes /// all the issues framed by the trial court, its discussion and ultimate conclusion based on the pleadings and supported by (2) the materials.

Issue No. 15 in the trial court judgment related to estoppel which has been decided in favour of / the plaintiff. In respect of other issues relating to execution of extra work, the trial court based its findings on // the materials placed, accepted certain items in toto and rejected certain claims and, ultimately, rightly granted a decree for a /// sum of Rs. 2 lacs with proportionate costs and interest @ 6 per cent per annum from (3) the date of the suit till realization and the plaintiff is entitled to the said amount. The impugned judgment of / the High Court is set aside and the judgment and decree of the trial court restored.

The issue that falls // for consideration in the present appeals is whether the appellant would be entitled for refund of the tax which was /// paid by him to the seller, in view of the provisions of Section 44 of the Kerala General Sales (4) Tax Act, 1963. One additional issue which was urged at the time of hearing of the appeals and / requires consideration by this Court is as to whether the appellant would at all be entitled to claim exemption under // Section 5(3) of the Central Sales Tax Act, 1956, as at the time of sale, the appellant /// could not allegedly show any evidence that it was the penultimate sale of tea. The appellants are exporters of tea. (5)

Note - Study thoroughly the writing principles of Nasal Vowels and Proper Nouns for accurate reporting of the Judgments.



The appellant being the exporter of the aforesaid consignment claimed for exemption on the ground that the purchase was exempted/ under Section 5(3) of the CST Act. The said claim for exemption was also found to be // genuine by the Assessing Authority, and was allowed in full. The appellant also made a claim for refund of tax /// collected from them by the seller at the time of purchase of tea. The said claim was rejected by the *(1)* Assessing authority and it was held that they cannot claim for refund under Section 44 of the KGST / Act since they have not paid the tax to the Department but it was the sellers who have paid // the tax and therefore under the provisions of Section 44 of the KGST Act, the refund that could /// be made is to the dealer only and the assessee being not a dealer no such refund could be made *(2)* to the appellant or assessee.

Being aggrieved by the aforesaid order, the appellant filed an appeal before the Deputy Commissioner (Appeals) / who considered the contentions of the appellant and upon going through the records found that there is an observation recorded // by the assessing authority that the export sales is pursuant to the prior contract or prior order of the foreign /// buyers and also that export sales are supported by bill of lading, export invoices etc. The appellate authority recorded *(3)* the finding that the claim of exemption under Section 5(3) of the CST Act is envisaged for / the penultimate sales or purchase preceding the sale or purchase occasioning the export. However with regard to the refund it // was noted that the goods purchased are taxable at the sale point and hence the liability to pay tax is on the /// part of the seller. Accordingly, it was for the Seller to prove that the sales are effected to an exporter *(4)* in pursuance of prior contract or prior orders of the foreign buyers.

It was held by the Appellate Authority that / since, in the present case the aforesaid sellers namely the planters who sold tea to the appellant and on whom // the burden lies to prove before the assessing authority that his sale is for fulfilling an agreement or order of /// the foreign buyer had not satisfied those conditions of discharging his burden. So, the appellant is not entitled to refund. *(5)*

Note - Study carefully the rules of writing of legal words, phrases and proper nouns for accurate writing of judgments. Majority of the Legal words have been covered. Now only new words and their outlines have been given in following Exercises for 10 minutes dicts.

The assessing authority accepted the claim and allowed exemption. But so far as the question of refund of tax is / concerned, the Tribunal held that there is no question of refund of tax in the case of the appellant since // no tax had been demanded from the appellant for all the four years and therefore in those circumstances, there could /// be no question of refund under Section 44 of the KGST Act to the appellant. 9. *(1)* In the light of the aforesaid findings, the appellate Tribunal dismissed the appeal as against which a Revision Petition was / filed by the appellant before the Kerala High Court which was also dismissed under the impugned judgment and order as against // which the present appeals were filed. We have heard the learned counsel appearing for the parties who had taken us /// through all the orders which gave rise to the aforesaid two issues which fall for our consideration in the *(2)* present appeals. The learned counsel appearing for the appellant submitted before us that appellant has admittedly paid the tax to / the dealer at the time of occasion of sale made to it by the dealer namely the tea planters. It // was also submitted by him that department has received the aforesaid tax paid in excess by the appellant and that /// there is a prohibition on the State to retain the excess tax in lieu of the provisions of Article 265 *(3)* and 286 of the Constitution of India.

It was also submitted by him that in addition / to the provisions of Section 44 of the KGST Act, a pro-active view has to be taken // by this Court in the facts and circumstances of the present case by referring to the decision of this Court /// in the case of *Mafatlal Industries Ltd. & Others. Vs. Union of India & Others* reported in 1997. *(4)*

The learned counsel appearing for the State, however, not only refuted the aforesaid submissions but also stated that since there / is a specific provision in the State Act for giving refund of the excess amount of tax, if any, paid // only to the dealer and not to any other person, there cannot be a pro-active consideration in the facts /// and circumstances of the present case as sought to be submitted by the learned counsel appearing for the appellant. He *(5)* also submitted that aforesaid reference to the decision of *Mafatlal* (supra) is misplaced. The learned counsel for the State / went a step further and submitted that the appellant is not entitled to claim any exemption under Section 5(3) // of the CST Act in view of the fact that assessee could not

produce any agreement at the /// time of purchase of the tea in the auction sale indicating that the purchase is made in relation to export. *(6)* We have considered the aforesaid submissions of the learned counsel appearing for the parties in the light of the records / placed before us. Since, the contentions of the learned counsel appearing for the respondent State are with regard to the // fact that the appellant cannot claim exemption in absence of proof of an agreement in support of the claim for exemption /// under Section 5(3) and the same goes to the very root of the claim made, we deem it proper *(7)* to take the aforesaid stand at the first stage. Sub-section (3) of Section 5 has already been extracted hereinbefore /. According to the said provision, the last sale or purchase of any goods preceding the sale or purchase occasioning the // export of those goods out of the territory of India shall also be deemed to be in the course /// of such export, if such sale or purchase took place after, and was for the purpose of complying with, the agreement. *(8)*

When an assessing authority finds, on final assessment, that the dealer has paid tax in excess of what is due, / it shall refund the excess to the dealer. When the assessing authority receives an order from any appellate authority or // revisional authority to make refund of tax or penalty paid by a dealer it shall effect the refund due. Notwithstanding /// anything contained in sub-section (1) and (2), the assessing authority shall have power to adjust the amount due to *(9)* be refunded under sub-section (1) or sub-section (2) towards the recovery of any amount due, on the date / of adjustment, from the dealer. After referring to the said provision, it was held by the Tribunal that in // case the dealer has paid the tax in excess of what was due from him it could be refunded to /// the dealer, but here is a case where not the dealer but the appellant had claimed exemption under Section 5(1). *(10)*

New Words / phrases

.....assessing authority .....exemption .....revision

.....revisional authority .....adjustment .....contention

.....aforesaid .....appellant .....pro-active

.....tea planters.....versus(Vs).....Mafatlal Industries Ltd.

.....Union of India .....hereinafter .....hereinbefore

This appeal is directed against the judgment and final order dated 7th October 2002 passed by the Division / Bench of the High Court of Gujarat whereby the High Court set aside the judgment and decree dated 14th December,// 1982 passed by the Civil Judge, Jamnagar directing the State Government to pay a sum of Rs.2 lacs /// with costs and interest and dismissed the Civil Suit as well as cross objections filed by the appellant-Firm for *(1)* recovery of the aggregate amount of Rs. 3 lacs on account of different counts as specified in the claim of the / said suit. The Brief facts of the case are as follows:

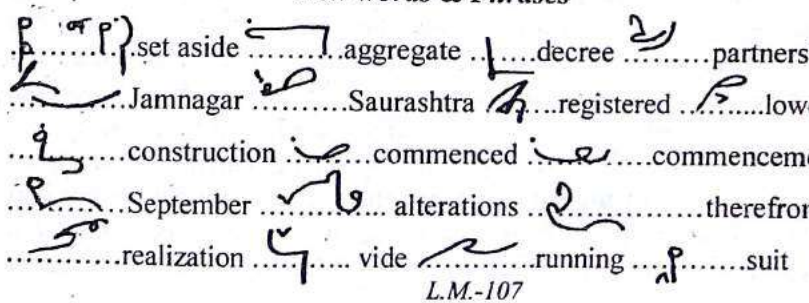
(a) The appellant-Firm, a partnership firm registered // under The Indian Partnership Act, is carrying on the business of construction of roads, buildings, dams etc. mostly in Saurashtra /// and also in other parts of the State of Gujarat. In response to the invitation of tender by the State *(2)* Government for construction of Fulzer Dam-II in Jamnagar District, the appellant-Firm quoted and offered to construct the same / for the quotation, specifications and design of the Dam vide covering letter dated 5 June, 1970. In the // said letter, the appellant-Firm also offered that they would give rebate of 4% provided the final bill be /// paid within three months from the date of completion of the work. The offer of the appellant being the lowest *(3)* amongst other parties, it was accepted by the State Government with the clause that the construction work was to be completed / within a period of 24 months from the works order dated 7th September, 1970 which was subsequently // clarified that the period of 24 months was to be commenced from the date of commencement of work.

During /// execution of the said work, the Executive Engineer, who was in-charge of the project, made certain additions, alterations and *(4)* variations in respect of certain items of work and directed the appellant to carry out additional and alteration work as / specified in writing from time to time. The final decision as to the alteration in respect of certain items of // work and particularly, in respect of the depth of foundation which is known as cut off trenches took long time // with the result that the Firm was required to attend the larger quantity of work and thus entitled for extra /// payment for the additional work. As per the works contract, the Firm was not paid the running bill within the *(5)* specified time and, therefore, suffered loss. On 16 September, 1976, the Firm lodged a consolidated statement of

their / claims for the additional or altered works etc. to the Executive Engineer. As there was no response, the Firm served // a statutory notice. The appeal was filed therefrom to the Kerala Sales Tax Appellate Tribunal, which after going through the /// records referred to the provisions of refund as contained in Section 44 of the KGST Act, *(6)* which reads as follows:- Refunds:- (a) When an assessing authority finds, at the time of final assessment, that the dealer / has paid tax in excess of what is due from him, it shall refund the excess to the dealer. (b) When // the assessing authority receives an order from any appellate or revisional authority to make refund of tax or penalty paid /// by a dealer it shall effect the refund. (c) Notwithstanding anything contained in sub-section (1) and (2), the assessing *(7)* authority shall have power to adjust the amount due to be refunded under sub-section (1) or sub-section (2) / towards the recovery of any amount due, on the date of adjustment, from the dealer. After referring to the said // provision, it was held by the Tribunal that in case the dealer has paid the tax in excess of what /// was due from him it could be refunded to the dealer, but here is a case where not the dealer (8) but the appellant had claimed exemption under Section 5(1).

Again, on 24th March, 1977, after getting no reply, the Firm filed Civil Suit No. 30 of / 1977 on the file of the Civil Judge, Jamnagar praying for a decree of the aggregate amount of // Rs.3.5 lacs with running interest at the rate of 9% per annum from the date of /// final bill till the date of Suit and at the rate which may be awarded by the Court from the *(9)* date of Suit till payment. Vide order dated 14th December, 1982, the Civil Judge allowed the suit / and passed a decree for a sum of Rs.2,27,000/- with proportionate costs together with interest // @ 6% p.a. from the date of suit till realization. Being aggrieved by the said judgment /// and decree, the State Government filed First Appeal No. 38 of 1983 before the High Court. *(10)*

New words & Phrases



Exercise 53 (80 w.p.m. - 10 minutes- Transcriptions)

The Division Bench of the High Court, vide its order dated 7th October, 2002, allowed the appeal of / the State Government and dismissed the suit of the appellant-Firm and also directed that the decretal amount deposited by // the State Government and as permitted to be withdrawn by the Firm should be refunded within a period of four /// months from the date of the judgment.

Being aggrieved by the said judgment, the appellant-Firm has filed this appeal *(1)* by way of special leave petition before this Court who heard Mr. Altaf Ahmed, learned senior counsel for the appellant / and Ms. Madhavi Divan, learned counsel for the respondent-State. Though the trial Court after accepting the claim of the // plaintiff granted a decree to the extent of Rs. 2,27,000/- with proportionate costs and interest /// @ 6 per cent per annum from the date of suit till realization, in the appeal filed by *(2)* the State after finding that the plaintiff was stopped from claiming damages against the Department as the final bill was / accepted, the High Court allowed the appeal of the State and dismissed the suit of the plaintiff.

The High Court // non-suited the plaintiff mainly on the ground of Clauses 8 and 10 of the agreement and of the fact /// that the final bill was accepted by the plaintiff under protest. In view of the same, it is relevant to *(3)* refer Clauses 8 and 10 of the agreement which are as follows: "Clause 8.—No payment shall be made for / any work estimated to cost less than Rs 1,000/- till after the whole of the said work shall // have been completed and a certificate of completion given. But in the case of work estimated to cost more than /// Rs 1,000/- the contractor shall, on submitting a monthly bill therefore, be entitled to receive payment proportionate to the *(4)* part of the work then approved and passed by the engineer in charge whose certificate of such approval and passing / of the sum so payable shall be final and conclusive against the contractor.

All such intermediate payments, shall be regarded // as payments by way of advance against the final payments only and not as payments for work actually done and /// completed and shall not preclude the engineer in charge from requiring bad, unsound, imperfect or unskillful work to be removed *(5)* and taken away and reconstructed or re-erected, nor shall any such payment be considered as an admission of the / due performance of the contract or any part thereof in any respect of the occurring of any claim nor shall // it conclude, determine, or effect any way of the powers of the engineer

in charge as to the final settlement /// and adjustments of the accounts of otherwise, or in any other way vary or affect the contract. The final bills *(6)* shall be submitted by the contractor within one month of the date fixed for the completion of the work, otherwise / the engineer in charge's certificate of the measurement and of the total amount payable for the work shall be final // and binding on all parties.

A bill shall be submitted by the contractor each month on or before the date /// fixed by the engineer in charge for all work executed in the previous months and the engineer in charge shall *(7)* take or caused to be taken the requisite measurement for the purpose of having the same verified, and the claim,/ so far as it is admissible, shall be adjusted, if possible within 10 days from the presentation of the bill.// If the contractor does not submit the bill within the time fixed as aforesaid, the engineer in charge may depute /// a subordinate to measure up the said work in the presence of the contractor or his duly authorized agent whose *(8)* counter signature to the measurement list shall be sufficient warrant, and the engineer in charge may prepare a bill from / such list which shall be binding on the contractor in all respects. It is the stand of the State and // accepted by the High Court that the plaintiff-Firm has not fully complied with Clauses 8 and 10 of the /// agreement. It is also their stand that mere endorsement to the effect that the plaintiff has been accepting the amount *(9)* as per final bill "under protest" without disclosing real grievance on merits is not sufficient and it amounts to accepting / the final bill without any valid objection and grievance on merits by the plaintiff. The High Court has also accepted // the claim of the State that by the conduct of the plaintiff in accepting the final bill, the Department has /// made full payment to the plaintiff, sending statutory notice and filing suit for recovery of the differential amount barred by principle of stopple.*(10)*

Intext words and Phrases

unskillful ..... plantiff ..... stopple ..... differential

adjustments ..... grievance ..... subordinate ..... valid

Altaf Ahmed ..... Madhvi Divan ..... conclusive

re-erected ..... reconstructed ..... preclude

performance ..... proportionate ..... unsound

Conduct ..... statutory ..... different ..... binding

On going through the entire materials including the oral and documentary evidence led in by both the parties and the / judgment and decree of the trial Judge, we are unable to accept the only reasoning of the High Court in // non-suiting the plaintiff.

It is true that when the final bill was submitted, the plaintiff had accepted the amount /// as mentioned in the final bill but "under protest". It is also the specific claim of the plaintiff that on *(1)* the direction of the Department, it had performed additional work and hence entitled for additional amount or damages as per the / terms of agreement. Merely because the plaintiff had accepted the final bill, it cannot be deprived of its right to // claim damages if it had incurred additional amount and able to prove the same by acceptable materials.

Before going into /// the factual matrix on this aspect, it is useful to refer the decisions of this Court relied on by Mr. *(2)* Altaf Ahmed. In the case of *Chairman and MD, NTPC Ltd.* vs. *Reshmi Constructions, Builders & / Contractors,* (2004) 2 SSC 663, which relates to termination of a contract, one of // the questions that arose for consideration was "Whether after the contract comes to an end by completion of the contract /// work and acceptance of the final bill in full and final satisfaction and after issuance a 'No Due Certificate' by *(3)* the contractor, can any party to the contract raise any dispute for reference to arbitration? While answering the said issue / this Court held:- Even when rights and obligations of the parties are worked out, the contract does not come to // an end inter alia for the purpose of determination of the disputes arising thereunder, and, thus, the arbitration agreement can /// be invoked. Although it may not be strictly in place but we cannot shut our eyes to the ground reality *(4)* that in a case where a contractor has made huge investment, he cannot afford not to take from the employer / the amount under the bills, for various reasons which may include discharge of his liability towards the banks, financial institutions // and other persons. In such a situation, the public sector undertakings would have an upper hand. They would not ordinarily /// release the money unless a "No-Demand Certificate" is signed. Each case, therefore, is required to be considered on its *(5)* own facts.

Further, *necessitas non habet legem* is an age-old maxim which means necessity knows no law. A person / may sometimes have to succumb to the pressure of the other party to the bargain who is in a // stronger position." A glance at the said clause will

immediately indicate that a no-claim certificate is required to be /// submitted by a contractor once the works are finally measured up. In the instant case the work was yet to *(6)* be completed and there is nothing to indicate that the works, as undertaken by the contractor, had been finally measured / and on the basis of the same a no-claim certificate had been issued by the appellant. On the other // hand, even the first arbitrator, who had been appointed, had come to a finding that no-claim certificate had /// been given under coercion and duress. It is the Division Bench of the Calcutta High Court which, for the first *(7)* time, came to a conclusion that such no-claim certificate had not been submitted under coercion and duress.

The High / Court conjectured that the age of the prosecutrix could be even 19 years. This appears to have been done by // adding two years to the age opined by PW-1. There is no such rule much less an absolute /// one that two years have to be added to the age determined by a doctor. In the instant case, the *(8)* brother of the prosecutrix has been examined as PW-1 and, therefore, it cannot be said that best evidence has / been withheld. The High Court fell in grave error in observing that the prosecutrix could be even 19 years of // age at the time of alleged occurrence. As regards clause 'Firstly', or clause 'Secondly' of S. 375 /// IPC, the expressions 'against her will' and 'without her consent' may overlap sometimes but surely the two expressions *(9)* in clause 'Firstly' and clause 'Secondly' have different connotation and dimension.

The expression 'against her will' would ordinarily mean that / the intercourse was done by a man with a woman despite her resistance and opposition. On the other hand, the // expression 'without her consent' would comprehend an act of reason accompanied by deliberation. The concept of 'consent' in the context /// of S. 375 IPC has to be read with s. 90 of the IPC. *(10)*

Intext new words and Phrases

....necessitas .... habet .. legem .. .... consent

.....inter alia ....thereunder .....documentary .....Builders

.....Contractors.....intercourse. prosecutrix...concept

.....connotation succumb.. ...succumbed

Note - Minutes-figures have been marked in Italics to differentiate these from clauses/sections of legal matter, in Dictation- writing.

Exercise 55 (80 w.p.m. - 10 minutes-Transcriptions)

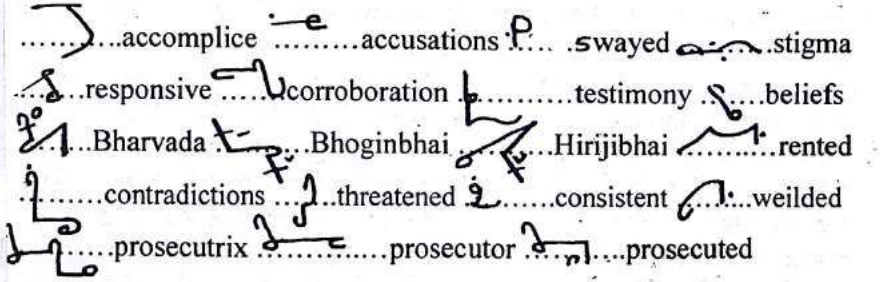
This Court in a long line of cases has given wider meaning to the word 'consent' in the context of /sexual offences as explained in various judicial dictionaries. A woman who is victim of sexual assault is not an accomplice // to the crime. Her evidence cannot be tested with suspicion as that of an accomplice. As a matter of fact, /// the evidence of the prosecutrix is similar to the evidence of an injured complainant or witness. The testimony of prosecutrix, *(1)* if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence / is necessary. In prosecutions of rape, the law does not require corroboration. It is only by way of abundant caution // that court may look for some corroboration so as to satisfy its conscience and rule out any false accusations. In /// examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent in the Indian society *(2)* and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight / of the female victim of sexual assault. The stigma that attaches to the victim of rape in Indian society, ordinarily, // rules out the leveling of false accusations. The observations made in the case of *Bharwada Bhoginbhai Hirjibhai* must be /// kept in mind invariably while dealing with a rape case.

The contention on behalf of the respondent that no alarm *(3)* was raised by the prosecutrix at the bus stand or the other places where she was taken and that creates / serious doubt about truthfulness of her evidence, overlooks the situation in which the prosecutrix was placed. She had been kidnapped // by two adult males, one of them - A-1 - wielded fire-arm and threatened her and she was taken away from /// her village, and kept in a rented room for many days where A-1 had sexual intercourse with her. Whenever *(4)* she asked A-1 for return to her village, she was threatened and her mouth was gagged. The absence of / alarm by her at the public place cannot lead to an inference that she had willingly accompanied A-1 and // A-2. The circumstances made her submissive victim and that does not mean that she was inclined and willing to /// intercourse with A-1. She had no free act of the mind during her stay with A-1 as *(5)* she was under constant fear. Although there are certain contradictions and omissions in her testimony, but such omissions and contradictions / are minor and on material aspects, her evidence is consistent. The prosecutrix being illiterate and rustic young woman, some contradictions // and omissions are natural as her recollection,

observance, memory and narration of chain of events may not be precise. Except /// the bald statement of A-1 u/s 313 Cr.P.C. that he has been *(6)* falsely implicated due to enmity, nothing has been brought on record that may probabalise that the prosecutrix had motive to / falsely implicate him. The circumstances even do not remotely suggest that the prosecutrix would put her reputation and chastity at // stake for the reason stated by A-1 u/s 313 Cr.P.C. that a case was /// pending between A-1 and one 'SR'. The evidence of the prosecutrix is reliable and has rightly been acted *(7)* upon by the trial court.

Although the lady doctor (PW-5) did not find any injury on the external or internal part of / body of the prosecutrix and opined that the prosecutrix was habitual to sexual intercourse but, that does not make the // testimony of the prosecutrix unreliable. The fact of the matter is that the prosecutrix was recovered almost after three /// weeks. Obviously the sign of forcible intercourse would not persist for that long period. It is wrong to assume that *(8)* in all cases of intercourse with the women against will or without consent, there would be some injury on the / external or internal part of the victim. The prosecutrix has clearly deposed that she was not in a position to // put up any struggle as she was taken away from her village by two adult males. The absence of injuries /// on the person of the prosecutrix is not sufficient to discredit her evidence; she was a helpless victim. Due to *(9)* fear she did not and could not inform the neighbours where she was kept. As regards the belated FIR,/ suffice it to observe that PW-1 He deposed that when he returned to his home in the evening // from agricultural field, he was informed that his sister (prosecutrix) who had gone to ease herself had not returned. He /// searched for her and he was told by the two villagers that she was seen with the accused in the fields. *(10)*

Intext new words and Phrases



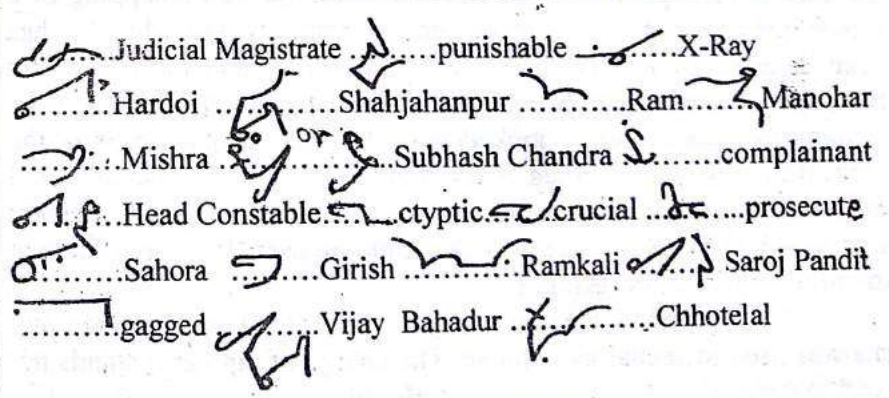
He contacted the relatives of the accused for return of his sister. He did not lodge the report immediately as / the honour of the family was involved. It was only after few days that when his sister did not return // and there was no help from the relatives of the accused that he made the complaint on 28th September, /// 1989 to the Superintendent of Police, who marked the complaint to the Circle Officer and the FIR (1) was registered on 30th September, 1989. The delay in registration of the FIR is, thus, reasonably / explained. The High Court was in grave error in concluding that there was no reasonable and plausible explanation for // the belated FIR and that it was lodged after consultation and due deliberation and that creates doubt about /// the case. The High Court was not at all justified in taking a different view or conclusion from the trial (2) court. The judgment of the High Court is vitiated by non-consideration of the material evidence and relevant factors eloquently / emerging from the prosecution evidence. The High Court in a sketchy manner reversed the judgment of the trial court without // discussing the deposition of the witnesses as well as all relevant points which were considered and touched upon by the /// trial court. The High Court has dealt with the matter with casual approach. The judgment of the High Court (3) is not only cryptic and perfunctory but it has also not taken into consideration the crucial evidence on record. On / flimsy grounds, the accused convicted of a serious crime of kidnapping and rape has been acquitted. There is no application // of mind to the evidence of the prosecutrix at all. There is no proper consideration of the evidence by the /// High Court.

The prosecution case in brief is th.s: On September 19, 1989 the prosecutrix (name withheld) (4) had gone to relieve herself in the evening. Ram Kali (A-3) followed her on the way. While she was / returning and reached near the plot of one Vijai Bahadur, Chhotey Lal (A-1) and Ramdas (A-2) came // from behind; A-1 caught hold of her and when she raised alarm, A- 1 showed fire-arm to her /// and gagged her mouth. A-1 along with A-2 and A-3 brought the prosecutrix upto the road. There, (5) A-3 parted company with A-1 and A-2. A-1 and A-2 then took the prosecutrix to / Village Sahora. On the night of September 19, 1989, the prosecutrix was kept in the house of // Girish and Saroj Pandit in Village Sahora. On the next day i.e., September 20, 1989, in the /// wee hours, A-1 and A-2 took the

prosecutrix in a bus to Shahajahanpur where she was kept in (6) a rented room for few days. During their stay in Shahajahanpur, A-1 allegedly committed forcible intercourse with the prosecutrix. / Whenever prosecutrix asked for return to her house, A-1 would gag her mouth and threaten her. In the meanwhile, // Rampal – brother of the prosecutrix – made a complaint to the Superintendent of Police, Hardoi on September 28; 1989 /// that A-1, A-2 and A-3 have kidnapped her sister (prosecutrix) on September 19, 1989. (7) Based on this complaint, the First Information Report (FIR) was registered on September 30, 1989. / The prosecutrix was recovered by the police on October 13, 1989 from Shahabad - Pihani Road near Jalalpur // culvert. On that day itself, the prosecutrix was sent for medical examination to the Women Hospital, Hardoi where she was /// examined by Dr. Shakuntala Reddy. Ram Manohar Misra to whom the investigation of the case was entrusted then took steps (8) for determination of the age of the prosecutrix as advised by the doctor and sent her for X-Ray examination. / On October 17, 1989, the prosecutrix was produced before the Judicial Magistrate I, Hardoi, where her statement under // Section 164 Cr.P.C. was recorded by the Judicial Magistrate.

A-1 was arrested on December /// 2, 1989. On completion of investigation, A-1 was charge sheeted for the offences punishable under various Sections (9) of the Indian Penal Code (IPC); A-2 was charge-sheeted under Sections 363, 366 / and 368, IPC and A-3 under Sections 363 and 366, // IPC. The prosecution in support of its case examined five witnesses, namely, complainant – Rampal (PW-1), prosecutrix (PW-2),/// Investigating Officer – Ram Manohar Mishra (PW-3), Subhash Chandra Mishra – Head Constable (PW-4) and Dr. Shakuntala Reddy. (1)

Intext new words and Phrases



Exercise 57 (80 w.p.m. - 10 minutes- Transcriptions)

The Additional Sessions Judge III, Hardoi vide his judgment dated September 5, 1990 acquitted A-3 as the / prosecution was not able to establish any case against her. However, on the basis of the prosecution evidence, the Additional // Sessions Judge III held that the prosecutrix was about 17 years of age at the time of occurrence of crime /// and found A-1 guilty under Sections 363, 366, 368 and *(1)* 376, IPC and sentenced him to undergo 7 years' rigorous imprisonment under Section 376 / IPC and the different sentences for other offences which were ordered to run concurrently.

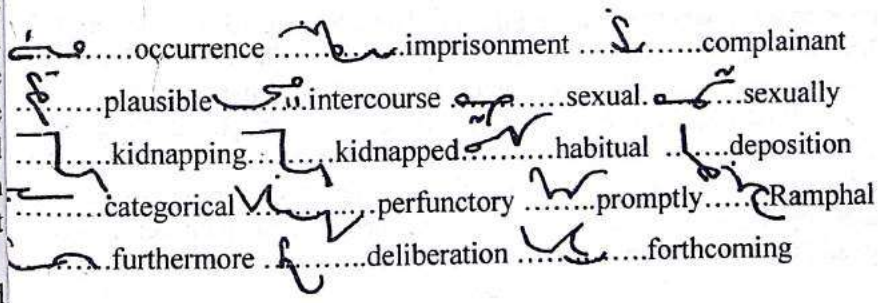
A-1 challenged the // judgment passed by the Additional Sessions Judge III, Hardoi before the Allahabad High Court, Lucknow Bench, Lucknow. The High Court /// vide its judgment dated March 11, 2003 reversed the judgment of the trial court and acquitted A-1. *(2)* While acquitting A-1, the High Court gave three reasons, namely; (1) kidnapping took place on September 19, 1989 / whereas the report of the occurrence was lodged after ten days and there was no reasonable and plausible // explanation as to why the report could not be lodged promptly and why it had been delayed for ten days; /// (2) according to medical evidence, the prosecutrix was found to be 17 years of age and she could be even *(3)* of 19 years of age at the time of occurrence and (3) no internal or external injury was found on / her body and she was habitual to sexual intercourse. We deem it appropriate to reproduce the entire reasoning of the // High Court as it is which reads as follows: "It has been submitted by the learned counsel for the appellant /// that according to the prosecution, alleged kidnapping took place on 19th September, 1989 whereas the report of *(4)* the occurrence was lodged after ten days. There was no reasonable and plausible explanation forthcoming from the side of the / prosecution as to why after alleged kidnapping of a minor girl a report could not be lodged promptly and why // it has been delayed for ten days. This by itself shows that the report had been lodged after consultation and after /// due deliberation and the prosecution can be safely looked with doubt. I fully agree with the contention of the learned *(5)* counsel for the appellant and furthermore, according to medical evidence on record, girl in question was found 17 years of / age and she could be even 19 years of age at the time of alleged occurrence.

No internal or external // injury was found on her body and she was used to sexual intercourse. The charge of rape also stands not

/// proved. The learned court below was thus not justified in believing the prosecution theory and convicting the appellant." We are *(6)* indeed surprised by the casual approach with which the High Court has dealt with the matter. The judgment of the / High Court is not only cryptic and perfunctory but it has also not taken into consideration the crucial evidence on // record. On flimsy grounds, the accused convicted of a serious crime of kidnapping and rape has been acquitted. There is no /// application of mind to the evidence of the prosecutrix at all. Having not been benefited by the proper consideration of *(7)* the evidence by the High Court, we have looked into the entire evidence on record carefully. The prosecutrix is an / illiterate and rustic young woman. She does not seem to have had formal education and, therefore, there is no school // certificate available on record. In the FIR, the age of the prosecutrix has been stated to be 13 /// years. In her statement recorded under Section 164, Cr.P.C., the prosecutrix stated that her age was *(8)* 13 years. PW-1, who is elder brother of the prosecutrix, in his deposition also stated that the age / of the prosecutrix was 13 years at the relevant time. However, the doctor - PW-5 on the basis of // her X-ray as well as physical examination opined that the prosecutrix was 17 years of age.

The trial court on /// consideration of the entire evidence recorded a categorical finding that the prosecutrix was about 17 years of age at the *(9)* time of occurrence. This is what the trial court said: "According to the complainant Ramphal, PW-2 was / aged 13 years at the time of the occurrence, but during the cross-examination, the complainant has stated in para // 7 of her cross examination that he was aged about 24 years and PW-2 was younger to him /// by 8-9 years. Thus, the age of the prosecutrix, according to the statement of the complainant comes to 16 years. *(10)*

Intext new words and Phrases



Note - Know the meaning of legal words and practice these thoroughly.

Exercise 58 (80 w.p.m. - 10 minutes- Transcription)

According to the supplementary report, on record, prepared by Lady Dr. Shakuntala, P.W. 5, PW-2 was aged / about 17 years. During the cross-examination, P.W. 5, has stated in para 9 of cross-examination that there // could be a difference of 6 months both ways in the age of PW-2. Thus PW-2 can be /// said to be aged 17 ½ years at the time of the occurrence."

We find ourselves in agreement (1) with the view of the trial court regarding the age of the prosecutrix. The High Court conjectured that the age / of the prosecutrix could be even 19 years. This appears to have been done by adding two years to the // age opined by PW-5. There is no such rule much less an absolute one that two years have to /// be added to the age determined by a doctor. We are supported by a 3-Judge Bench decision of this (2) Court in *State of Karnataka* v. *Bantara Sudhakara* wherein this Court at page 41 of the Report stated as / under: "Additionally, merely because the doctor's evidence showed that the victims belong to the age group of 14 to 16, // to conclude that the two years' age has to be added to the upper age-limit is without any foundation."

Learned /// counsel for the respondent relied upon a decision of this Court in the case of *M. Ahmed v. State of (3) Assam* in support of his submission that the best evidence concerning the age of prosecutrix having been withheld, the finding / of the High Court that the prosecutrix could be 19 years of age cannot be said to be erroneous. In the // present case, the brother of the prosecutrix has been examined as PW- 1 and, therefore, it cannot be said that /// best evidence has been withheld. The decision of this Court in *M. Ahmed* has no application at all. In our (4) view, the High Court fell in grave error in observing that the prosecutrix could be even 19 years of age at / the time of alleged occurrence.

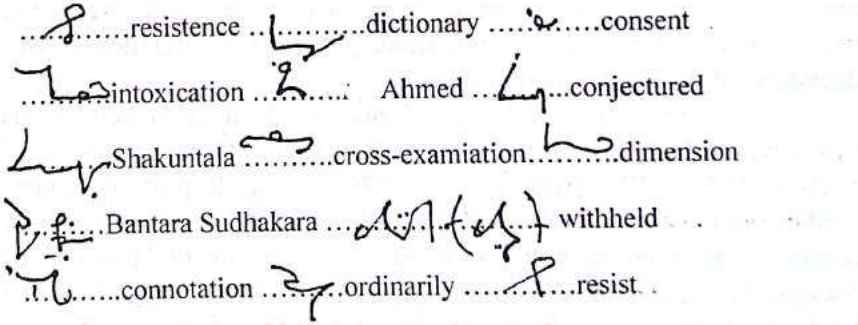
Be that as it may, in our view, clause (6) of Section 375 // IPC is not attracted since the prosecutrix has been found to be above 16 years (although below 18 /// years). In the facts of the case what is crucial to be considered is whether clause First or clause Second (5) of Section 375 IPC is attracted. The expressions 'against her will' and 'without her consent' may / overlap sometimes but surely the two expressions in clause First and clause Second have different connotation and dimension. The expression // 'against her will' would ordinarily mean that the intercourse was done by a man with a woman despite her resistance /// and opposition. On the other hand, the expression 'without her consent' would comprehend an act of reason accompanied by deliberation. The

(6) concept of 'consent' in the context of Section 375 IPC has come up for consideration before / this Court on more than one occasion. Before we deal with some of these decisions, reference to Section 90 of // the IPC may be relevant which reads as under: (a) "Consent known to be given under fear or /// mis-conception.—A consent is not such a consent as it intended by any section of this Code, if the (7) consent is given by a person under fear of injury, or under a misconception of fact, and if the person / doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or // misconception; (b) Consent of insane person.— if the consent is given by a person who, from unsoundness of mind, or /// intoxication, is unable to understand the nature and consequence of that to which he gives his consent; (c) Consent (8) of child.— unless the contrary appears from the context, if the consent is given by a person who is under / twelve years of age."

This Court in a long line of cases has given wider meaning to the word 'consent' // in the context of sexual offences as explained in various judicial dictionaries.

A woman's consent to intercourse may be hesitant, /// reluctant or grudging, but if she consciously permits it there is "consent".' In Words and Phrases, Permanent Edition, (Volume 8A) (9) at pages 205-, few American decisions wherein the word 'consent' has been considered and explained with regard to / the law of rape have been referred. These are as follows: "In order to constitute "rape", there need not // be resistance to the utmost, and a woman who is assaulted need not resist to the point of risking being /// beaten and, if she resists to the point where further resistance would be useless or her resistance is overcome by force. (10)

Intext new words and Phrases



"Will" is defined as wish, desire, pleasure, inclination, choice, the faculty of conscious, and especially of deliberate, action. It is / purely and solely a mental process to be ascertained, in a prosecution for rape, by what the prosecuting witness may // have said or done. It being a mental process there is no other manner by which her will can be /// ascertained, and it must be left to the jury to determine that will by her acts and statements, as disclosed (1) by the evidence. It is but natural, therefore, that in charging the jury upon the subject of rape, or assault / with intent to commit rape, the courts should have almost universally, and, in many cases, exclusively, discussed "consent" and resistance. // There can be no better evidence of willingness is a condition or state of mind no better evidence of unwillingness /// than resistance. No lexicographer recognizes "consent" as a synonym of willingness, and it is apparent that they are not synonymous.(2) It is equally apparent, on the other hand, that the true relation between the words is that willingness is a / condition or state of mind and "consent" one of the evidences of that condition. Likewise resistance is not a synonym // of unwillingness, though it is an evidence thereof. In all cases, therefore, where the prosecuting witness has an intelligent /// will, the court should charge upon the elements of "consent" and resistance as being proper elements from which the jury (3) may infer either a favourable or an opposing will. It must, however, be recognized in all cases that the real / test is whether the assault was committed against the will of the prosecuting witness. Broadly, this Court has accepted and // followed the judgments referred to in the above judicial dictionaries as regards the meaning of the word 'consent' as occurring /// in Section 375 IPC. It is not necessary to refer to all the decisions (4) and the reference to two decisions of this Court shall suffice.

In *State of H.P.* v. *Mango Ram3* , a / 3-Judge Bench of this Court while dealing with the aspect of 'consent' for the purposes of Section 375 // IPC held at page 230 of the Report as under: "Submission of the body under /// the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 *(5)* requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality / of the act but after having fully exercised the choice between resistance assent. Whether there was consent or not, is

// to be ascertained only on a careful study of all relevant circumstances."

In the case of *Uday* v. *State of /// Karnataka*, this Court put a word of caution that there is no strait jacket formula for determining whether consent given by (6) the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. The Court / at page 57 of the Report stated: "In the ultimate analysis, the tests laid down by the courts provide // at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, /// consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar (7) facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception / of fact.

The appellant filed a complaint u/s 138 of the Negotiable Instruments Act, 1881 //. The accused, on being summoned by the Magistrate, filed a petition before the High Court u/s 482 /// CrPC, *inter alia,* praying for dispensing with her personal appearance before the Magistrate. The Single Judge of (8) the High Court, while allowing the petition and permitting the accused to appear before the trial court through her counsel, / issued general directions to all the criminal courts as regards holding of trials, particularly, in cases involving offences u/s // 138 of the N.I. Act as also in all other cases involving offences technical in nature and /// not involving moral turpitude. The appeal filed by the complainant was listed before a Division Bench of the Supreme Court (9) which felt the necessity of referring the matter to a larger Bench and, thus, the appeal was referred to the / three-Judge Bench to consider the question: whether. the High Court in exercise of its jurisdiction u/s //482 and 483 of the Code of Criminal Procedure, 1973 and/or under Article /// 227 of the Constitution of India could issue guidelines directing all courts taking cognizance of offences u/s 138. (10)

Intext new words and Phrases

....conscious .....ascertain .....ascertained .....assent

.....lexicographer .....recognizes .....synonym(s)-ous

.....evidences .....construed .....negotiable-tion

.....dispensing.....turpitude .....cognizance

Exercise 60 (80 w.p.m. - 10 minutes- Transcriptions)

Section 205 of the Code of Criminal Procedure, 1973 confers a discretion on the court to / exempt an accused from personal appearance till such time his appearance is considered by the court to be not necessary // during the trial. It is manifest from a plain reading of the provision that while considering an application u/s /// 205 of the Code, the Magistrate has to bear in mind the nature of the case as also *(1)* the conduct of the person summoned. He shall examine whether any useful purpose would be served by requiring the personal attendance / of the accused or whether the progress of the trial is likely to be hampered on account of his absence. //

Therefore, the satisfaction whether or not an accused deserves to be exempted from personal attendance has to be of the /// Magistrate, who is the master of the court in so far as the progress of the trial is concerned and (2) none else. The guidelines, laid down by this Court in *Bhaskar Industries Ltd.,* are concurred with and while reaffirming the same, / this Court would add that the order of the Magistrate should be such which does not result in unnecessary harassment // to the accused and at the same time does not cause any prejudice to the complainant. The Court must ensure /// that the exemption from personal appearance granted to an accused is not abused to delay the trial. In view of (3) the legal principles enunciated by this Court, the impugned order is clearly erroneous in as much as the discretion of / the Magistrate u/s 205 of the Code cannot be circumscribed by laying down any general directions in // that behalf.

Similarly, while it is true that the power of superintendence conferred on the High Court under Article /// 227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly (4) and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. In any / event, the power of superintendence cannot be exercised to influence the subordinate judiciary to pass any order or judgment in // a particular manner. As regards direction (iv) in the order of the Single Judge of the High Court to accept /// and consider the written statement made by the accused, it is again not in accord with the language of *(5)* S. 313 of the Code nor with the dictum laid down by this Court in *Basavaraj R. Patil's case*. / On the plain language of S. 313, it is evident that in a summons case, when the personal // appearance of the accused has been dispensed with u/s 205 of the Code, a discretion is vested /// in the Magistrate to dispense with the

rigor of personal examination of the accused u/s 313 *(6)* of the Code as well. It is manifest from the judgment in *Basavraj R. Patil's case* that dispensation with the / personal examination of an accused in terms of the provision of s. 313(1)(h) is within the // trial court's discretion, to be exercised keeping in view certain parameters, enumerated therein and not as a matter of course. ///

It is true that in direction (vii) in the impugned judgment, the Single Judge has clarified that the stipulations in *(7)* the preceding paragraphs are not intended to fetter the discretion of the court to follow any different procedure, if there / be compelling need but the requirement of recording 'specific reasons' by the Magistrate for deviating from the directions given in // the order, as stipulated in the same paragraph is by itself tantamount to putting fetters on the jurisdiction of the /// Magistrate. This is not warranted in law.

Thus, in the instant case, the High Court exceeded its jurisdiction u/s 482 *(8)* of the Code and/or Article 227 of the Constitution by laying down the general directions, which / are inconsistent with the clear language of Sections 205 and 313 of the Code. In // light of the guidelines laid down by this Court, further directions on the same issue by the High Court were /// wholly uncalled for. The impugned order containing general directions to the lower courts is set aside. However, if the accused *(9)* moves the trial court with an application u/s 205 of the Code for exemption from personal attendance / within the time stated, the exemption granted to her by the High Court shall continue to be in force till // her application is disposed of by the trial court.

Challenge in this appeal, by special leave, is to the order /// dated 4th September, 2008 passed by a learned Single Judge of the High Court of Kerala in 2007. *(10)*

Intext new words and Phrases

converse ..... hampered ..... Bhaskar ..... judiciary

harassment ..... appearance ..... circumscribed

erroneous ..... superintendence ..... dictum

Basavraj ..... dispensation ..... deviating

uncalled for ..... stipulation ..... reaffirming

Kerala ..... exemption ..... tantamount

Exercise 61 (80 w.p.m. - 10 minutes- Transcriptions)

In the judgment of the Kerala High Court, a number of general directions have been issued to all the criminal / courts, which are called upon to hold trials, particularly in cases involving an offence under Section 138 // of the Negotiable Instruments Act, 1881, as also in all other cases involving offences which are technical in /// nature and do not involve any moral turpitude. In view of the controversy at hand, it is unnecessary to state the (1) facts giving rise to this appeal in detail, except to note that the present case arises out of a complaint / filed under Section 138 of the N.I. Act. On being summoned by the Magistrate, the accused preferred // a petition before the High Court under Section 482 of the Criminal Procedure Code, 1973 ///, *inter alia,* praying for dispensing with her personal appearance before the Magistrate. As afore-stated, the High Court, while allowing (2) the said application, and permitting the accused to appear before the Trial Court through her counsel, felt that there was / great need for rationalising, humanising and simplifying the procedure in criminal courts with particular emphasis on the attitude to the // "criminal with no moral turpitude" or the criminal allegedly guilty of only a technical offence, including an offence under Section /// 138 of the N.I. Act. Relying on the decision of this Court in *Bhaskar Industries Ltd. Vs. Bhiwani Denim (3) Ltd. & Ors.* and of the Kerala High Court in *Saseendran Nair Vs. General Manager*; the learned Judge has issued the / following 'rules of guidance', with a direction that these can and must certainly be followed by the court below in // the instant case as also by all criminal courts which are called upon to deal with trials under Section 138 /// of the N.I. Act:- Hereafter in all 138 prosecutions, the very fact that the prosecution (4) is one under Section 138 of the Negotiable Instruments Act shall be reckoned as sufficient reason by all / criminal courts to invoke the discretion under Section 205 Cr.P.C and only a summons under Section // 205 Cr.P.C shall be issued by the criminal courts at the first instance. In all pending /// 138 cases also applications under Section 205 Cr.P.C shall be allowed and the accused (5) shall be permitted to appear through their counsel.

The plea whether of guilty or of innocence can be recorded through / counsel duly appointed and for that purpose personal presence of the accused shall not be insisted. Evidence can be recorded // in a trial under Section 138 of the Negotiable Instruments Act in the presence of the counsel as enabled /// by Section 273

Cr.P.C when the accused is exempted from personal appearance and for that (6) purpose, the personal presence of the accused shall not be insisted.

Examination under Section 313(b) / Cr.P.C can be dispensed with under the proviso to Section 313(1) and if the // accused files a statement explaining his stand, the same can be received by the court notwithstanding the absence of a /// provision similar to Section 233 and 243 Cr.P.C in the procedure for (7) trial in a summons case. The power and the obligation to question the accused to enable him to explain the circumstances / appearing in evidence against him must oblige the court in such situation to accept and consider the written statement made // by the accused. To receive the judgment also, it is not necessary or essential to insist on the personal presence /// of the accused if the sentence is one of fine or the judgment is one of acquittal. After the pronouncement (8) of judgment, the case can be posted to a specific date with directions to the accused to appear in person / to undergo the sentence. By that date, it shall, of course, be open to the accused to get the order // of suspension of the superior court produced before court. Where warrants are to be issued in a 138 /// prosecution, ordinarily a bailable warrant under Section 88 Cr.P.C must be issued at the first instance before a (9) non-bailable warrant without any stipulations under Section 87 Cr.P.C is issued.

The above stipulations can only be reckoned / as applicable in the ordinary circumstances and are not intended to fetter the discretions of the court to follow any different // procedure if there be compelling need. In such event, the orders/directions of the Magistrate shall clearly show the specific /// reasons as to why deviations are resorted to. So, any person having a grievance has the option of approaching this Court. (10)

Intext new words and Phrases

controversy ..... dispensing ..... afore-stated

Bhawani Denim Ltd. ..... Saseedran ..... reconed

innocence ..... exempted ..... dispensed ..... invoke

pronouncement ..... suspension ..... deviations

acquittal ..... acquitted ..... resorted ..... intended

Magistrate ..... orders ..... grievance

The Sessions Judges and the Chief Judicial Magistrates must also ensure that these directions are followed in letter and spirit by the / subordinate courts. Commitment to human rights and the yearning to ensure that courts are user friendly are assets to a modern // judicial personality and assessment of judicial performance by the superiors must make note of such commitments of a judicial officer. /// Even though the above directions are issued with specific reference to prosecutions under Section 138 of the *(1)* Negotiable Instruments Act, they must be followed in all other cases also where the offence alleged is technical and involves / no moral turpitude."

Being aggrieved with the order granting a general exemption to the accused from personal appearance before the // Trial Court, the complainant has filed this appeal. On 17th November, 2008, while granting leave in this matter,/// a bench of two learned judges referred the instant case to a larger Bench, posing the following question for determination. *(2)*

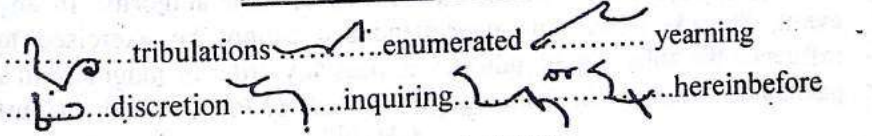
"One of the questions which arises for consideration in this special leave petition is as to whether the High court / in exercise of its jurisdiction under Sections 482 and 483 of the Code of the Criminal // Procedure and/or under Article 227 of the Constitution of India could issue guidelines directing all courts taking /// cognizance of offences under section 138 of the Negotiable Instruments Act *inter alia* to invoke the discretion under *(3)* Section 205 of the Code of Criminal Procedure and only with a further direction that summons under Section 205 / shall be issued at the first instance. Keeping in view importance of the question involved as also the various // decisions of this Court, upon which the learned Judge of the High Court has placed reliance, in our opinion, we /// think that this is a matter which should be heard by a larger Bench. It is directed accordingly." This is *(4)* how the present appeal has been placed before this Bench.

Having heard the learned counsels for the parties, we are / convinced that the impugned order is unsustainable. Section 205 of the Code, which clothes the Magistrate with the // discretion to dispense with the personal appearance of the accused, reads as follows: Magistrate may dispense with personal attendance of /// accused.—(a) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the *(5)* personal attendance of the accused and permit him to appear by his pleader. (b) But the

Magistrate inquiring into or / trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, // and, if necessary, enforce such attendance in the manner hereinbefore provided." The Section confers a discretion on the court to /// exempt an accused from personal appearance till such time his appearance is considered by the court to be not necessary *(6)* during the trial. It is manifest from a plain reading of the provision that while considering an application under Section / 205 of the Code, the Magistrate has to bear in mind the nature of the case as also // the conduct of the person summoned. He shall examine whether any useful purpose would be served by requiring the personal /// attendance of the accused or whether the progress of the trial is likely to be hampered on account of his *(7)* absence. Therefore, the satisfaction whether or not an accused deserves to be exempted from personal attendance has to be of / the Magistrate, who is the master of the court in so far as the progress of the trial is concerned // and none else.

In *Bhaskar Industries Ltd.* (supra), this Court had laid down the following guidelines, which are to be borne in mind /// while dealing with an application seeking dispensation with the personal appearance of an accused in a case under Section *(8)*138 of the N.I. Act: It is within the powers of a Magistrate and in his judicial discretion / to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in // a summons case, if the Magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations /// on him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due *(9)* to the far distance at which the accused resides or carries on business or on account of any physical or other / good reasons the Magistrate feels that dispensing with the personal attendance of the accused would only be in the interests // of justice. However, the Magistrate who grants such benefit to the accused must take the precautions enumerated above, as a /// matter of course." The Court must ensure that the exemption from personal appearance granted to an accused is not abused. *(10)*

Intext new words and Phrases



We respectfully concur with the above guidelines and while reaffirming the same, we would add that the order of the / Magistrate should be such which does not result in unnecessary harassment to the accused and at the same time does not cause // any prejudice to the complainant.

In light of the afore-extracted legal principles, the impugned order is clearly erroneous in /// as much as the discretion of the Magistrate under Section 205 of the Code cannot be circumscribed by *(1)* laying down any general directions in that behalf. In *Manoj Narain Agrawal Vs. Shashi Agrawal & Ors.8*, this Court, / while observing that the High Court cannot lay down directions for the exercise of discretion by the Magistrate under Section // 205 of the Code, had echoed the following views: "Similarly, the High Court should not have, for all intent /// and purport, issued the direction for grant of exemption from personal appearance. Such a matter undoubtedly shall be left for *(2)* the consideration before the learned Magistrate. We are sure that the Magistrate would exercise his jurisdiction in a fair and / judicious manner."

It is equally trite that the inherent powers of the High Court under Section 482 // of the Code have to be exercised sparingly with circumspection, and in rare cases to correct patent illegalities or /// to prevent miscarriage of justice. In *Madhu Limaye Vs. The State of Maharashtra*,9 a Bench of three learned *(3)* Judges of this Court had observed that: the following principles may be noticed in relation to the exercise of the inherent / power of the High Court....: - (a) That the power is not to be resorted to if there is a specific // provision in the Code for the redress of the grievance of the aggrieved party; (b) That it should be exercised /// very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice; *(4)* (c) That it should not be exercised as against the express bar of law engrafted in any other provision of the / Code."

Similarly, while it is true that the power of superintendence conferred on the High Court under Article 227 // of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only /// in appropriate cases in order to keep the subordinate courts within the bounds of their authority. In any event, the *(5)* power of superintendence cannot be exercised to influence the subordinate judiciary to pass any order or judgment in a particular / manner. In *Jasbir Singh Vs. State of Punjab10*, this Court

observed that: "So, even while invoking the provisions of Article // 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and /// only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. The power of *(6)* superintendence exercised over the subordinate courts and tribunals does not imply that the High Court can intervene in the judicial / functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of // paramount importance, just as the independence of the superior courts in the discharge of their judicial functions. The principle of /// justice, therefore should be observed by all Courts.

The Bangalore Development Authority, on 3.1.1977, issued a *(7)* preliminary notification in terms of the Bangalore Development Authority Act, 1976 (BDA Act) for acquisition / of certain lands of which the land in question (2 acres and 34 guntas located in Survey No. 19/20) was // a part. The final notification was issued on 2.8.1978. However, non-finalisation of the acquisition /// proceedings led to filing of a writ petition before the High Court. The Authority by Resolution No. 1084 *(8)* dated 28.6.1988 denotified 1 acre and 2 guntas of the land in question. The / writ petition was withdrawn. The appellant purchased the said land. Subsequently, by a letter dated 30th August, // 2001, the appellant was informed that the de-notification Resolution No. 1084 had been withdrawn by /// Resolution No. 325/97 dated 31.12.1997. The appellant filed a *(9)* writ petition before the High Court seeking to quash the preliminary and the final notifications dated 3.1.1977 and / 2.8.1978, respectively. It was contended that the provisions of s. 11-A of the // Land Acquisition Act, 1894 were applicable to the BDA Act and the award having been made /// after a period of more than two years from the date of declaration of the Act., the acquisition proceedings had lapsed. *(10)*

Intext new words and Phrases

....denotified ....subsequently .....finalization

.....sparingly .....superintendence .....quash

.....Madhu Limaye .....illegalities .....mis-carriage

.....inherent .....Manoj Narain .....Shashi Agarwal

.....lapsed .....declaration .....Superintendent

Exercise 64 *(80 w.p.m. - 10 minutes)*

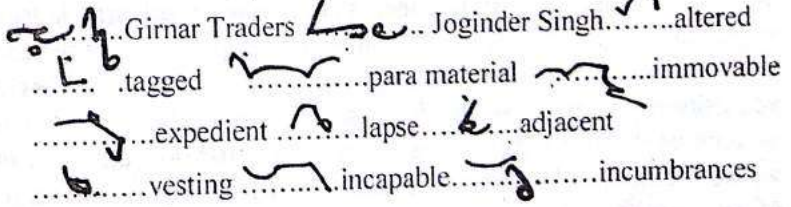
The writ petition and the writ appeals of the purchaser-appellant having been dismissed by the Single Judge and the / Division Bench of the High Court respectively, it filed the instant appeal. A two Judge Bench of the Supreme Court // in *Girnar Traders'* case1 considered the question of reading the provisions of the Land Acquisition Act, 1894,/// as amended by Central Act of 1984, into the provisions under Chapter VII of the Maharashtra Regional *(1)* and Town Planning Act, 1966 for acquisition of land thereunder and feeling difficulty to agree with the / observations made in *Sant Joginder Singh's* case, referred the matter to a larger Bench. When the case came up // before a three Judge Bench, even it was of the opinion (*Girnar Traders*)-3 that the question of reading the /// provisions of s. 11-A of the 1894 Act into the provisions of the MRTP *(2)* Act required consideration by a larger Bench and, as such, the matters were referred to the Constitution Bench. A number / of other matters including the instant appeal were tagged with the case of *Girnar Traders-2),* which was decided by the Constitution // Bench on January 11, 2011.

Though the object of the Bangalore Development Authority Act, 1976 /// may be pari materia to the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act), *(3)* there are certain stark distinctions between some of the provisions of the respective Acts, particularly, where they relate to functions / and powers of the Authority in preparation of plans as well as with respect to acquisition of the land. The // instant appeal relates to the BDA Act. The respondent-Bangalore Development Authority (the Authority) came to be /// constituted in terms of s.3 of the BDA Act. The object of the Authority has been spelt *(4)* out in s. 14 of the BDA Act which states that the Authority, *inter alia,* shall promote and / secure the development of the Bangalore Metropolitan Area and for that purpose, the Authority shall have the power to acquire,// hold, manage and dispose of moveable and immoveable property, whether within or outside the area under its jurisdiction, to carry /// out building, engineering and other operations and generally to do all things necessary or expedient for the purpose of such *(5)* development and for purposes incidental thereto. Thus, the primary object of the BDA Act was to provide for / establishment of the development authority, for development of the city of Bangalore and areas adjacent

thereto and for the matters // connected therewith; and other matters are incidental thereto. The acquisition of immoveable property is, therefore, for the said purpose alone. /// The development scheme has to provide for every detail in relation to development of the area under the scheme as *(6)* well as acquisition of land, if any, required. Upon sanction of the scheme, the Government shall publish, in the Official / Gazette, a declaration stating the fact of such sanction and that the land proposed to be acquired by the Authority // for the purposes of the scheme is required for a public purpose.

A very important aspect which, unlike the MRTP /// Act, is specified in the BDA Act is that once the land is acquired and it vests *(7)* in the State Government in terms of s.16 of the Land Acquisition Act, then the Government upon (a) payment / of the cost of acquisition and (b) the Authority agreeing to pay any further cost, which may be incurred on // account of acquisition, shall transfer the land to the Authority whereupon, it shall vest in the Authority. The Government is /// further vested with the power to transfer the land to the Authority belonging to it or to the Corporation as *(8)* per s. 37 of the BDA Act. Government in terms of s. 16 of the Land Acquisition / Act, the acquisition would not lapse or terminate as a result of lapsing of the scheme u/s 27 // of the BDA Act. On vesting, the land stands transferred and vested in the State/Authority free from /// all encumbrances and such status of the property is incapable of being altered by fiction of law either by the *(9)* State Act or by the Central Act. Both these Acts do not contain any provision in terms of the property./ The language of Section 36 of the BDA Act clearly mandates legislation by incorporation and as per // the scheme of the two Acts, effective and complete implementation of the State law without any conflict is possible. The /// object of the State law being planned development, acquisition does not offend any of the known principles of statutory interpretation. *(10/800)*

Intext new words and Phrases



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There is no reversal of the title and possession of the State. However, this may not be true in cases / where acquisition proceedings are still pending and land has not been vested in the Government in terms of s.16 // of the Land Acquisition Act.

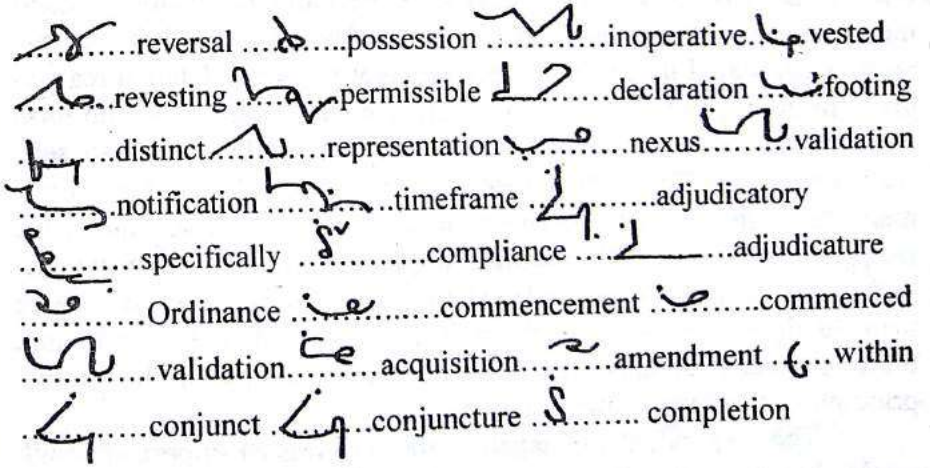
What is meant by the language of s.27 of the BDA /// Act, i.e. "provisions of s. 36 shall become inoperative", is that if the acquisition proceedings are pending and *(1)* where the scheme has lapsed, further proceedings in terms of s.36(3) of the BDA Act, / i.e. with reference to proceedings under the Land Acquisition Act shall become inoperative. Once the land which, upon its // acquisition, has vested in the State and thereafter vested in the Authority in terms of s. 36(3); such /// vesting is incapable of being disturbed except in the case where the Government issues a notification for re-vesting the *(2)* land in itself, or a Corporation, or a local Authority in cases where the land is not required by the / Authority under the provisions of s.37(3) of the BDA Act. This being the scheme of // the acquisition within the framework of the State Act, read with the relevant provisions of the Central Act, it will /// not be permissible to bring the concept of 'lapsing of acquisition' as stated in the provisions of s. 11A *(3)* of the Land Acquisition Act into Chapter IV of the BDA Act. The provisions of s. 27 of / the BDA Act mandate the Authority to execute the scheme, substantially, within five years from the date of // publication of the declaration under sub-s. (1) of s. 19. If the Authority fails to do so, then the /// scheme shall lapse and provisions of s. 36 of the BDA Act will become inoperative. The provisions *(4)* of s.27 have a direct nexus with the provisions of s.36, which provide that the / provisions of the Land Acquisition Act, so far as they are applicable to the State Act, shall govern the cases // of acquisition otherwise than by agreement. Acquisition stands on a completely distinct footing from the scheme formulated which is the subject /// matter of execution under the provisions of the BDA Act.

On a conjunct reading of the provisions of *(5)* Sections 27 and 36 of the State Act, it is clear that where a scheme lapses, the acquisition / may not. This, of course, will depend upon the facts and circumstances of a given case. Where, upon completion of // the acquisition proceedings, the land has vested in the State Under the scheme of the BDA Act, there /// are two situations, amongst others, where the rights of a common person are affected - one relates to levy of betterment *(6)* tax u/s 20 and property tax u/s 28B of the BDA Act

while the / other relates to considering the representation made upon drawing up of a notification in terms of s.17(1) of // the said Act in regard to acquisition of building or land and the recovery of betterment tax. For determination of the /// rights and claims in this regard, a complete adjudicatory mechanism has been provided under the State Act itself. There is *(7)* a provision of appeal in s.62A. Further, the Government and the Authority are vested with revisional powers. / All these provisions show that the BDA Act has provided for a complete adjudicatory process for determination of // rights and claims. Only in regard to the matters which are not specifically dealt with in the BDA /// Act, reference to Land Acquisition Act, in terms of s.36, has been made, for example acquisition of land *(8)* and payment of compensation. This also is a pointer to the BDA Act being a self-contained Act. /

The provisions of the Land Acquisition Act, which provide for timeframe for compliance and the consequences of default thereof, are // not applicable to acquisition under the BDA Act. They are Ss. 6 and 11A of the Land Acquisition /// Act. As per s. 11A, if the award is not made within a period of two years from the *(9)* date of declaration u/s 6, the acquisition proceedings will lapse. Similarly, where declaration u/s 6 of this / Act is not issued within three years from the date of publication of notification u/s 4 of the Land Acquisition // [such notification being issued after the commencement of the Land Acquistion (Amendment and Validation) Ordinance, 1967 /// but before the commencement of Central Act 68 of 1984] or within one year of notification. (10)

Intext new words and Phrases



Exercise 66 (80 w.p.m. - 10 minutes- Transcriptions)

One of the apparent and unavoidable consequences of reading the provisions of s.11A of the Central Act into the / State Act would be that it is bound to adversely affect the 'development scheme' under the State Act and may // even frustrate the same. It is a self defeating argument that the Government can always issue fresh declaration and the /// acquisition in all cases should lapse in terms of s.11A of the Central Act. The argument also does not *(1)* stand when tested on the touchstone of the principles, 'test of unworkability', 'test of intention' and 'test of frustration of the / object of the principal legislation'. As per the scheme of the two Acts, the conclusion has to be that they // can be construed and applied harmoniously to achieve the object of the State Act and it is not the requirement /// of the same that provisions of s.11A of the Central Act should be read into the State Act. *(2)* The obvious animus, is that the provisions providing time-frames, defaults and consequences thereof, which are likely to have adverse / effect on the development schemes, were intended to be excluded. Thus, it will be clear that the provisions relating to // acquisition like passing of an award, payment of compensation and the legal remedies available under the Central Act would have /// to be applied to the acquisitions under the State Act but the bar contained in ss. 6 and 11A *(3)* of the Central Act cannot be made an integral part of the State Act as the State Act itself has / provided specific time-frames under its various provisions as well as consequences of default thereto. The scheme, thus, does not // admit such incorporation. The BDA Act has already been held to be a valid law by this Court /// not repugnant to the Land Acquisition Act as they operate in their respective fields without any conflict. For the reasons *(4)* stated in different decision as well as the detailed reasons given in the case of *Girnar Traders III*, which reasoning / would form part of this judgment, it is concluded that the BDA Act is a self-contained code. The // language of s. 36 of the BDA Act clearly mandates legislation by incorporation and as per the /// scheme of the two Acts, effective and complete implementation of the State law without any conflict is possible. The object *(5)* of the State law being planned development, acquisition is merely incidental thereto and, therefore, such an approach does not offend / any of the known principles of statutory interpretation.

The respondents, engaged in the business of import of rough marble blocks, // classifiable under sub-heading 15.12 of the Customs

Tariff Act, 1975. The goods imported by /// them were confiscated u/s 111(d) of the Act. They were given option to redeem the goods on *(6)* payment of redemption fine, which was fixed adopting the margin of profit as the basis, u/s 125,/ with penalty levied u/s 112(a) of The Act. The appeals of importers were partly allowed by the // Customs, Excise and Gold Control Appellate Tribunal, observing that the facts in each case were similar to those in *M/s /// Stonemann Marble Industries vs. Commissioner of Customs*; decided on 30 January, 2002, and, therefore, reduced the redemption fine *(7)* and penalty to 20% and 5% of the CIF value, respectively. The Revenue filed an application / u/s 130 A of the Act before the High Court stating the questions for reference by the // Tribunal to the High Court. The High Court rejected the applications on the ground that no question of law arose /// from orders of the Tribunal. Aggrieved, Revenue filed the appeals.

On a bare perusal of the provisions of *(8)* s. 130 A of the Customs Tariff Act, 1975, it is manifest that it is for the party applying / for reference to clearly state the question of law which he seeks to be referred to the High Court and // then it is for the High Court to consider whether any such question of law stated in the application for /// reference before it should be directed to be referred. In the instant cases, it is manifest from the format of *(9)* the questions proposed by the Revenue, for reference to the High Court that the Revenue did not assail the Tribunal's / finding to the effect that the facts in the instant cases were similar to those in *M/s. Stonemann Marble // Industries*. It is a trite proposition that unless the correctness of facts, on the basis whereof an inference is drawn /// by the Tribunal, is put in issue, a question of law does not arise from its order in any way. *(10)*

Intext new words and Phrases

.....animous .....unavoidable .....adversely .....redeem

.....redemption .....unworkability.....touchstone .....tariff

.....Stonemann .....statutory .....interpretation .....whereof

.....proposition.....harmoniously .....interpret

.....classifiable .....confiscated .....repugnant

.....marble industries .....revenue .....referred

Exercise 67 (80 w.p.m. - 10 minutes- Transcriptions)

The appellants herein, Gurdial Singh now aged 85 years, his brother Bakshish Singh, now aged 70 years, and Darshan / Singh now aged about 35 years were brought to trial and convicted for offences punishable under Section 302 // etc. of the IPC and sentenced to life imprisonment by the Trial Court. The High Court dismissed /// the appeal filed by them and the matter is before us after grant of special leave. The facts are as *(1)* under:

A drain carrying the village sewage ran across the house of Gurdial Singh appellant. He attempted to divert the / course of the drain away from his house towards the house of Buta Singh deceased. A civil suit was accordingly // filed by Buta Singh against Gurdial Singh for restraining him from constructing the new drain. It appears that the appellants /// had a grudge against Buta Singh and his family on that account. At about 8 a.m. on the 10th September *(2)* 1995, as Buta Singh and his brother Gurbachan Singh were going towards their fields, they were way-laid in / front of the village Gurdwara by Gurdial Singh, Bakhshish Singh, Darshan Singh, the appellants herein, and in addition Amrik Singh, // Joginder Singh, Kulwant Singh and Balwant Singh. Gurdial Singh was armed with a Gandasi whereas the others were armed with /// Dangs. As the accused were taking measurements for the construction of the drain, Buta Singh raised an objection on which *(3)* Gurdial Singh raised a lalkara exhorting the others to teach a lesson to Buta Singh.

Gurdial Singh then gave a / Gandasi blow on the head of Buta Singh whereas the other accused attacked Buta Singh with their dangs. PW5 // Kulwinder Kaur, daughter-in-law of Buta Singh witnessed the occurrence. She raised an alarm which attracted her husband /// PW-7 Gurmeet Singh. Kulwant Singh and Darshan Singh gave injuries to him. PW Kulwinder Kaur also intervened *(4)* but was chased away by Gurdial Singh, Balwant Singh, Amrik Singh and Joginder Singh and after entering her house Joginder Singh / gave a dang blow on her left upper arm and when Mohinder Kaur, sister of PW Gurmeet Singh attempted to // intervene Gurdial Singh gave a gandasi blow from its reverse side on Kulwinder Kaur and Balwant Singh and Amrik /// Singh caused dang blows to Kulwinder Kaur. Chint Kaur, wife of Buta Singh was also inflicted injuries by Gurdial Singh. *(5)* The injured were thereafter removed to the hospital and information about their admission was conveyed to the police post. PW11 / Rajesh Kumar, ASI also received the Medico-legal reports in

respect of Buta Singh, Gurmeet Singh, Chint Kaur, // Mohinder Kaur and Kulwinder Kaur in the Police Station. The ASI immediately reached the hospital and moved an /// application at 11.30 a.m. to find out if the injured were fit to make a statement. The doctor (6) opined that they were unfit to do so. The ASI again went to the hospital at 8.30 p.m. / and moved another application as to the fitness of the injured and the doctor reiterated that Buta Singh and // Gurmeet Singh were unfit to make their statements but Kulwinder Kaur, Mohinder Kaur and Chint Kaur were found fit for /// the purpose. The ASI then recorded the statement of Kulwinder Kaur and on its basis the First Information Report (7) under Section 307 etc. of the IPC was registered. The injured were also medically examined and / it was found that Gurmeet Singh had 8 injuries in all, with injury No.1 being caused by a sharp // edged weapon and injury No.2 being grievous in nature. Chint Kaur was found to have two simple injuries, Mohinder /// Kaur one simple injury and Kulwinder Kaur three simple injuries.

The doctor also examined Buta Singh at 11.20 a.m. *(8)* and found two injuries on his person; A lacerated wound 3.5 cm x ½ cm x bone deep / on the left side of the scalp 8 cm lateral to the mid-line and 5 cm behind the anterior // hair line. Bleeding was present.

A lacerated wound 2 cm x ½ cm x bone deep on the left side /// of the scalp, 3 cm lateral to the midline and 5 cm medical (sic) to injury No.1.*(9)* Bleeding was present. The doctor also kept the injuries under observation and opined that injury No.1 could be caused / from the reverse side of a Gandasi. He also opined that both the injuries were grievous in nature. Buta Singh // expired at the 7.30 p.m. on the 17th September 1995 and his body was subjected to /// a post-mortem examination. On the completion of the investigation, seven accused were charged for offences punishable under the Code. (10)

Intext new words and Phrases

Gurdial Singh. Bakshi Singh Darshan Singh

Gurbachan Singh Gurudwara Amrik Singh

Joginder Singh Kulwant Singh Balwant Singh

Gandasa dangs lalkara Gurmit Singh

post-mortem bleeding punishable

medico-legal intervened alarm

Exercise 68 (80 w.p.m. - 10 minutes- Transcriptions)

They pleaded not guilty, and were brought to trial. The trial court relying on the evidence of PW5, PW7 / and PW10, the injured three eye witnesses, held that the prosecution story in so far as the three appellants // was proved beyond doubt, but the other accused, namely Amrik Singh, Joginder Singh, Kulwant Singh and Balwant Singh were entitled /// to benefit of doubt and they were accordingly acquitted. The plea of the right of private defence and that, if *(1)* at all, the case fell within the ambit of Section 304 Part II read with Section 34 / of the IPC was repelled. An appeal was thereafter taken to the High Court by the three appellants. // The appeal was dismissed, leading to the present proceedings.

The learned counsel for the appellants has argued that in the /// light of the fact that Bakhshish Singh appellant had received an injury in the same incident which had not been *(2)* explained by the prosecution, the prosecution story itself was in doubt and the accused-appellants were entitled to acquittal on / that basis. It has also been pleaded that the trial court had found that four of the accused were not // involved in the incident and it was thus apparent that the present case was one of false implication on account /// of animosity between the parties over the construction of the drain.

It has finally been pleaded that there was absolutely *(3)* no evidence to show that the appellants had an intention to commit murder as the Doctor had opined that the / two injuries on Buta Singh had been caused by the reverse side of the Gandasi whereas the other injuries on // the person of the PW's had been caused with dangs and as such the case fell under Section /// 304 Part II and not under Section 302 of the IPC. The learned State *(4)* counsel and the complainant's counsel have, however, controverted the stand and pointed out that the trial court and the High / Court had given categorical findings that the appellants were involved in a case of murder and had attempted to // take the law into their hands and attempted to construct the drain despite the injunction order made by the Civil /// Court.

We have heard the learned counsel for the parties and gone through the record very carefully. We are of the *(5)* opinion that no fault can be found with the conviction of the appellants in the light of

the fact that / the prosecution story rests on the evidence of three injured witnesses. The incident is virtually admitted by both sides although // in different circumstances as the appellants' claim was that Bakhshish Singh had suffered injuries at the hands of the Gurdial Singh /// and others and that the prosecution had suppressed this part of the story. This plea has been rejected by the *(6)* trial court as well as the High Court holding that the injuries suffered by Bakhshish Singh could not be related / to the present incident. We are therefore of the opinion that the conviction of the appellants is fully justified on // the facts of the case. We, however, feel that a case under Section 302 of the IPC /// is not spelt out. It is clear from the prosecution story that the incident happened all of a sudden when *(7)* Buta Singh objected to the construction of the drain by Gurdial Singh and others in violation of an injunction order / in operation. Buta Singh was apparently attacked as he was making his way to his fields when he objected to // the taking of measurements as a prelude to the diversion of the drain. The evidence shows that some altercation took /// place on which the three appellants Gurdial Singh armed with a Gandasi and the other two with dangs caused injuries *(8)* to Buta Singh and the PWs. We, however, see that the weapons used were in fact implements of common use / which are normally carried by villagers all over India and they do not reflect any prior intention on the part of // the accused to commit murder. It also appears that Gurdial Singh had used the Gandasi from its blunt side as /// would be clear from the evidence of the doctor. PW4 who had examined Buta Singh on the 11th September *(9)* 1995 in the Dayanand Medical College Hospital, Ludhiana. He opined that both the injuries on the deceased had / been caused by a blunt weapon. We, therefore, find that if the appellants had intended to murder Buta Singh, there // was nothing to stop Gurdial Singh from using the Gandasi from its true side as that would have made it /// a much more effective weapon. We are, therefore, of the opinion that the appellants are liable for the offence under IPC. *(10)*

Intext new words and Phrases

.....ambit .....repelled .....argued .....animosity

.....controverted .....categorical .....suppressed

.....injunction order .....conviction .....altercation

.....Dayanand Medical College Hospital.....Ludhiana

Exercise 69 (80 w.p.m. - 10 minutes- Transcriptions)

Two paintings auctioned by the appellant company and purchased by two foreign nationals were seized by Archaeological Survey of India, / as it found the same to be antique in nature. A complaint was made to the CBI, Which // prima facie found the commission of offence u/s 3 punishable u/s 25(1) of the Antiquities and Art /// Treasures Act, 1972, and registered an FIR on 29.1.2004 for offences *(1)* punishable u/s 120-B IPC and s.25(1) read with s.3 of the Act. / and after investigation filed charge sheet on 28.4.2004 against the appellants and the two foreign nationals. // Thereafter the appellants filed Writ Petition No. 16598 of 2004 in the High Court challenging /// the report of the Director General, ASI and confiscation of the said two paintings under the Customs Act. *(2)* In the writ petition neither the CBI was made a party nor was the FIR-charge sheet challenged. The writ petition was disposed of by a consent order dated 24.3.2005 / directing the competent authority to pass a fresh order. Again Writ Petitions were filed seeking to quash the FIR // mainly on the ground that the basis of the FIR, i.e. the earlier report of the ASI /// had been rendered redundant in view of the decision of the Division of the High Court. The High Court dismissed *(3)* the writ petition. Aggrieved, the auctioneers filed the appeals. Dismissing the appeals, the Court:

It is pertinent to note that / in the instant writ petition, the relief prayed for is to quash the FIR and not the order passed // by the trial Court refusing to discharge the appellants from the criminal case filed by the CBI. The /// writ petition is mainly based on the ground that the basis of the FIR i.e. the earlier report *(4)* of Archaeological Survey of India has been rendered redundant in view of the decision rendered by the Division Bench / of the High Court by order dated 24.3.2005. There is no explanation whatsoever forthcoming from the // appellants as to why they did not implead the CBI in Writ Petition and challenge the FIR /// though they were aware of the same.

It cannot be said that the basis of the FIR does *(5)* not survive in view of the judgment of Delhi High Court in Writ Petition of 2004. The High / Court mainly observed that in view of the consensus arrived at between the parties thereto, it will not be necessary // for the parties to give effect to the earlier report and "if a new report is passed, the earlier report will /// not be given effect to". The earlier report has not been set aside by the High Court and obviously to *(6)*

continue its operation, a new order is to be made by the Director General, ASI which has not so / far been passed. At any rate, all these pleas may be advanced, if at all, available to the appellants, in // the pending criminal case. The observation made by the High Court that it will not be necessary for the parties /// to give effect to the earlier report binds only the parties to the proceedings and, admittedly, the CBI has (7) not been impleaded as party respondent in that writ petition.

The jurisdiction of the High Court under Article 226 / to issue appropriate writs is extra-ordinary, equitable and discretionary. Prerogative writs mentioned therein may be issued only for doing // substantial justice. No person is entitled to claim relief under Article 226 of the Constitution as a matter of /// course. The High Court rightly refused to exercise its discretion under Article 226 in favour of the */(8)* appellants. On the facts and circumstances, this Court is not inclined to exercise discretion under Article 136 / of the Constitution of India to grant any relief to the appellants. It is evident from the record that after // registration of the first information report, the CBI made detailed investigation in the matter and filed charge sheet ./// for the offence punishable u/s 25 (1) read with s. 3 of the Act. The trial court having taken *(9)* cognizance of offences framed charges against all the concerned. The appellants have even filed discharge application before the trial court. / It is not clear from the averments made in the writ petition as to the result of the said application.// On the facts and in the circumstances and keeping in view the progress made in the case, it is not possible at this /// stage to quash the very first information report. The trial court can consider whether the paintings in question are antiquities as alleged. *(10)*

Intext new words and Phrases

paintings ..... auction ..... auctioned..... auctioneers

archeological ..... antique ..... antiquities ..... implead

impleaded ..... treasurers ..... redundant ..... redundancy

discretionary ..... discretion ..... prerogative

framed ..... charge-sheet ..... discharge ..... filed

survive ..... survival ..... survived ..... survivors

framer ..... prerogatives ..... in favour of

The appellant, a Pvt. Ltd. Company had auctioned a number of paintings on 20th November, 2002. Two paintings/ were purchased by M/s Tony Haynes of England. The said two paintings were to be exported. The Customs authorities had // detained these paintings on the suspicion that the said paintings were antiques within the meaning of the provisions of the /// Antiquities and Art Treasures Act, 1972 (hereinafter referred to as 'the Act'). The said paintings were examined by Deputy *(1)* Superintendent, Archaeology Customs), Archeological Survey of India on 7.1.2003 and having opined that the paintings / were antiques, referred the matter to the Director General, Archaeological Survey of India for final opinion under Section 24 // of the Act. The said paintings were seized by the Department.

This was followed by a complaint dated 6.1.2004 /// by Superintendent, Archaeologist (Antique) addressed to the Superintendent of Police, CBI in which it is inter alia *(2)* stated that after examination of the said two paintings; they were found to be antique in nature. After receiving the / complaint, further verification was conducted by the CBI. On verification of facts, the CBI found prima facie // the commission of offence under Section 3 of the Act punishable under Section 25(1) of the said Act. /// The CBI accordingly registered the FIR on 29.1.2004 under Section 120B, *(3)* IPC read with Section 25(1) read with Section 3 of the Act. The / CBI after investigation filed the charge sheet against the appellants company who purchased the said paintings in the // auction.

Be it noted that after the filing of charge sheet, the appellants filed Writ Petition (Civil) No. 16 /// of 2004 in Delhi High Court challenging the report of Director General, ASI and for directing *(4)* the Customs authorities not to proceed in the matter on the basis of the order passed by the Adjudicating Authority / directing confiscation of the said two paintings under the Customs Act. In the said Writ Petition, the petitioner clearly admitted // the factum of CBI registering FIR and copy of the said FIR was also /// made available for the perusal of the Court. It may be noted that by the time the said Writ *(5)* Petition came to be filed, CBI had filed its charge sheet on 24.08.2004 / yet the petitioner had not chosen to challenge the FIR and the charge sheet filed by the CBI. //

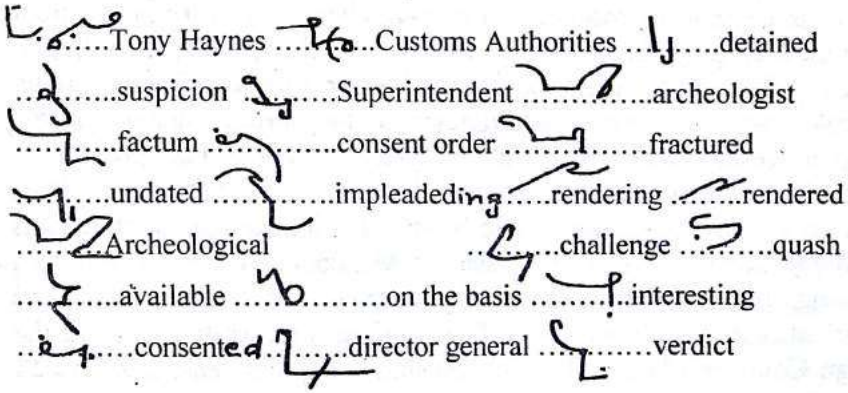
The said Writ Petition was disposed of by a consent order directing the competent authority to pass a /// fresh order on the basis

of fresh report submitted by a fresh Committee. It was agreed by the Archaeological Survey *(6)* of India in that Writ Petition to reconstitute a Committee for the examination of the paintings and to pass a / fresh order in regard to the matter in controversy.

It may also be noted that CBI was not // even impleaded as a party respondent in the Writ Petition. That in compliance of the order dated 24th March, /// 2005, a Committee consisting of six members was constituted to examine the said paintings. The Committee gave a fractured *(7)* verdict due to which the competent authority could not give a final opinion. The appellants again moved another Writ Petition / (Civil) No. 56 of 2006 before Delhi High Court seeking appropriate directions against the ASI so // as not to give effect to undated minutes of meetings dated 26.7.2005 on various grounds with /// which we are not concerned for the present in these appeals. The High Court vide order dated 28th *(8)*April, 2006, disposed of the Writ Petition directing the Director General, ASI to pass an order in terms of the / decision of the Division Bench dated 24.3.2005 and granted stay of the prosecution till expiry // of 30 days after the fresh determination/decision of Director General,

The ASI, thereafter filed Writ Petition Nos./// 203-05 of 2005 resulting in the impugned order. It is interesting to note that in the *(9)* present Writ Petition, the relief prayed for is to quash the FIR and not the order passed / by the trial Court refusing to discharge the appellants from the criminal case filed by the CBI. The // Writ Petition is mainly based on the ground that the basis of the FIR *i.e.* the earlier report /// of Archaeological Survey of India has been rendered redundant in view of the decision rendered by the Division Bench. *(10)*

Intext new words and Phrases



Exercise 71 (80 w.p.m. - 10 minutes- Transcriptions)

MCL is a Government of India undertaking. By the end of 1993, 38 vacancies of / Mazdoors, Category-I (I.T.I.) had occurred in the MCL. MCL sent a requisition // to the local employment exchange for sending a list of eligible candidates for filling up the said vacancies. The local /// employment exchange, in response to that requisition, sponsored 664 candidates. Out of these 664 candidates, *(1)* 375 candidates submitted their bio-data. After scrutiny of the biodata of these candidates, MCL called / 316 candidates for the written test.

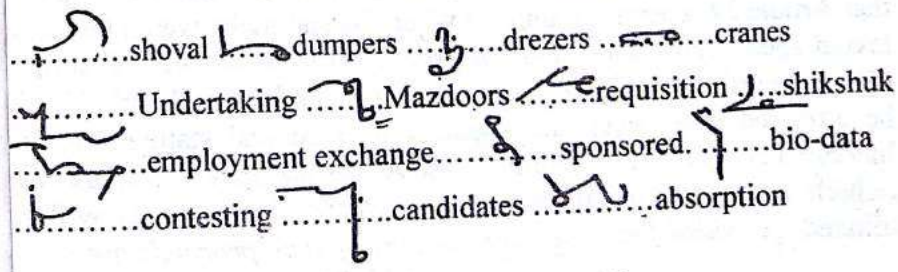
Pursuant thereto, 289 candidates appeared for the same on October // 29, 1995. They were also called for trade test in different batches during the period December 26, /// 1995 to January 5, 1996. Finally, 240 candidates secured qualifying marks. There is a *(2)* dispute of fact about merit list as according to the contesting private respondents (writ petitioners before High Court), a merit / list comprising 226 I.T.I. candidates was prepared by the MCL as they were // found suitable in all respects, but MCL denies having prepared a merit list of 226 candidates /// for employment. However, it is an admitted position that, of the candidates who secured qualifying marks, 24 were *(3)* given appointment as Mazdoor Category-I (I.T.I.). 14 vacancies in the trade of Auto Electrician and 9 vacancies / in Scheduled Caste and Scheduled Tribe category could not be filled up due to non-availability of the candidates.

Subsequently, // it appears that fresh 84 vacancies of Mazdoor Category-I (I.T.I.) occurred and MCL requested the /// local employment exchange for their permission to fill up fresh vacancies from amongst the candidates who had qualified in the *(4)* written test and the trade test conducted as above. There was no response from the local employment exchange to that / requisition and, accordingly, MCL filled up 51 vacancies out of 84 fresh vacancies by giving employment to // those candidates who had already undergone the apprenticeship with them in the year 1991-92. The present /// appellants are amongst those candidates. The private respondents herein and few others aggrieved by the appointment of the appellants and *(5)* some others to the posts of Mazdoor – Category I (I.T.I.) having been given preference as they had undergone / the apprenticeship with the MCL, filed various writ petitions before the High Court of Orissa. They prayed that // appointments given to 51

such appointees be quashed. They also prayed for their (writ petitioners') absorption in the vacant /// posts without calling them to appear for fresh written test and/or interview. MCL and its functionaries who *(6)* were impleaded as respondents in the writ petition filed their counter affidavit and contested the writ petitions on diverse grounds. / The defence of the MCL was that the preference was given to the apprentices who had undergone training // with them in the interest of the company as coal mines use very specific and specialized high value heavy earth /// moving machines like dragline, shovel, dumpers, heavy duty dazers, drills and craines and those who have been extensively trained on *(7)* these machines are of much use than the candidates who were trained in other industries not dealing with heavy earth / moving machines. MCL justified their action on the basis of a decision of this Court in *U.P.// State Road Transport Corporation and Another* v. *U.P. Parivahan Nigam Shishukhs Berozgar Sangh and Others1*. It was submitted /// by MCL that the preference to MCL apprentices was not influenced by any consideration other than *(8)* the interest of the company.

It is pertinent to mention here that neither the appellants nor others whose appointments were / challenged in the writ petitions were impleaded initially. It was after 10 years or so that the present appellants were // impleaded as party respondents in the writ petitions. On their impleadment and service of notice, the present appellants filed their /// counter affidavit in opposition to the writ petitions and denied the claim of the writ petitioners. The High Court vide *(9)* its judgment dated May 2, 2008, however, held that MCL ought to have filled up the newly / sanctioned 51 posts of Mazdoor – Category I (I.T.I.) from the merit list prepared earlier strictly in the // order of merit and no preference could have been given to those who had undertaken apprenticeship with MCL. ///The High Court, accordingly, directed MCL to fill up 51 posts strictly in the order of merit list. *(10)*

Intext new words and Phrases



Exercise 72 (80 w.p.m. - 10 minutes- Transcriptions)

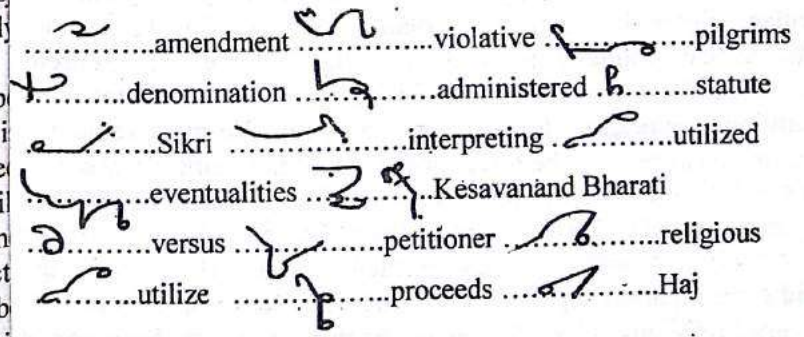
This Writ Petition under Article 32 of the Constitution had been initially filed challenging the constitutional validity of the/ Haj Committee Act 1959, but thereafter by an amendment application the Haj Committee Act of 2002 // which replaced the 1959 Act, has been challenged. The ground for challenge is that the said Act is /// violative of Articles 14, 15, and 27 of the Constitution. The grievance of the petitioner is that he is ***(1)*** a Hindu but he has to pay direct and indirect taxes, part of whose proceeds go for the purpose of / the Haj pilgrimage, which is only done by Muslims. For the Haj, the Indian Government inter alia grants a subsidy // in the air fare of the pilgrims.

Particular emphasis has been given by the petitioner to Article 27 of the /// Constitution which states:- Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled ***(2)*** to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance / of any particular religion or religious denomination." The petitioner contends that his fundamental right under Article 27 of the // Constitution is being violated. We have, therefore, to correctly understand and interpret Article 27. There are not many decisions // which have given an indepth interpretation of Article 27. The decision in *Commissioner, Hindu Religious Endowments vs. Sri Lakshmindra (3) Thirtha Swamiar,* 1954 (5) SCR 1005 held (vide page 1045) that since / the object of the Madras Hindu Religious and Charitable Endowments Act, 1951 is not to foster or preserve the // Hindu religion but to see that religious trusts and institutions are properly administered, Article 27 is not attracted. The /// same view was taken in *Jagannath Ramanuj Das vs. State of Orissa and Another,* 1954(5) SCR ***(4)*** 1046. The decision in *T.M.A. Pae Foundation vs. State of Karnataka,* AIR 2003 / SC 355 (vide paragraph 85) does not really deal with Article 27 at any depth.//

There can be two views about Article 27. One view can be that Article 27 is attracted only /// when the statute by which the tax is levied specifically states that the proceeds of the tax will be utilized ***(5)*** for a particular religion. The other view can be that Article 27 will be attracted even when the statute / is a general statute, like the Income Tax Act or the Central Excise Act or the State Sales Tax Act (which // do not specify for what purpose the proceeds will be utilized) *provided that a substantial part of such proceeds are /// in fact utilized for a particular religion.* In our opinion Article 27 will be attracted in both these eventualities. ***(6)*** This is because Article 27 is a provision in the Constitution, and not an ordinary statute. Principles of interpreting / the Constitution are to some extent different from those of interpreting an ordinary statute vide judgment of Hon'ble Sikri, J. // in *Kesavanand Bharati vs. State of Kerala,* 1973 (4) SCC 225 (vide para 15)./// The object of Article 27 is to maintain secularism, and hence we must construe it from that angle.

As ***(7)*** Lord Wright observed in *James vs. Commonwealth of Australia,* (1936) AC 578, a Constitution is not / to be interpreted in a narrow or pedantic manner. This is because a Constitution is a constituent or organic statute, // vide *British Coal Corporation vs. The King,* and *Kesavanand Bharati vs. State of Kerala,* 1973. While a statute /// must ordinarily be construed as on the day it was enacted, a Constitution cannot be construed in that manner, for ***(8)*** it is intended to endure for ages to come, as Chief Justice Marshal of the U.S. Supreme Court observed. / Hence a strict construction cannot be given to it. In our opinion Article 27 would be violated if *a// substantial part of the entire income tax* collected in India, or a substantial part of the entire central excise or /// the customs duties or sales tax, or a substantial part of any other tax collected in India, were to be ***(9)*** utilized for promotion or maintenance of any particular religion or religious denomination. In other words, suppose 25 per cent / of the entire income tax collected in India was utilized for promoting or maintaining any particular religion or religious denomination,// that, in our opinion, would be violative of Article 27 of the Constitution. However, the petitioner has not made /// any averment in his Writ Petition that a substantial part of tax collected in India is utilized for the Haj. ***(10)***

Intext new words and Phrases

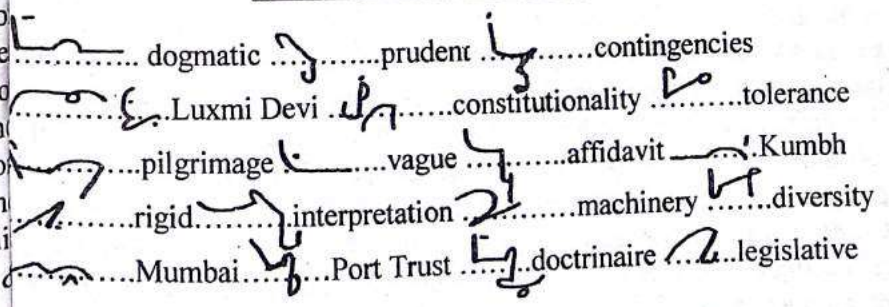


All that has been said in paragraph 5 (i) and (ii) of the Wri Petition is :- "(a) That the / respondent herein has been imposing an collecting various kinds of direct and indirect taxes from th petitioner and other citizens // of the country. (b) That a part of th taxes so collected have been utilized for various purposes includin promotion and /// maintenance of a particular religion and religiou institutions." Thus, it is nowhere mentioned in the Writ Petition as t what *(1)* percentage of any particular tax has been utilized for th purpose of the Haj pilgrimage. The allegation in para 5(ii) / of th Writ Petition is very vague. In our opinion, if only a relatively smal part of any tax //collected is utilized for providing some convenience or facilities or concessions to any religious denomination, that woul not be violative /// of Article 27 of the Constitution. It is only when *substantial part* of the tax is utilized for *(2)* any particular religio that Article 27 would be violated. As pointed out in para 8 (iv), (v and (viii) of / the counter affidavit filed on behalf of the Centra Government, the State Government incurs some expenditure for th Kumbh Mela,// the Central Government incurs expenditure fo facilitating Indian citizens to go on pilgrimage to Mansarover, etc Similarly in para 8 (vii) /// of the counter affidavit it is mentioned tha some State Governments provide facilities to Hindu and Sikh pilgrim to visit Temples *(3)* and Gurudwaras in Pakistan. These are very smal expenditures in proportion to the entire tax collected. Moreover, i para 8(iii) / of the counter affidavit the Central Government has state that it is not averse to the idea of granting support to // the pilgrimag conducted by any community. In our opinion, we must not be to rigid in these matters, and must /// give some free play to the joints o the State machinery. A balanced view has to be taken here, and *(4)* w cannot say that even if one paisa of Government money is spent for particular religion there will be / violation of Article 27. As observe by Mr. Justice Holmes, the celebrated Judge of the U.S. Supremo Court, // in *Bain Peanut Co. vs. Pinson,* "The interpretation o constitutional principles must not be too literal. We must remembe that /// the machinery of the government would not work if it were no allowed a little play in its joints" Hence, *(5)* in our opinion, there is n violation of Article 27 of the Constitution. There is also no violatio of / Articles 14 and 15 because facilities are also given, an expenditures incurred, by the Central and State Governments in Indi // for other religions. Thus there is no discrimination. In *Transport*

Dock Workers Union vs. Mumbai Port Trust, 2010, /// this Court observed that Article 14 cannot be interpreted in a doctrinaire or dogmatic manner. It is not prudent or *(6)* pragmatic for the Court to insist on absolute equality when there are diverse situations and contingencies, as in the present / case (vide paragraphs 39 and 43). Apart from the above, we have held in *Government of Andhra Pradesh // vs. P. Laxmi Devi,* AIR 2008 SC that Court should exercise great restraint when deciding /// the constitutionality of a statute, and every effort should be made to uphold its validity. Parliament has the legislative competence (7) to enact the Haj Committee Act in view of entry 20 to List 1 of the Seventh Schedule to the / Constitution which states : "Pilgrimages to places outside India". Thus there is no force in this petition and it is dismissed.// Before parting with this case we would like to mention that India is a country of tremendous diversity, which is /// due to the fact that it is broadly a country of immigrants (like North America) as explained in detail by *(8)* us in *Kailas & Others vs. State of Maharashtra,* JT 2011 (1) 19. As observed in paragraph / 32 of the said decision, since India is a country of great diversity, it is absolutely essential if we // wish to keep our country united to have tolerance and equal respect for all communities and sects. It is due /// to the wisdom of our founding fathers that we have a Constitution which is secular in character, and which caters *(9)* to the tremendous diversity in our country.

It may be mentioned that when India became independent in 1947 there / were partition riots in many parts of the sub-continent, and a large number of people were killed, injured and // displaced. Religious passions were inflamed at that time, and when passions are inflamed it is difficult to keep a cool /// head. It is the greatness of our founding fathers that they kept a cool head and declared India a secular country. *(10)*

Intext new words and Phrases



Exercise 74 (80 w.p.m. - 10 minutes- Transcriptions

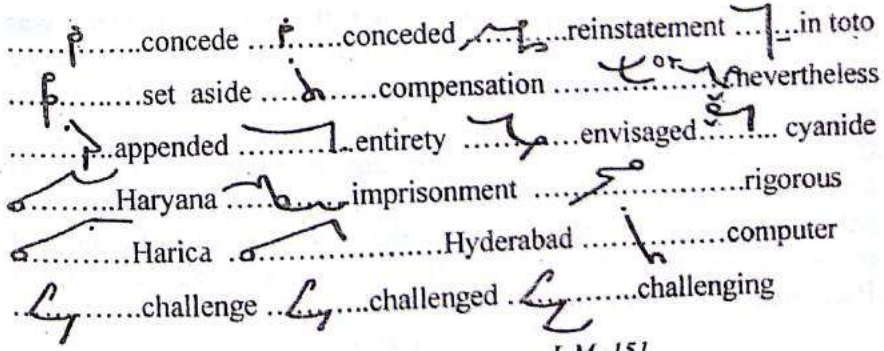
The appellant herein, a workman, was engaged on daily wages in the year 1992. His services were terminated / in the year 1999 on the ground that he had been involved in a criminal case. It is // the conceded position that the criminal case has ended in his acquittal. The appellant also raised an industrial dispute alleging // violation of Section 25(f) of the Industrial Disputes Act, 1947. The matter was referred to the Labour Court *(1)* which held in favour of the appellant directing his reinstatement with fifty per cent back wages. The State of Haryana / challenged the order of the Labour Court exclusively on the plea that the award of back wages was not justified. // The learned Single Judge however, allowed the writ petition filed by the State in toto and set aside the Award ///of the Labour Court and instead awarded a compensation of Rs. 60,000/- to the appellant. The matter was thereafter taken *(2)* before the Letters Patent Bench and it was argued that the challenge in the writ petition had been limited to the award / of back wages and the judgment of the Single Bench setting aside the Award in toto was beyond the / prayer. The Division Bench noticed this argument but nevertheless went on to hold that as the issue with regard to /// the status of a daily wage employee was covered against the appellant by a string of judgments of this Court, *(3)* the technicality with regard to the prayer in the writ petition would not stand in the way of the High / Court making an order setting aside the Award of the Labour Court. The Division Bench, accordingly, affirmed the order of // the learned Single Judge. The appellant-workman is here before us in appeal.

Before us today, the learned counsel for /// the appellant has argued that in the writ petition filed by the respondent-State challenging the Award of the Labour *(4)* Court, the only plea was against the grant of back wages and nothing more. In support of this submission, the / learned counsel has drawn our attention to the writ petition which has been appended with the paper book. We find // that the assertion of the learned counsel is correct. We are, therefore, of the opinion that the order of the /// Single Judge as well as of the Division Bench was well beyond the scope of the prayers in the writ *(5)* petition . If the State felt aggrieved by the Award of the Labour Court in toto there was no impediment in / its way to challenge it in its entirety. We feel that a party must be held to be bound by // its pleadings; a prayer clause cannot be construed or dubbed as

technicality. We are, therefore, of the opinion that /// the appeal deserves to succeed. We, accordingly, allow the appeal and set aside the orders of the Single Judge as (6) well as the Division Bench and restore the order of the Labour Court to the extent of reinstatement. We are / also told by the learned counsel for the appellant that the appellant had in fact been reinstated but after the // order of the Division Bench his services had again been terminated in December, 2009. We, accordingly, direct that /// the back wages envisaged would be payable only from January 2010 onwards till his reinstatement vide this order. *(7)*

This appeal by grant of special leave is directed against the judgment and order dated September 13, 2007 passed / by the High Court of Andhra Pradesh in Criminal Appeal No. 1009 of 2005. The High Court // allowed the government appeal, reversed the judgment of acquittal passed by the trial court, found the appellant guilty of the /// charge of killing his wife Laxmi Kumari by giving her cyanide in cold drink and, accordingly, convicted him under section *(8)* 302 of the Penal Code and sentenced him to rigorous imprisonment for life and a fine of Rs.1,000/-/ and in default of payment of fine, simple imprisonment for 3 months. The basic facts of the case which are // admitted or are at any rate undeniable need to be stated in the sequence in which those facts were unfolded. /// The appellant and Laxmi Kumari got married on April 30, 2000. After marriage they came to live in a (9) rented house at Hyderabad. The appellant and his wife lived on the first floor and the remaining portion of the / house was occupied by its owner. The appellant had a graduate degree in Engineering and a diploma in Computer. He // worked as a faculty member in Harica Information, situated at Hyderabad, and he also gave coaching to students in another /// computer centre. He was earning a salary of Rs.20,000/ - per month. On September 2, 2000. *(10)*

Intext new words and Phrases



According to the prosecution, seven assailants came in a Maruti Van and assaulted a College Professor and chopped off his / right palm when he was returning home. The alleged motive for attacking the Professor was that he incorporated a question // for the internal examination of B.Com. paper criticizing Prophet Mohammed and Islam.

Respondent is a dental surgeon. The prosecution /// case is that the respondent gave medical aid to one of the wounded accused in pursuance of a previous plan *(1)* that if and when any of the assailants got injured in the attack on the Professor then immediate medical treatment / would be given by the respondent to the injured; and that the respondent stitched the back of an assailant, which // is not the job of a dentist. It was further alleged that the respondent was a member of the Popular /// Front of India, a Muslim organization, and was head of its medical committee. The prosecution placed reliance on the proviso *(2)* to Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 which states that the / accused shall not be released on bail if the Court, on perusal of the case diary or the report under // Section 173 Cr.P.C. is of the opinion that there are reasonable grounds for believing that the /// accusation against such person is *prima facie* true. The instant appeal is filed against the order of High Court granting *(3)* bail to the respondent. Dismissing the appeal, the Court held: In the instant case, this Court is only considering the bail matter and not deciding whether the respondent is guilty or not. Evidence has yet to be led and the trial // yet to commence. Hence the prosecution is yet to establish by proof beyond reasonable doubt that the respondent was part /// of a conspiracy which led to the attack on the Professor. The case against the respondent is very different from *(4)* that against the alleged assailants. There is no allegation that the respondent was one of the assailants.

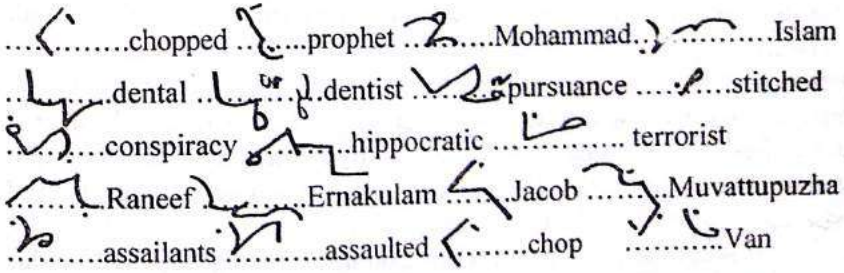
There is no / *prima facie* proof that the respondent was involved in the crime. Hence the proviso to Section 43D(5) // of the Unlawful Activities (Prevention) Act, 1967 has not been violated. The respondent, being a doctor, was /// under the Hippocratic oath to attempt to heal a patient. Just as it is the duty of a lawyer to *(5)* defend an accused, so also it is the duty of a doctor to heal. Even a dentist can apply stitches / in an emergency. *Prima facie* the only offence that can be leveled against the respondent is that under Section 202 // I.P.C., that is, of omitting to give information of the crime to the

police, and this offence has also /// to be proved beyond reasonable doubt. Section 202 is a bailable offence. As regards the allegation that the *(6)* respondent belongs to the Popular Front of India, there is no evidence as yet to prove that the P.F.I. / is a terrorist organization, and hence the respondent cannot be penalized merely for belonging to the P.F.I. Moreover, // even assuming that the P.F.I. is an illegal organization, this Court is yet to consider whether all members /// of the organization can be automatically held to be guilty.

In deciding bail applications an important factor which should certainly *(7)* be taken into consideration by the Court is the delay in concluding the trial. Often the trial takes several years, / and if the accused is denied bail but is ultimately acquitted, Article 21 of the Constitution, which is the // most basic of all the fundamental rights in our Constitution, would be violated. Of course this is not the only /// factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case *(8)* the respondent has already spent 66 days in custody, and there is no reason why he should be denied / bail. The appellant has filed this appeal challenging the impugned order of the Kerala High Court dated 17th September, // .2010 granting bail to the respondent, Dr. Raneef, who is a medical practitioner (dentist) in Ernakulam district in Kerala, and /// is accused in crime no.704 of 2010 of P.S. Muvattupuzha for offences under various provisions *(9)* of the I.P.C., the Explosive Substances Act, and the Unlawful Activities (Prevention) Act.

The facts of the case / are that on 4.7.2010 soon after 8 a.m. seven assailants came in a Maruti Van and // assaulted Prof. T.J. Jacob of Newman College, and chopped off his right palm from the vicinity of his house /// when he was returning home after Sunday mass. The role attributed to the respondent is that he treated injured assailants. *(10)*

Intext new words and Phrases



Exercise 76 (80 w.p.m. - 10 minutes- Transcriptions)

The alleged motive for attacking Prof. Jacob was that he incorporated a question for the internal examination of B.Com. / paper criticizing Prophet Mohammed and Islam. The prosecu ion case is that the respondent gave medical aid to one of the // wounded accused in pursuance of a previous plan that if and when any of the assailants got injured in the attack /// on Prof. Jacob then immediate medical treatment would be given by the respondent to the injured. The respondent stitched the *(1)* back of an assailant, which is not the job of a dentist. The respondent, along with the other accused is / a member of the Popular Front of India, a Muslim organization, and was head of its medical committee. Certain // documents, C.D.s, mobile phone, books, etc. including a book called 'Jihad' were allegedly seized from his house and car.///

The prosecution has placed reliance on the proviso to Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 *(2)* which states that the accused shall not be released on bail if the Court, on perusal of the case diary / or the report under Section 173 Cr.P.C. is of the opinion that there are reasonable grounds // for believing that the accusation against such person is prima facie true.

On the other hand, the case of the /// respondent as disclosed in the counter affidavit filed before us is that even according to the prosecution case the respondent *(3)* was not one of the assailants, and he is not named in the FIR. In para 13 of the / counter affidavit the respondent has stated that the attack on Prof. Jacob is a crime which is to be condemned.// However, as a pretext to the investigation the police had lashed out a rein of terror on innocent people of /// the minority community, people who are totally innocent or even had no knowledge of the crime have been falsely implicated. *(4)* 54 persons have been made accused in the crime. Many residential houses, mosques and offices were raided and searched, / and even minor children and women were cruelly tortured both physically and mentally. Holy books and other religious books // were thrown out, seized and taken away and bundled in police stations. War like atmosphere was created in mosques, daily /// prayers were disrupted and men illegally detained, and physically tortured in custody and false cases booked against innocents.

It is *(5)* further alleged in the counter affidavit that the Popular Front of India (PFI) or the Social Democratic Party / of India (SDPI) are not militant or terrorist organizations. There is no history of

crimes against the // party or its workers. They are not banned organizations. The SDPI is a political party recognized by /// the Election Commission and the PFI is registered under the Societies Registration Act.

The respondent has alleged that *(6)* he is a dental surgeon hailing from a respectable family in Aluva. His father Late Dr. Abdul Karim was a / doctor loved and respected by all, who died as a Civil Surgeon while working in the Government Hospital, Perumbaroor. In // 2001 the respondent started Al Ameen Multi-Specialty Dental Hospital in Aluva. Five other doctors including the respondent's /// wife, who is also a dental surgeon, are working in the said hospital. The respondent has a son aged 9 *(7)* years and daughter aged 5 years. He claims that he has a very good reputation and is loved by all / due to the services rendered by him to the poor and needy. The respondent's elder sister is a post graduate // in zoology, and his younger sister is a law graduate. The book entitled 'Jihad' said to have been found in /// his house was a Malayalam translation of a book written in Urdu in 1927 by a well known *(8)* and respected religious scholar, Maulana Sayyid Abul Ala Mandoodi and has been in circulation for 83 years, and is / available in many book shops. The respondent has alleged that he has been falsely implicated only because he medically treated // one of the alleged assailants.

At this stage we are not expressing any opinion as to whether the allegations in /// the versions of the prosecution or defence are correct or not, as evidence has yet to be led. However, we *(9)* would like to make certain observations:

(1) We are presently only considering the bail matter and are not deciding whether the respondent is guilty or / not. Evidence has yet to be led and the trial yet to commence. Hence the prosecution is yet to establish // by proof beyond reasonable doubt that the respondent was part of a conspiracy which led to the attack on Prof. /// Jacob. (2) The case against the respondent is very different from that against the alleged assailants as he was not there.

Intext new words and Phrases

..... Jihad ..... unlawful activities ..... prevention

..... bundled ..... Aluva ..... Abdul Karim

..... Al Ameen ..... Maulana ..... Sayyid

Exercise 77 (80 w.p.m. - 10 minutes- Transcriptions)

The Reference Court referred to the evidence showing that the plot covered by Ex. P-2 was across the road / from the acquired lands and was therefore a neighbouring property. Feeling aggrieved, the Appellant (Housing Board) filed appeals. The land // owners filed cross-objections. The High Court, by impugned judgment, dismissed the appeals of the appellant and allowed the cross-objections /// filed by the land owners and increased the compensation to Rs.4,00,000/- per acre. Instead of Ex. P-2 relied *(1)* upon by the Reference Court, the High Court relied upon Ex. P-19 which related to another auction sale of / a smaller plot measuring 150 sq.m. of the Municipality for a price of Rs.24000/- // (which works out to a price of Rs.16000 per sq.m). On that basis the High Court works out /// the market value per acre as Rs.6,00,000/-. The High Court was of the view that the deduction or cut *(2)* towards development factor should be only 33% instead of 53% adopted by the Reference Court. By deducting / 33% from Rs.6,00,000/- it arrived at the market value as Rs.4,00,000/- per acre while awarding // the compensation.

Feeling aggrieved, the Housing Board filed these appeals by special leave. The appellants have put forth the following /// contentions: Ex. P-19 relied upon by the High Court did not relate to a neighbouring land whereas there was *(3)* specific evidence that the plot covered by Ex. P-2 was in regard to a nearby land. Therefore, Ex. P-2 / ought to have been preferred to Ex. P-19. Further as Ex.P-19 related to a very small plot // it ought to have been ignored and the transaction relating to the larger plot (Ex.P-2) should have been /// preferred.

The High Court ought to have maintained the cut towards cost of development as 53% instead of *(4)* applying a cut of 33%. Auction sales do not furnish a safe guide for determination of market value / and therefore, the High Court and Reference Court ought not to be relied upon either Ex.P.19 or Ex.// P2 which relate to auction sales. We may deal with the last submission first. The standard of litigation, which have /// the effect of dampening the enthusiasm of bidders and making them cautious, thereby depressing the price. There is therefore every *(5)* likelihood of auction price being either higher or lower than the real market price, depending upon the nature of sale. / As a result, courts are wary of relying upon auction sale transactions when other regular traditional sale transactions are available // while determining the market value of the acquired land. This Court in *Raj Kumar v. Haryana State* - 2007 /// SCC 609, observed that the element of competition in auction

sales makes them unsafe guides for *(6)* determining the market value. But where an open auction sale is the only comparable sale transaction available (on account of / proximity in situation and proximity in time to the acquired land), the court may have to, with caution, rely upon the // price disclosed by such auction sales, by providing an appropriate deduction or cut to off-set the competitive-hike in // value. In this case, the Reference Court and High Court, after referring to the evidence relating to other sale transactions, /// found them to be inapplicable as they related to far away properties. Therefore we are left with only the *(7)* auction sale transactions. On the facts and circumstances, we are of the view that a deduction or cut of 20% / in the auction price disclosed by the relied upon auction transaction towards the factor of 'competitive - price hike' would // enable us to arrive at the fair market price.

There is clear evidence that the plot sold under Ex. P-2 /// was very near to the acquired lands whereas there is no such specific evidence in regard to the proximity of *(8)* the plot sold under Ex.P-19, though that plot was also in the vicinity. further, though both Ex. P2 *(8)* and P.19 relate to developed plots, Ex. P.19 relates to a comparatively small plot of 150 sq. m. / whereas Ex. P2 refers to a larger plot of 329 sq.m. Having regard to the proximity of // location and the size, we are of the view that the Reference Court was justified in relying upon the sale /// transaction under Ex. P2 and the High Court was not justified in ignoring Ex. P2 and relying upon the *(9)* transaction under Ex. P19. We may also note that the general rule that the highest of the comparable sales / should be relied upon will not apply, where the sale transactions relied upon are auction sales, for the reasons mentioned // in para (6) above.

There is yet another important reason for ignoring the said auction sale for determining the market /// value of the acquired lands. In Karnataka Power Transmission Corporation case, this court determined the compensation at Rs.4 lac per acre. *(10)*

Intext new words and Phrases

.....deduction .....deducting .....contentions

.....bidders .....nereby .....preferred

.....transactions.....dampening .....proximity

.....enthusiasm .....arrived .....Raj Kumar

.....auction .....inapplicable .....relying .....ignoring

Exercise 78 (80 w.p.m. - 10 minutes- Transcriptions)

The wife of the appellant died of cyanide poisoning. It was alleged by the prosecution that the appellant had mixed up / cyanide in a cold drink bottle of Limca and given it to his wife to drink. Apart from the doctor // (PW14) and the forensic expert (PW17), 16 more witnesses were examined to prove the culpability of /// the appellant. Out of them PWs 1 and 2 were the father and the brother respectively of the deceased. The *(1)* trial Court on a consideration of all the evidence produced before it found that the prosecution had failed to prove the guilt / of the accused beyond all reasonable doubts. It, therefore, acquitted him of the charge under section 302 IPC. // Against the judgment of the trial Court, the State Government preferred appeal. The High Court allowed the government appeal,/// reversed the judgment of acquittal passed by the trial court and, accordingly, convicted the appellant under section 302, *(2)* IPC and sentenced him to rigorous imprisonment for life.

In the instant appeal, the question which arose for / consideration was whether on the basis of the materials on record, the view taken by the trial Court, was so // wrong and unreasonable as to warrant interference and reversal by the High Court. Allowing the appeal, the Court: PW7 /// was the landlady in whose house the appellant and the deceased lived on rent, and PW3 was her maid. *(3)* These two witnesses stated before the Court how they had found the appellant's wife lying unconscious in a chair and / had shifted her to Hospital for treatment. PW3 further stated that at that time the accused was not present // in the house but he came to the hospital an hour after the deceased was admitted there reasons, this Court /// is very reluctant in accepting the testimony of PW6. As regards the recovery of the empty Limca bottle from *(4)* one of the rooms at the appellant's residence that was found by the forensic laboratory to contain cyanide, the appellant's / residence was thoroughly searched soon after the death of Laxmi Kumari. The 'Scene of Offence Panchnama' is in considerable detail // and it describes the appellant's residence and the articles found there. On the 'sajja' of the appellant's bedroom, suit cases /// and some miscellaneous articles were found and on shelves. there were portraits of goddesses, weekly magazines, other books and some *(5)* clothes. It is rather strange, that in course of such a detailed examination, the Sub-Inspector should have missed out / the empty Limca bottle that is shown to be recovered three days later from the same shelf. The seizure memo // does not state that the bottle was taken out by the appellant from some hidden place from where normally it /// could not be recovered without his assistance. The seizure memo was prepared in presence of panchas. Only one of them (6)

was examined by the prosecution as PW12. He denied that any recovery was made in his presence. On / the contrary he stated that police obtained his signatures on some papers of which some were written and some were // blank. He denied that in his presence the appellant had led the police to his house and had produced the /// Limca bottle, that the police had seized it under the seizure memo, and that he and another panch attested the *(7)* panchnama. Thirdly, it is in the seizure report under the column details of seizure what is stated is 'One empty / Limca Bottle-300 ml.' Thus, at the time of seizure there was no white powder visible inside the bottle // as is mentioned in the report of the Forensic Science Laboratory. Also, the bottle reached the Forensic Science Laboratory much /// later and there is absolutely no evidence as to where and with whom the bottle remained during this period. All *(8)* these circumstances make the prosecution case on recovery of the Limca bottle from the residence of the appellant highly suspect. / There appears to be hardly anything in the prosecution evidence to establish the charge against the appellant. The facts and // circumstances of the case may give rise to a strong suspicion against the appellant but suspicion, howsoever strong, can not /// take place of proof. There is no proof of the appellant's guilt and on the basis of the evidence on *(9)* record it would be quite unsafe to hold him guilty of murder and to send him to imprisonment for life. /

The trial court had taken the perfectly correct view in the matter. The High Court was unable to keep aside // the so called confessional statement made by the appellant. On the contrary, it put the confessional statement at the centre /// and proceeded to examine all other evidences in its back drop and, thus, reached to a completely erroneous conclusion regarding his guilt. *(10)*

Intext new words and Phrases

guilt ..... erroneous ..... confessional

Forensic ..... Laboratory ..... panchnama

sajja ..... Laxmi Kumari ..... cyanide ..... guilty

poison ..... poisoning ..... acquittal ..... evidences

Limca ..... bottle ..... recovery ..... landlady

goddess ..... hide ..... seizure ..... magazine

hidden ..... strange ..... describes ..... goddesses

assistance ..... miscellaneous ..... accepting

Exercise 79 (80 w.p.m. - 10 minutes - Transcriptions)

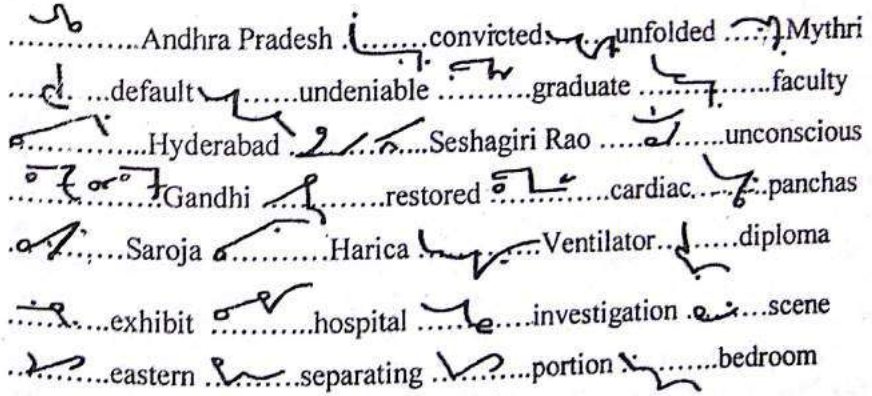
This appeal by grant of special leave is directed against the judgment and order dated September 13, 2007 passed / by the High Court of Andhra Pradesh in Criminal Appeal No. 9 of 2005. The High Court allowed the // government appeal, reversed the judgment of acquittal passed by the trial court, found the appellant guilty of the charge of killing /// his wife Laxmi Kumari by giving her cyanide in cold drink and, accordingly, convicted him under section 302 of *(1)* the Penal Code and sentenced him to rigorous imprisonment for life and a fine of Rs.1,000/- and in / default of payment of fine, simple imprisonment for 3 months.The basic facts of the case which are admitted or // are at any rate undeniable need to be stated in the sequence in which those facts were unfolded. The appellant /// and Laxmi Kumari got married on April 30, 2000. After marriage they came to live in a rented house *(2)* at Hyderabad. The appellant and his wife lived on the first floor and the remaining portion of the house was / occupied by its owner. The appellant had a graduate degree in Engineering and a diploma in Computer. He worked as // a faculty member in Harica Information, Hyderabad, and he also gave coaching to students in another computer centre. He was /// earning a salary of about Rs.20,000/ - per month.

On September 2, 2000 in the after-noon the landlady, *(3)* Saroja (PW7) received a telephone call asking for Laxmi Kumari. She went to the portion of the house where / she lived and found her there lying on a chair. Then, with the help of her maid servant (PW3), // she got her shifted to Hospital. After some time her husband, the appellant also reached there. In the morning of /// September 3, 2000 Laxmi Kumari's father, PW1 received a phone call from the brother of the appellant, *(4)* Seshagiri Rao intimating him that his daughter had fallen seriously ill and had been admitted to the hospital. He along / with his wife proceeded to Hyderabad and on reaching there went to the hospital, where they found their daughter in // an unconscious state. On the same day at 8.30 p.m. Laxmi Kumari was declared dead by the doctors of /// Mythri Hospital. In the death certificate issued by the Hospital (exhibit P-3) it was stated that she was admitted *(5)* to the hospital on September 2, 2000 at about 7 p.m. At the time of admission she was unconscious / and there was no pulse or blood pressure. She was diagnosed to have suffered a cardio-pulmonary arrest. She was // put on Ventilator and given certain medicines that restored her cardiac activity. She suffered further cardiac arrest on September 3, /// that led to her death. After Laxmi Kumari was dead, her father PW1 went to Police Station and lodged *(6)* a complaint stating that in the morning on that day he received a telephone call from

Seshagiri Rao from Hyderabad / asking them to immediately come down to Hyderabad as their daughter was in danger. On reaching Hyderabad they went to // Mythri Hospital where their daughter was in an unconscious state. After half an hour the doctors declared that their daughter /// had died. He further said that to his knowledge their daughter was not suffering from any ailment; he knew that *(7)* she was in good health till 4 p.m. on September 2, 2000, and after completing her household work she became / unconscious at 6 p.m. He did not know how this happened. He requested for necessary action so that her dead // body could be handed over to him for the last rites. The complaint (exhibit P-1) was registered as Crime /// No. 5/2000 under section 174 of the Criminal Procedure Code (Cr. P.C.), and was formally *(8)* incorporated in an FIR (exhibit P-14). After recording the statement of the father of the deceased the / Sub-Inspector (PW15) proceeded for Mythri Hospital and got the body of the deceased shifted to Gandhi Hospital for // post mortem examination.

On the same day, the Sub-Inspector went to the residence of the appellant and the /// deceased and in the presence of two 'panchas' made a thorough search of the three rooms which were in the occupation *(9)* of the appellant and the deceased. He prepared the 'Scene of Offence Observation Panchnama' (exhibit P-5) and the 'Rough / Sketch of the Scene of Offence' (exhibit P-6). From exhibit P-5, the 'Scene Panchnama,' it appears that the // door on the eastern side of the bedroom was kept closed for separating it from the portion of the house. /// The case was changed under sections 306 of the Penal Code and further investigation began in that light. *(10)*

Intext new words and Phrases



Note - Master the phonetic principles of writing Proper Nouns.

Exercise 80 (80 w.p.m. - 10 minutes- Transcriptions)

He made plans to go to the U.S.A. for better job prospects, and while continuing to work in / the coaching centre he also obtained a passport in his name. But after a few months of marriage frictions arose between // him and his wife. She did not co-operate with him at the time of sex, and used to pick up /// quarrels with him on several issues. She would complain about the stay of his brother with them and would strongly *(1)* oppose his sending any money to his parents. She did not seem to care much for him or his work / and despite persuasions by him showed no interest in learning computer. Distressed by the unhappiness of his matrimonial life, he // thought of taking his own life and with that intention procured from his friend Brahmachary, who was a goldsmith, some /// cyanide on the pretext that he needed it for cleaning the computer parts. He kept the cyanide at a concealed *(2)* place at their residence in Hyderabad. At that time he got an opportunity to go to the U.S.A. / through the Macro Technology Company, and he told his wife that he would go first and then call her there // after a year, but she insisted on accompanying him. He even told her that he would call her to America /// only after three months of his going there, but she would not listen and insisted that he must take her along *(3)* with him. Completely exasperated by his wife's nagging he thought of killing her rather than giving up his own life. / He then decided to kill her by administering the poison that lay hidden at their residence and waited for a // suitable chance to give her the poison. On August 22, 2000 his wife went to her native place to /// attend the marriage of her elder brother and she returned back to Hyderabad on September 1, 2000. During her *(4)* absence from the house he had decided to kill her within the shortest possible time as he had to go / to the U.S.A. in the month of October, 2000. In the night of September 1, 2000 // his brother-in-law, Prasad stayed in his house. That night he was completely unable to sleep and he kept /// on thinking of ways to kill his wife by giving her cyanide. On the following day at about 2.30 *(5)* in the afternoon he returned from the computer centre. His brother-in-law had already left the house in the / morning. At around 4 in the afternoon his wife said she wanted to have a cold drink. And this suddenly // gave him the idea to give her the poison by mixing it in the cold drink. He took out the /// cyanide packet from the place where it was hidden and went to a nearby general store from where he purchased (6) a bottle of Limca. He got the bottle opened and on the way back went inside a STD / booth where he put some cyanide into the opened cold drink bottle. At around 4.30 p.m. he arrived // back at his

house and gave the cold drink, spiked with cyanide, to his wife. His wife asked him to /// have some cold drink from that bottle but he declined the offer and left the house saying that he had *(7)* some urgent work at the computer centre. On the way to the institute, he threw away the remaining cyanide in / a nala. He was sure that his wife would consume the poisoned cold drink and would die. At about 6 / p.m. he received the message at his office that his wife was seriously ill and was admitted to Mythri // Hospital. He knew that his wife would die. He went to the hospital and found his wife in unconscious state. /// He feigned ignorance about the reason for her falling ill. He rushed back to his house and found the Limca *(8)* bottle by the side of the sofa. It still contained about half of its contents. He threw away the remaining / contents of the bottle in the bathroom and concealed the bottle on the bedroom shelf. Then, he again went to // the hospital. In the meanwhile some of his relatives had sent the message to his in-laws. On September 3,/// his in-laws reached the hospital. On the same day around 8 p.m. the doctors declared his wife dead. *(9)* On the death of his wife, his in-laws got agitated. They expressed doubt about the cause of her death / and cast suspicion on him. Seeing the turn of the events he went away from the hospital. On the following // morning, he came to know that the police was searching for him. He decided to escape from Hyderabad and go /// to his village. He was waiting near the Electricity Office, Ameerpet to meet the M.D. of his computer institute. *(10)*

Intext new words and Phrases

Ameerpet ..... nala ..... shelf ..... feigned

ignorance ..... computer ..... institute ..... suspicion

in-laws ..... Brahmchary ..... goldsmith

quarrel ..... matrimonial ..... unhappiness

administering ..... exasperated ..... nagging

persuasion ..... stayed ..... spiked ..... shortest

Prospects ..... brother-in-law ..... suddenly

Electricity ..... searching ..... concealed

poison ..... morning ..... search ..... waiting

Note - Write these dictations repeatedly till you are able to write them fully with proper outlines.

Exercise 81 (80 w.p.m. - 10 minutes - Transcriptions)

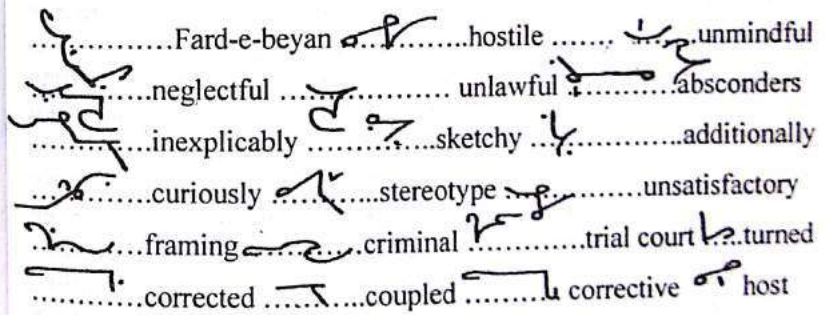
According to the prosecution, in view of old enmity, an unlawful assembly carrying fire-arms caused the death of PW4's / uncle. The prosecution case is based on the Fard-e-beyan of PW4. The police submitted chargesheet against seven // accused persons of whom five (including the appellant's father and brother) were named in the Fard-e-beyan/FIR /// while the other two accused (including the appellant) were not so named in the Fard-e-beyan/FIR. *(1)*

In the charge-sheet three accused were shown as absconders and the rest were in custody. Later one more accused / was apprehended and he was also put on trial along with the accused who were in custody. The case of // the two accused who remained absconding was separated and the other five accused were put on trial. Later on, the /// appellant's father died and in so far as he was concerned, the proceedings abated. The trial continued in respect of *(2)* the four accused, including the appellant. The trial court finally convicted all the four accused under section 302 / IPC and section 27 of the Arms Act and sentenced them to rigorous imprisonment for life under // section 302 IPC and rigorous imprisonment for 1 year under section 27 of the Arms /// Act. One accused died after the judgment of the trial court. The rest three accused, including the appellant and *(3)* his brother preferred appeals before the High Court. The appeals were dismissed. Against the judgment of the High Court, the / appellant and his brother jointly filed SLP before this Court. The third convict did not file any further // appeal against the judgment of the High Court. The SLP in so far as the appellant's brother was /// dismissed while the appellant was granted leave to appeal. Allowing the appeal, the Court Curiously, the trial court charged all *(4)* the five accused (before the appellant's father died) only under section 302 IPC, without the aid of / either section 149 or section 34 of IPC. Equally inexplicably, the trial court did // not charge the accused under section 148 IPC. Apart from section 302 /// IPC all the accused were charged under section 27 of the Arms Act; one accused was additionally (5) charged under section 379 of the Indian Penal Code for taking away the rifle of the deceased. The charge / framed by the trial court was highly flawed. The appellant was examined by the court under section 313 of // CrPC. This examination too is highly unsatisfactory and sketchy. This is not an isolated case but it is /// almost a stereotype. In criminal trials in Bihar no proper attention is paid to the framing of charges and the examination *(6)* of the accused under section 313 of the Code of Criminal Procedure, the two very important stages in / a criminal trial. The framing of the charge and the examination of the

accused are mostly done in the most unmindful // and mechanical manner. The Patna High Court should take note of the neglectful way in which some of the Courts /// in the State appears to be conducting trials of serious offences and take appropriate corrective steps.

In any event, in *(7)* the instant case, there is no reason to go into that technical aspect of the matter since the appellant has / a good case on merit as well. The prosecution examined eight witnesses in support of its case. PWs 1 and // 2 stated that they did not know anything about the occurrence and they had not given any statement before the /// police. They were declared hostile. PW3 who was the brother-in-law of the deceased and who was *(8)* not only present at the time of recording of the Fard-e-beyan but had also signed it as a / witness also turned hostile. In cross-examination he also said that his brother-in-law had enmity with a large // number of people. PW4 and PW6 are the two eye witnesses. PW5 did not claim /// to have witnessed the actual occurrence but said that on the date of occurrence, at about 2:30 in the *(9)* afternoon he heard the report of the gun shots and saw some of the accused fleeing away with rifles./ In view of the evidences of PWs 4, 6 and 5 coupled with the medical evidence there is no room // for doubt that the deceased was killed in the manner as stated by the prosecution. But the question is whether /// or not the appellant was one of the accused for taking part in the commission of the offence committed by them.

Intext new words and Phrases



Note - Outlines of new words which have occurred in dictations should be mastered and practiced thoroughly and their meaning understood. This will help you in day to day working in the legal field, Sessions Court, High Court or the Supreme Court. All types of cases occur and all types of terminology has to be studied and remembered for easy working of the legal proceedings to be reported by Stenographers.

Exercise 82 (80 w.p.m. - 10 minutes - Transcriptions)

The questions which arose for consideration in the instant appeals were whether persons appointed as Superintendents in aided non-governmental / Hostels are entitled to claim absorption by way of regularization in government service or salary on par with Superintendents in // Government Hostels and whether part-time cooks and chowkidars appointed temporarily by Mess Committees of Government Hostels, with two or /// three years service, are entitled to regularization by framing a special scheme. Allowing the appeals, the Court held that the High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption / or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with // relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 /// should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be ***(2)*** violative of constitutional scheme.

While something that is irregular for want of compliance with one of the elements in the / process of selection which does not go to the root of the process, can be regularized, the back door entries and appointments // contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized. Mere continuation of service by a /// temporary or *ad hoc* or daily-wage employee, under cover of some interim orders of the court, would not confer ***(3)*** upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, *ad hoc* or / daily-wage service for a long number of years, let alone service for one or two years, will not entitle // such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds /// for passing any order of regularization in the absence of a legal right. Even where a scheme is formulated for ***(4)*** regularization with a cut off date (that is a scheme providing that persons who had put in a specified number / of years of service and continuing in employment as on the cut off date), it is not possible to others // who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to /// them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive ***(5)*** cut off dates.

Part-time employees are not entitled to seek regularization as they are not working against any sanctioned / posts. There cannot be a direction for absorption, regularization or permanent continuance of part

time temporary employees. Part time temporary employees // in government run institutions cannot claim parity in salary with regular employees of the government on the principle of /// equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary (6) with government employees. The right to claim a particular salary against the State must arise under a contract or under / a statute.

The respondents in the instant appeals were appointed in pursuance of the Government and Aided Hostels Management Rules, // 1982 which were issued by the State Government on 18.1.1982. Though they were /// referred to as Rules, they were not statutory rules framed by the State Government in pursuance of any power vested ***(7)*** in the State by the legislature under any enactment. They were more in the nature of executive instructions and guidelines / framed for administrative convenience. The said rules were intended to apply to Government hostels run by the Social Welfare Department // as also aided hostels which received any aid in the form of grant from the Social Welfare Department. In so /// far as aided hostels are concerned, the Government is liable only to extend aid by way of a grant to ***(8)*** students of 6 to 8 standards and students of 8 to 11 standards, staying in such hostels, to meet the expenditure / of food, water, electricity, clothes, hair-cutting, soap, oil and shoes and another grant for books and stationery of such // students. The Government is not liable to bear the expenses of salary and allowances of the employees of the aided /// hostels and it is for the private organizations which run the aided hostels to meet the salaries of employees from ***(9)*** their own resources. The persons employed in the aided hostels are the employees of the respective organizations running those hostels / and not the employees of the Government. The Government has merely prescribed the eligibility conditions to be fulfilled by // the private organizations to get grants to meet the food and education expenses of students staying in such hostels. /// Therefore under no stretch of imagination, persons employed by aided hostels could be termed as persons employed by the State Government. ***(10)***

Intext new words and Phrases

....Superintendents .....non-governmental .....regularized

.....regularization .....absorption .....requisite .....statute

.....permanent .....continuance .....ad hoc .....fulfilled

.....imagination .....eligibility ..... stationery

The services of some of them had been terminated within one or two years from the date of temporary appointment. / Though the State had taken a decision to terminate all those who were appointed on consolidated wage basis, the other // respondents continued because of the interim orders by courts. Service for a period of one or two years or continuation for /// some more years by virtue of final orders under challenge, or interim orders, would not entitle them to any kind *(1)* of relief either with reference to regularization nor for payment of salary on par with regular employees of the Department. / If there was a one time scheme for regularisation of those who were in service prior to 1.5.1995,// there cannot obviously be successive directions for scheme after scheme for regularization of irregular or part-time appointments. ///

The first matter relates to persons temporarily appointed as Assistant Superintendents in 1985 and 1986 in *(2)* aided hostels. The prefix 'Assistant' was omitted in 1996 and thereafter the respondents were known as Superintendents.

The / second matter relates to a person temporarily appointed as a Superintendent in an aided hostel. They filed writ petitions // contending that they were employed on full-time basis and were discharging functions similar to those of Superintendents in Government /// hostels, but were being paid only a meagre salary while their counterparts in Government hostels are paid much higher pay *(3)* scale in the category (A) and (B) Hostels and in category 'C' hostels. They sought regularization in the posts of / Hostel Superintendent from the date of initial appointment and payment of salary on par with hostel Superintendent of class 'C' // hostels of the Social Welfare Department.

The respective respondents in the remaining eight appeals, claim that they were appointed in the /// years 1995 to 1998, as part-time cooks and chowkidars in government hostels run by Social *(4)* Welfare Department. They claim that their appointment orders were issued by the respective Mess Committee of the hostel where they / were employed; that the State Government was paying a fixed amount of Rs.600/- per month in the form // of aid to the concerned Hostel Mess Committee which, in turn, was being paid to them as remuneration.

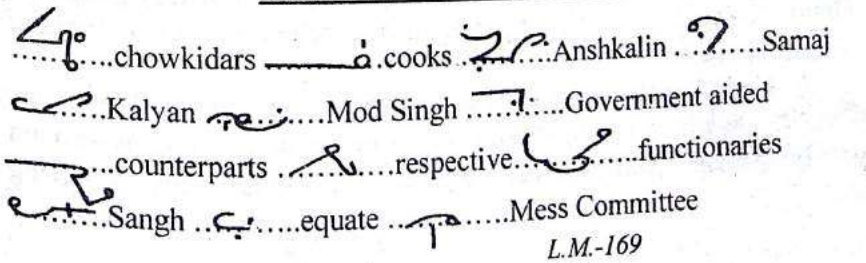
The /// State Government issued an order dated 28.12.1998, stopping the practice of appointing Class IV employees *(5)* on consolidated wages and to remove any person appointed on that basis. By subsequent circular the District Social Welfare Officers / were directed to remove part time chowkidars and cooks employed by the

Department with immediate effect and replace them by // ex-servicemen or widows of ex-servicemen. In view of the Government directives, the respondents apprehended their services may be dispensed /// with.

In the first seven appeals, a learned Single Judge by a common order allowed the writ petitions. He held *(6)* that the writ petitioners working on the posts of Superintendent, Cooks and Chowkidars are entitled to salary on par with / the salary which was paid to their counterparts holding similar posts in the hostels run by the Social Welfare Department // of the State Government with effect from the dates of their respective writ petitions. He also held that any attempt /// to terminate the services of employees working in the hostels on consolidated salary was unjust and illegal and therefore the *(7)* writ petitioners should be permitted to continue to work on the posts which they were holding as on the date / of filing their respective writ petitions. He directed the State Government to frame a scheme on the same lines in // which the State Government had earlier framed a scheme relating to part-time cooks and chowkidars (who were serving as /// on 1.5.1995). He also quashed the orders which directed chowkidars and cooks employed on consolidated *(8)* wages should be removed with immediate effect and should be replaced by ex-servicemen or widows of ex-servicemen.

The scheme / referred to by the learned Single Judge was the scheme which was framed by the State Government in pursuance of the // directions of the Rajasthan High Court in *Anshkalin Samaj Kalyan Sangh* (supra) which was approved by this court in 1996 /// in *State of Rajasthan vs. Mod Singh*). Feeling aggrieved, the State filed appeals which were dismissed by a *(9)* common judgment dated 16.8.2004. The said judgments are challenged in the first seven appeals by / the State and its functionaries. In the next two appeals, a learned Single Judge by common order allowed the writ // petitions of the respondent in terms of the following directions issued in *Anshkalin Samaj Kalyan Sangh* (supra): "It would be /// just and proper to equate Chowkidars and Cooks employed in the hostels run by the Government or Government aided institutions. (10)

Intext new words and Phrases



So far as the regularization is concerned, the cases of all such employees who have put in service of five years / or more shall be immediately taken up for consideration for regularization and scheme for regularization of their services shall be // framed and put into effect within a period of six months from today. A scheme for regularization of employment of /// such employees who have not completed five years service shall also be framed within a reasonable time by the Government. *(1)* These directions shall be applicable in the cases of all the employees similarly situated working in the hostels under the /Social Welfare Department of the State irrespective of the fact whether such employees have filed petitions in this Court or // not. The benefit of this Order shall be available to only those employees who were in service on the day /// of filing of petition or the date of this order as the case may be." The writ appeals filed by *(2)* the State against the said order were dismissed by a division bench by common order dated 16.11.2005. /

In the last appeal (relating to Kurda Ram), the writ petition for regularization was dismissed by a learned Single Judge // by order dated 3.5.1999. However, the special appeal filed by the respondent was allowed by order /// dated 2.12.2005 and the order of termination was set aside following the decision dated 16.8.2004 *(4)* (which is the subject matter of the first seven appeals). The division bench observed that the respondents' / case may be considered in the light of the decision of this court in the pending challenge to the order // dated 16.8.2004. Two questions therefore arise for consideration in these appeals : Whether persons appointed as Superintendents /// in aided non-governmental Hostels are entitled to claim absorption by way of regularization in government service or salary *(5)* on par with Superintendents in Government Hostels?

Whether part-time cooks and chowkidars appointed temporarily by Mess Committees of Government / hostels, with two or three years service, are entitled to regularization by framing a special scheme? We may at the // outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of /// these appeals:

High Courts, in exercising power under Article 226 of the Constitution will not issue directions for *(6)* regularization, absorption or permanent continuance, unless the employees claiming

regularization had been appointed in pursuance of a regular recruitment in accordance / with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and // 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which /// would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements *(7)* in the process of selection which does not go to the root of the process, can be regularized, back door entries, / appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized. Mere continuation of service by // a temporary or *ad hoc* or daily-wage employee, under cover of some interim orders of the court, would not /// confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, *(8)* *ad hoc* or daily-wage service for a long number of years, let alone service for one or two years, will not / entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be // grounds for passing any order of regularization in the absence of a legal right. Even where a scheme is formulated /// for regularization with a cut off date (that is a scheme providing that persons who had put in a specified *(9)* number of years of service and continuing in employment as on the cut off date), it is not possible to / others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to // them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut///off dates. Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. *(10)*

Intext new words and Phrases

.....sanctioned .....part-time .....fresh

.....sentiments .....successive .....litigious

..... ineligible .....violative .....chowki

.....irrespective .....at the outset .....Kurda

.....exercising .....in the light of .....2 or 3 year

.....subsequent .....regulariz .....regularized

On that analogy an administrative decision is revocable while a judicial decision is not revocable except in special circumstances. Exercise / of power of a subordinate legislation will be prospective and cannot be retrospective unless the statute authorizes such an exercise // expressly or by necessary implication. The principle laid down in Section 21 is of general application. The power to /// rescind mentioned in Section 21 is without limitations or conditions. It is not a power so limited as ***(1/80)*** to be exercised only once. The power can be exercised from time to time having regard to the exigency of / time. When by a Central Act, power is given to the State Government to give some relief by way of concession // and/or rebate to newly established industrial units by a notification, the same can be curtailed and/or withdrawn by issuing /// another notification under the same provision and such exercise of power cannot be faulted on the ground of promissory estoppel. ***(2/160)***

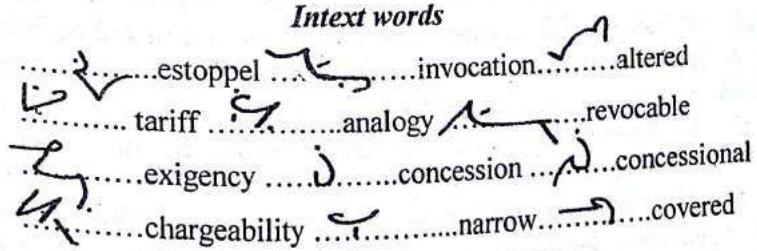
The purpose of the General Clauses Act is to place in one single statute different provisions as regards interpretations of / words and legal principles which would otherwise have to be specified separately in many different Acts and Regulations. Whatever the // General Clauses Act says whether as regards the meaning of words or as regards legal principles, has to be read /// into every statute to which it applies. Further, power to curtail and/or withdraw the notification issued under Section 49 ***(3/240)*** of the Electricity (Supply) Act, 1948 giving rebate is implied under Section 49 itself on proper interpretation / of Section 21 of the General Clauses Act. Therefore, power to curtail and/or withdraw the notification issued under // Section 49 of the Electricity (Supply) Act, 1948, granting certain benefits was available to the respondents. /// By virtue of Sections 14 and 21 of the General Clauses Act, when a power is conferred on ***(4/320)*** an authority to do a particular act, such power can be exercised from time to time and carry with it / power to withdraw, modify, amend or cancel the notifications earlier issued, to be exercised in the like manner and subject // to like conditions, if any, attached with the exercise of the power. It would be too narrow a view to /// accept that chargeability once fixed cannot be altered. Since the charging provision in the Electricity (Supply) Act, 1948 ***(5/400)*** is subject to the State Government's power to issue notification under Section 49 of the Act granting rebate, the / State Government, in view of Section 21 of the General Clauses Act, can

always withdraw, rescind, add to or // modify an exemption notification. No industry can claim as of right that the Government should exercise its power under Section /// 49 and offer rebate and it is for the Government to decide whether the conditions are such that rebate ***(6/480)*** should be granted or not.

There being nothing repugnant to raising of public revenue in exercise of sovereign power of / State to impose and collect taxes including electricity duty, in any provision of the Act of 1948 // or the policy statement made in the notification granting rebate, the raising of public revenue by withdrawing or reducing /// exemption, cannot be said to be against the provisions of any statute. Noticeably, the new industrial units, which were being ***(7/560)*** established in the hill areas, could not have compelled the Government to exercise power under Section 49 of the / Act of 1948 in their favour, for grant of rebate/ concession in electricity tariff. Powers under Section 49 // normally would be exercised by the State Government for industrial growth of an area and to generate employment opportunities /// for those who are residing in the area. However, on change in the circumstances, the Government can always reconsider the ***(8/640)*** matter and can either curtail or withdraw the benefit granted earlier. The concept of the larger public interest introduced, before / invocation of Section 21 of the General Clauses Act, in fact, amounts to amendment of the said provision, as notifications // dated June 18, 1998 and January 25, 1999, issued under Section 49 of /// the Act of 1948, as well as notification dated August 7, 2000, issued under Section ***(9/720)*** 24 of the Uttar Pradesh Electricity Reforms Act, 1999, are in the nature of legislations and, therefore, / the principle of promissory estoppel would not apply to them.

That contention was specifically refuted by pointing out that there // was proper publication of the notices under Section 4 of the Act. The other objection raised was that the whole /// acquisition was done with mala fide intentions. The acquisition of the land for planned development was not covered under public purpose. ***(10/800)***

Intext words



It is apparent from the report that all these objections were dealt with holding that there was no question of / any mala fides in the acquisition. It has also been held that the acquisition for the public purpose of planned // housing development is very much a public purpose. The said acquisition has been justified on account of increase in the /// population and fast industrial development which required the availability of the houses for the persons of middle income group and *(1/80)* lower income group, and of Scheduled Castes, Scheduled Tribes and backward class. The other objection raised was that the land / was not suited for the public purpose since there was 16 year old village Abadi of about one and a // half acre and there were number of trees on two and half acre land. That question has also been dealt /// with in details holding that the Mathura Vrindavan Development Authority would develop Public Park, School and Play Ground on the *(2/160)* acquired land. Even the objections raised by one Devendra Nath Bhargava have been considered in details by the Land Acquisition / Officer. We are quite convinced that all this could not have been possible unless the appellants were heard and their // objections were considered in details. The learned senior counsel appearing for the appellants urged that this Court had invited the /// original report and the original report did not show the factum of hearing. We have seen the original report and *(3/240)* the order sheet. Indeed, there are dates given after the first date, on which date some of the objectors were / also present. There are some missing pages. However, it is specifically mentioned in the report that the objectors have been // heard. In our opinion, once the original report suggests that the objectors were heard, there is no point in urging /// that the appellants were not heard. Shri Vikas Singh, learned senior counsel appearing on behalf of Mathura Vrindavan Development Authority *(4/320)* (respondent No. 3) relied on the decision in *Jayabheri Properties Private Limited & Others. Vs. State of Andhra Pradesh & Ors.* The observations / made in para 42, where this Court had specifically held that the contention raised on behalf of the // appellants about hearing not afforded to the objectors was refuted on the ground that the objections filed were duly considered /// by the Special Dy. Collector and rejected by his order dated 21.7.2006. Since we have *(5/400)* seen the original report in this case, we are of the opinion that not only was the hearing afforded, but all / the objections have been specifically considered. The counter

affidavit shows a document where the objectors have been invited for // the hearing on a fixed date i.e. 17.9.1991. We are of the clear opinion that not only /// the objectors were heard, but their objections were also decided. This contention raised on behalf of the appellants is rejected. *(6/480)* As regards the affidavit of the lawyer appearing on behalf of the appellants in land acquisition proceedings, we have gone / through the affidavit. It is, however, completely, bereft of the dates and other details. We, therefore, do not find it // fit to rely upon the same. The second contention raised by Shri Lalit, learned senior counsel is that though the acquisition proceedings /// are over and the award is also passed, the possession has not been taken at all. The learned senior counsel *(7/560)* pointed out, relying on the decision that as per the majority view expressed by Bhagwati & Gupta, Ji., it is / the physical possession which should be taken in pursuance of the land acquisition and not only symbolical possession or paper // possession. As regards the affidavit of the lawyer appearing on behalf of the appellants in land acquisition proceedings, we have /// gone through the affidavit. It is, however, completely, bereft of the dates and other details. We, therefore, do not find *(8/320)* it fit to rely upon the same. The learned senior counsel also relied on the report to suggest that inspite / of the acquisition, still the Revenue entries were in favour of the appellants showing their possession and the cultivation by // them in respect of the land. Shri Lalit tried to show some photographs suggesting therein that the wicket gate had /// the lock of the appellants and thus contended that the possession still continues with the appellants. In fact, it is *(9/720)* a question of fact as to whether the possession has been taken or not. However, the respondents have produced the / possession receipt, where it is suggested that the possession was taken by the officers after going on the spot. Shri // Vikas Singh, learned senior counsel appearing on behalf of Mathura Vrindavan Development Authority (respondent No. 3) pointed out that it /// would be impossible for the Collector or Revenue officers to enter each bigha of land for taking possession thereof. *(10/800)*

Intext words - bigha, Vrindavan, Lalit, hearing, Bhagwati, wicket, abadi, Deven dra, Bhargava, Jayabheri, properties, private limited

Mr. Nariman, learned senior counsel, pointed out that earlier the counsel for the appellant-accused was Mr. Choudhury but the / appellant changed his counsel and appointed Mr. Sinha in the year 2007 as his new counsel, and this // fact is corroborated by affidavit. Unfortunately, the name of Mr. Sinha as counsel for the appellant was not shown in /// the case list when the case was listed and the name of the former counsel Mr. Choudhury was shown. In *(1/80)* these circumstances, Mr. Sinha who was engaged by the appellant as his new counsel did not appear.

We are of / the opinion that even assuming that the counsel for the accused does not appear because of the counsel's negligence or // deliberately, even then the Court should not decide a criminal case against the accused in the absence of his counsel /// since an accused in a criminal case should not suffer for the fault of his counsel and in such *(2/160)* a situation the Court should appoint another counsel as amicus curiae to defend the accused. This is because liberty of / a person is the most important feature of our Constitution. Article 21 which guarantees protection of life and personal // liberty is the most important fundamental right of the fundamental rights guaranteed by the Constitution. Article 21 can be /// said to be the 'heart and soul' of the fundamental rights.

In our opinion that a criminal case should not *(3/240)* be decided against the accused in the absence of a counsel. Historically and in practice, in our own country at / least, it has always included the right to the aid of counsel when desired and provided by the party asserting // the right. The right to be heard would be, in many cases, of little avail if it did not comprehend /// the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in *(4/320)* the science of law. If charged with crime, he is incapable generally, of determining for himself whether the indictment is / good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be // put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise /// inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one. *(5/400)* He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he may be / not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that // be

true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of /// feeble intellect. If in any case, civil or criminal, a State or federal court were arbitrarily to refuse to hear *(6/480)* a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal / would be a denial of a hearing, and, therefore, of due process in the constitutional sense".

Additional evidence at appellate // stage is permissible, in case of a failure of justice. However, such power must be exercised sparingly and only in /// exceptional cases where the court is satisfied that directing additional evidence would serve the interests of justice. It would depend *(7/560)* upon the facts and circumstances of an individual case as to whether such permission should be granted having due regard / to the concepts of fair play, justice, and the well-being of society. Such an application for taking additional evidence // must be decided objectively, to cure the irregularity. The primary object of the provisions of Section 391 /// Cr.P.C. is the prevention of a guilty man's escape through some careless or ignorant action on part of *(8/640)* the prosecution before the court or for vindication of an innocent person wrongfully accused, where the court omitted to record / the circumstances essential to elucidation of truth.

Generally, it should be invoked when formal proof for the prosecution is necessary.// Thus, the additional evidence can be taken at the appellate stage in exceptional circumstances, to remove an irregularity, where the /// circumstances so warrant in public interest. Such power is exercised to have formal proof of the documents etc. just to *(9/720)* meet the ends of justice. However, the provisions of Section 391 Cr. P.C. cannot be pressed / into service in order to fill up lacunae in the prosecution's case. In the instant case, the electricity and telephone // bills have not been proved at the time of trial. The High Court while hearing the appeal remitted the matter /// back to the trial court to allow the prosecution to prove the documents and give opportunity to the prosecution witnesses. *(10/800)*

Intext Words - exceptional, lacunae, witnesses, escape, invoked, irregularity, sparingly, inadmissible, protection, Nariman, Chaudhary, Singh

The respondent, a Constable in the Railway Protection Force, was served with a memo of charge containing the allegation that / while on duty at the Railway Station he alongwith another Constable jointly caught hold of a passenger at the Railway // platform, dragged and assaulted him and snatched money and the key of a tractor from his possession. The enquiry officer /// held the respondent guilty and the disciplinary authority agreeing with the same inflicted upon him the punishment of removal from *(1/80)* service. The Appellate Authority, however, set aside the order of removal on various grounds including the ground of non-examination / of the complainant-passenger and directed for de novo enquiry. De novo enquiry was held, however, the complainant did not // appear. Nonetheless, the respondent was again held guilty and removed from service in terms of the order of the disciplinary /// authority. The Appellate Authority, however, substituted the punishment of removal from service to that of compulsory retirement. The order was *(2/160)* affirmed by a Single Judge of the High Court. The Division Bench of the High Court, however, set aside the / order of the Single Judge and quashed the order of compulsory retirement on the ground that the complainant was not // examined. The Appellate Authority while setting aside the order of removal and directing for de-novo enquiry earlier had found /// the same bad in law on account of various grounds including the ground of non-examination *(3/240)* of the complainant. Thereafter in the de novo enquiry, the enquiry officer had taken pains to call the complainant from / his native place but he did not appear during the enquiry. It is not the case of the respondent that // the disciplinary authority purposely withheld the complainant from appearing in the departmental enquiry from the order of the disciplinary authority /// does not act as a Court of appeal and appraise evidence. It interferes with the finding of enquiry officer only *(4/320)* when the finding is found to be perverse. The Division Bench of the High Court erred in setting aside the / order of Single Judge and quashing the order of compulsory retirement. The finding recorded by the enquiry officer was based // on the materials on record and on proper appreciation of evidence which cannot be said to be perverse, calling for /// interference by the High Court in exercise of its power of judicial review. A copy of the written complaint was *(5/400)* produced during the course of enquiry which supports the charge leveled against the respondent. Further the respondent in his defence / had accepted the

detention of the complainant and his release. However, he denied the allegation of snatching of money from // him but from his own defence, it is evident that he had accepted the incident except that he had not /// snatched the money. On the basis of the materials on record, the enquiry officer held the respondent guilty with which *(6/480)* the disciplinary authority as also the appellate authority agreed. It is well settled that High Court while exercising the power / of judicial review The enquiry officer held him uilty of the charge and the disciplinary authority agreeing with the same // inflicted the punishment of removal from service. The writ petitioner preferred appeal and the Appellate Authority allowed the appeal, set /// aside the order of removal and directed for de novo enquiry and while doing so, observed as follows :."However, I *(7/560)* find that there were some gross irregularities in the course of the proceeding enquiry. First, from the very beginning of / the proceeding the delinquent should have been given the option to engage a "friend" for defending his case and thereafter // in presence of his "friend" the enquiry should be started. Secondly, the complainant was not examined during the course of /// proceeding enquiry. Thirdly, the complainant's story of delivery of a tractor at Burdwan and boarding a train from Asansol after *(8/640)* that required further examination by E.O. and cross examination by the delinquent." Thereafter a de novo enquiry was / held in which the writ petitioner was allowed to engage a friend. However, Harish Chandra Ram, the victim was not // examined. Nonetheless the enquiry officer held the writ petitioner guilty of the charge. A copy of the enquiry-report was /// made available to the writ petitioner and he submitted his reply. The disciplinary authority considered the report of enquiry officer *(9/720)* and reply of the writ petitioner and passed the order of removal from service. As regards the plea of the / writ petitioner regarding non-de examination of Harish Chandra Ram, the disciplinary authority observed as follows: "In the 3rd para, he has alleged that the complainant Sri Harish Chandra Ram could not be presented in the // enquiry and hence the complaint is false. But this defence of Shri Guha cannot be accepted because the fact of /// the matter is that Harish Chandra Ram was illegally detained and released by constable B. Guha alongwith C. Rameshwar and Guha. *(10/800)*

Intext words - .....de novo .....Rameshwar .....Guha

.....withheld .....complainant .....perverse

Exercise 89 (80 w.p.m. - 10 minutes- Transcriptions)

On the 26th December 1991 Naranjan Singh PW-2 son of Jaswant Singh deceased was in / his house along with his father when there was a knock at the door. Naranjan Singh and his father, who happened // to be the Sarpanch of the village, thereupon opened the door. Two Sikh youth, who were subsequently identified as the /// appellants herein, Sukhbir Singh and Dilbagh Singh, were standing outside carrying AK-47 rifles. They told Jaswant Singh *(1/80)* that he was raising an unnecessary dispute with regard to the school land, part of which was under the possession / of Mohanjit Singh, Amir Singh and Bhupender Singh sons of Harbans Singh (all accused). Jaswant Singh answered that he // alone was not the deciding factor and the other members of the Panchayat and the Lambardar be also called. /// Jaswant Singh was then taken towards the house of Mohinder Singh Lambardar, by the two appellants followed by Naranjan Singh. *(2/160)* Mohinder Singh too was called out of his house and the entire group then went on to the house of / Hardev Singh, Member Panchayat. Hardev Singh too was called out and the appellants told them that the dispute should be // settled then and there.

They also took Jaswant Singh, Lambardar Mohinder Singh and Member, Panchayat Hardev Singh towards the side /// of the school outside the village again followed by Naranjan Singh. The three were thereafter told to sit on the *(3/240)* ground whereupon one of the appellants went to call Harbans Singh appellant. He returned about 5 minutes later accompanied by / Harbans Singh and directed Jaswant Singh to stand up and after telling him that he alone was not permitting Harbans // Singh and his family to live peacefully and that he was attempting to construct a school building over his land, /// they fired a burst each from their rifles killing Jaswant Singh on the spot. Naranjan Singh then ran away but *(4/320)* returned after some time and seeing his father's dead body, left for the police station.

He, however, came across a / police party at about 4 a.m. on the canal bridge near village Taragarh and made a statement to // Inspector Jarnail Singh PW- 8 and on its basis an FIR was registered at Police Station, Sadar Batala. /// The Special Report was delivered to the Magistrate in Batala itself. at 6 a.m. In the FIR, *(5/400)* Naranjan Singh stated that two Sikh youth who had killed his father were militants 25-30 years of age, / of medium build, wearing kurta pajamas and that he could identify them, if confronted. He further

stated that he suspected // that Harbans Singh and his sons Mohanjit Singh, Amir Singh and Bhupender Singh had entered into a conspiracy along with /// the appellants to commit the murder. Harbans Singh and his three sons were arrested soon after the incident but Sukhbir *(6/480)* Singh and Dilbagh Singh were arrested on the 21st May 1992 by Sub-Inspector Pyara Singh./ On the completion of the investigation, all the accused were brought to trial for offences punishable under section 302 // read with Section 149 and 120-B of the IPC.

The prosecution /// in support of its case placed reliance on the evidence of Sukhdip Singh PW-1, the doctor who had *(7/560)* carried out the post-mortem on the dead body, Naranjan Singh PW-2, Mohinder Singh Lambardar PW-3 / who too supported the prosecution story and further stated that he had seen Harbans Singh and his sons talking to // one of the appellants, and PW-8 Sub-Inspector Jarnail Singh who had recorded the statement of Naranjan Singh near /// the canal minor bridge and which had led to the registration of the formal FIR.

The trial court *(8/640)* relying on the aforesaid evidence convicted all the accused for offences punishable under Section 120-B of / the IPC and sentenced them to RI of 7 years and to fine, Sukhbir Singh and Dilbagh // Singh appellants under Section 302 of the IPC and sentenced them to life imprisonment along /// with fine and Harbans Singh, Mohanjit Singh, Amir Singh and Bhupender Singh under Section 302 of the *(9/720)* IPC also to serve a life sentence. The matter was thereafter taken in appeal to the High Court / and during the pendency of the appeal Harbans Singh passed away. The appeal against him was dismissed as having abated. //

The High Court observed that there was no delay in the lodging of the FIR in which the /// names of the accused Harbans Singh, Mohanjit Singh, Amir Singh and Bhupender Singh alias Shastri had been mentioned. *(10/800)*

Proper nouns - .....Naranjan .....Jaswant .....Sarpanch

.....Sukhbir .....Dilbagh .....Mohanjit

.....Harbans .....Bhupender .....Lambardar

.....Mohinder .....Hardev.....Taragarh

.....Sadar .....kurta pajama.....Pyara

Exercise 90 (80 w.p.m. - 10 minutes- Transcriptions)

When a court is considering whether punishment of 'termination from service' imposed upon a bank employee is shockingly excessive or / disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and // relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long /// inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from *(1/80)* "dormant" to "operative" category (contrary to instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal / form from such person, gets a token and collects the amount on behalf of such person for the purpose of // handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the /// banking procedures; and ultimately, if it transpires that the person who claimed to be account holder was an imposter, the *(2/160)* bank can not be found fault with if it says that it has lost confidence in the employee concerned. A / Bank is justified in contending that not only employees who are dishonest, but those who are guilty of gross negligence, // are not fit to continue in its service. Several witnesses were examined to prove the charge. One of them /// was H.S. Sharma who conducted the preliminary inquiry and to whom the respondent had made a statement broadly *(3/240)* admitting the facts which constituted the subject matter of the second charge. M. Rawal, who was the cashier and / C. Ojha, the officiating Branch Manager were also examined. Based upon their evidence, the Inquiry Officer found the respondent // to be guilty of the second charge and that has been accepted by the disciplinary authority. The High Court has interfered /// with the said finding without expressly holding that the said finding of guilt was erroneous. The High Court has proceeded *(4/320)* as if it was sitting in appeal over the departmental inquiry and interfered with the finding on a vague assumption / that the respondent must have acted bonafide in an "increasing customer friendly atmosphere". There was no justification for the division // bench to interfere with the finding of guilt. The fact that the criminal court subsequently acquitted the respondent by giving /// him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the punishment. *(5/400)* The standard of proof required in criminal proceedings being different from the standard of proof required in departmental

enquiries, the / same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental // proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental /// proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by *(6/480)* the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the / enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the // decision on the ground that subsequently, the criminal court has acquitted him. We are, therefore, of the view that the /// High Court was not justified in quashing the punishment and directing the department to take action for restoring his welfare. *(7/560)*

We have noticed at some length the sequence of events and the efforts made by the respondent to receive copies of / the documents which were relevant for the preparation of his defence in the departmental inquiry. As noticed earlier all the // requests made by the respondent fell on deaf ears. In such circumstances, the conclusions recorded by the High Court were /// fully justified.

Copies of the documents which formed the foundation of the charge sheet against the respondents have been denied *(8/640)* to the respondent on the lame excuse, as projected in the pleadings of the appellant, at different stages before the / High Court as well as this Court, that the respondent, at the relevant time, was posted in the same division // and the documents could have been received by him and the reply could have been given. According to the /// appellant all the concerned documents were with the Division in which the petitioner (respondent herein) was posted as Executive Engineer. *(9/720)* In the counter-affidavit filed in the High Court it is specifically mentioned that the documents pertain to the same / division in which the respondent had been posted as Executive Engineer and therefore he being in knowledge and custody of // the said documents, there was no requirement for the said documents to be supplied to the respondent. The very same /// submission has been reiterated before us by the learned Counsel of the Appellants. In our opinion, the submission is baseless. *(10/800)*

Intext Words - ...disproportionate ...dormant

.....Disciplinary ..... guilt .....reiterated

Even if the respondent had continued in the same department it would not have been possible for him to take / the custody of the documents as he would no longer be in charge of the office. Further more, it is // evident from the letter dated 19.11.2003 that the documents had to be collected from different /// offices and made available to the respondent. This fact is so mentioned in the letter of the Executive Engineer. In *(1/80)* such circumstances, we are unable to accept the submission of the learned counsel for the appellants that it was possible for /the respondent to make an effective representation against the charge sheet. The last payment of the Tender has been paid / by the then Executive Engineer Sri Akash Deep Sonkar and accordingly payment of Rs.19000/- was to be paid // by cheque. Thereafter you have made this payment through Cheque. At page 138 of the Cash Book Part-73, /// Entry No. illegible has been made. You have deliberately made aforesaid entry in order to cause loss to the Govt. *(2/160)* and had made the payment twice through voucher No.142 for the amount 1,93,000 which / has been changed to 1,34,000/-. Therefore the payment of Rs.59,000 which has already // been made shown to be not paid in the aforesaid entry.

In this manner you have deliberately caused loss to the /// Government by the fraudulent act conspiring for the same and had recovered Rs.59,000/- from the contractor through voucher *(3/240)* No.141, reason for which has been mentioned that Rs.59,000/- has been deducted due to excess / payment made for the work at Salon Jagat Pur Road through voucher No.142. Nowhere in voucher // No. 142 dated it is mentioned that due to what reason deduction has been made after the Issuing /// of cheque regarding the amount to be paid which shows bad intention on your part. You have made wrong entries *(320)* regarding deduction mention in the voucher amount which is proved to be violation of financial handbook Section-5 (Part-1) / para 4 D and 83. Voucher No.141 proves that the Divisional Accounts Officer has issued // the cheque regarding the aforesaid payment passed by the Assistant Engineer. At the time of issuing cheque deduction of /// Rs.59,000/- from the amount to be paid makes your conduct suspicious and you are found responsible for the *(5/400)* misconduct in this regard. Therefore, you are found guilty of misconduct according to Para 3 U.P. Govt. Servant Conduct / Rules 1956. Therefore, the cheque has been wrongly encashed by you after

making fraud entry by self name // and the amount has not been taken in cash book.

The firm has alleged that you had received payment after /// committing fraud therefore, you are found guilty and misconduct regarding the misappropriation of amount of Rs.1,29,000/- after *(6/480)* committing fraud on the documents and violating the financial rules. You are also held guilty for misconduct according to para / 3 U.P. Govt. Servant Conduct Rules 1956.

Case No.37/98 has been instituted for // adjudication between M/s Indian Coal Suppliers vs. Govt. of U.P. The case has been decided according to which /// demand for Rs.26, 00,000/- along with interest has been made by the concerned firm from the Department. The *(7/560)* fact has been in your knowledge that the option of appeal in the aforesaid case has been rejected by the / Govt. In such situation you had not prepared the defence regarding validity of the agreement during framing of issues in // proper manner. The case has been dismissed only on the ground of deficient Court Fees. You have deliberately appointed Special /// Advocate without permission of Govt., had not paid Court Fees and had colluded with M/s Indian Coal Suppliers to cause *(8/640)* loss of Rs.26,00,000/- to the Govt. by presenting weak case before the court in order to cause benefit / to the contractor. A bare perusal of the aforesaid charges shows that the three charges were based on official documents // or official communications. We have earlier noticed the relentless efforts made by the respondent to secure copies of the documents,/// which was sought to be relied upon, to prove the charges. These were denied by the department in flagrant disregard *(9/720)* of the mandate of Rule 7 sub rule 5. Therefore the inquiry proceedings are clearly vitiated having been held in / breach of the mandatory sub rule (5) of Rule 7 of the 1999 Rules.

The first inquiry // report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the /// respondent to answer the charges. In such a case the Inquiry Officer shall record the statement of witnesses mentioned above.

Intext words - ....mis-conduct....mis-appropriation

.... validity .....relentless .... flagrant

....disregard .....suspicious .....Akash

Sonkar .....appearance .....encashed

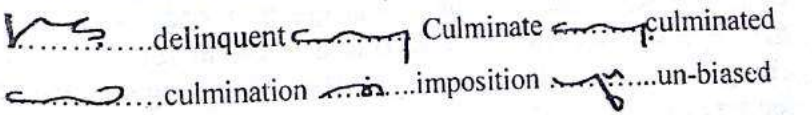
A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to / the charge sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. // It is only in a case when the Government servant despite notice of the date fixed failed to appear that /// the enquiry officer can proceed with the inquiry *ex parte*. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since ***(1/80)*** the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in / order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is // so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge. /// Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed ***(2/160)*** to be a representative of the department or disciplinary authority of the Government. His function is to examine the evidence / presented by the department, even in the absence of the delinquent official to see as to whether the un-rebutted // evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been /// observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken ***(3/240)*** into consideration to conclude that the charges have been / proved against the respondents.

Apart from the above by virtue of Article 311(2) of the Constitution of // India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement /// of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which ***(4/320)*** may culminate in a punishment being imposed on the employee. When a department enquiry is conducted against the Government servant / it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The // enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not /// only that justice is done but is manifestly seen to be done. The object of rules of natural justice is ***(5/400)*** to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal / or removal from service.

This Proposition can be illustrated by a large number of modern cases involving the use of / undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a // judicial tribunal and receives or appears to receive evidence *ex parte* which is not fully disclosed, or holds *ex parte* /// inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously ***(6/480)*** very strong; the maxim that justice must be seen to be done can readily be invoked. In our opinion the / aforesaid maxim is fully applicable in the facts and circumstances of this case.

As noticed earlier in the present case // not only the respondent has been denied access to documents sought to be relied upon against him, but he has /// been condemned unheard as the enquiry officer failed to fix any date for conduct of the enquiry. In other ***(7/560)*** words, not a single witness has been examined in support of the charges levelled against the respondent. The High / Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of principles natural // justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to /// offer an explanation against the allegations made in the charge sheet.

This Court, in the case of Kashinath vs. ***(8/640)*** *Union of India (1986)* had clearly stated the rationale for the rule requiring supply of copies of the / documents, sought to be relied upon by the authorities to prove the charges leveled against a Government servant. In that // case the enquiry proceedings had been challenged on the ground that non-supply of the statements of the witnesses and /// copies of the documents had resulted in the breach of rules of natural justice. The appellant therein had also requested ***(9)*** for supply of the copies of the documents as well as the statements of the witnesses at a preliminary enquiry./ The principle of law says that a Government employee who is facing any departmental inquiry is entitled to all the // relevant files, statements, documents and other materials which could help him to have a reasonable opportunity to prove himself not /// guilty of the charges so framed against him. It is his right to get copies of all the documents available. ***(10/800)***



The request made by the appellant was in terms turned down by the disciplinary authority. In considering the importance of / access to documents in statements of witnesses to meet the charges in an effective manner this Court observed as follows: // "When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet /// the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges *(1/80)* unless the copies of the relevant statements and documents to be used against him are made available to him. In / the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out // the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary /// authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in *(2/160)* this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the / question: "What is the harm in making available the material" and weighed the pros and cons, the disciplinary authority could // not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the /// time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to *(3/240)* supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other / hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There // was nothing confidential or privileged in it."

On an examination of the facts in that case, the submission on the /// behalf of the authority that no prejudice had been caused to the appellant, was rejected, with the following observations: "Be *(4/320)* that as it may, even without going into minute details it is evident that the appellant was entitled to have / an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and // statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against /// him. So also at the time of arguments, he would have needed the copies of the documents. So also he *(5/400)* would have needed the copies of the documents to enable him to effectively

cross-examine the witnesses with reference to the / contents of the documents. It is obvious that he could not have done so if copies had not been made // available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant /// has been denied a reasonable opportunity of exonerating himself." We are of the considered opinion that the aforesaid observations are fully *(6/480)* applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to / a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and // effective rebuttal to the charges being enquired into against the government servant.

The aforesaid proposition of law has been reiterated /// in the case of *Trilok Nath vs. Union of India* 1967 SLR 759 (SC) *(7/560)* wherein it was held that non–supply of the documents amounted to denial of reasonable opportunity. It was held as / follows:

"Had he decided to do so, the document would have been useful to the appellant for cross-examining the // witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after /// perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in *(8/640)* our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the / FIR and the statements recorded at Sidipura house and during the investigation must be held to have caused // prejudice to the appellant in making his defence at the inquiry."

The proposition of law that a government employee facing /// a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a *(9/720)* reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further / reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in the // case of *State of Punjab vs. Bhagat Ram (1975) 1 SCC*

"The State contended that the /// respondent was not entitled to get copies of statements as was given the opportunity to cross-examine all the witnesses." *(10/800)*

Intext Words - .....contended .....Triloknath .....Sidhipura .....Bhagat Ram .....inconsistency .....discipline

Exercise 94 (80 w.p.m. - 10 minutes- Transcriptions)

The appellant who, lost the Lok Sabha election, filed an election petition challenging the election of the respondent-returned candidate, / primarily on the allegations that the respondent had made communal appeals to the electorate, and prayed that the election of // the respondent be declared as void u/ss. 101(b) and 101(d) of the Representation /// of the People Act, 1951 and the petitioner be declared as elected in terms of s.101(b) ***(1/80)*** of the Act. In support of his allegations, he filed a VHS cassette said to have contained the speeches / made by the respondent. The Election Tribunal dismissed the election petition holding that the election petitioner had failed to prove // the allegations, as he did not produce any evidence to show that the VHS cassette filed by him was /// the true reproduction of the original speeches made by the respondent. The Tribunal also did not accept the plea of ***(2/160)*** the election petitioner that the cassette was obtained from the Election Commission and was a public document, and its mere production / was sufficient and no further evidence was required to be adduced to prove as to how the said cassette was // obtained by him. Aggrieved, the petitioner filed the appeal. The questions for consideration before the Court were: (i) whether the /// finding by the Tribunal that in the absence of any evidence to show that the VHS Cassette was ***(3/240)*** obtained by the appellant from the Election Commission, the cassette placed on record by the appellant could not be treated / as a public document is perverse and (ii) whether a mere production of an audio cassette, assuming that the same // is a certified copy issued by the Election Commission, is per se conclusive of the fact that what is contained /// in the cassette is the true and correct recording of the speech allegedly delivered by the respondent or his ***(4/320)*** agent? Dismissing the appeal, the Court held - "The Tribunal has rightly held that in the absence of any cogent evidence / regarding the source and the manner of its acquisition, the authenticity of the cassette was not proved and it could // not be read in evidence despite the fact that the cassette is a public document. No relevant material was brought /// to notice of the Court which would impel it to hold that the finding by the Tribunal is perverse, warranting ***(5/400)*** interference.

A charge of corrupt practice, envisaged by the Representation of the People Act, 1951 is equated with / a criminal charge and, therefore, standard of proof therefore would not be preponderance of probabilities as in a civil action // but proof beyond reasonable doubt

as in a criminal trial. If a stringent test of proof is not applied, a /// serious prejudice is likely to be caused to the successful candidate whose election would not only be set aside, but ***(6/480)*** he may also incur disqualification to contest an election for a certain period, adversely affecting his political career. Thus, a / heavy onus lies on the election petitioner to prove the charge of corrupt practice in the same way as a // criminal charge is proved.

The learned counsel for the petitioner submits that there is no prohibition in law in entertaining /// the petition under Article 136 of the Constitution against the order of the Family Court and in ***(7/560)*** such an eventuality, there was no occasion for the petitioner to approach the High Court as the relief sought herein / cannot be granted by any court other than this Court. Thus, the petitioner has a right to approach this Court // against the order of the Family Court and the petitioner cannot be non-suited on this ground alone.

Article /// 136 of the Constitution enables this Court, in its discretion to grant special leave to appeal from any judgment, ***(8/640)*** decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the / territory of India. Undoubtedly, under Article 136 in the widest possible terms, a plenary jurisdiction exercisable on // assuming appellate jurisdiction has been conferred upon this Court. However, it is an extra-ordinary jurisdiction vested by the Constitution /// in the Court with implicit trust and faith and thus, extra-ordinary care and caution has to be observed while ***(9/720)*** exercising this jurisdiction. There is no vested right of a party to approach this Court for the exercise of such / a vast discretion, however, such a course can be resorted to when this court feels that it is so warranted // to eradicate injustice. Such a jurisdiction is to be exercised by the consideration of justice and call of duty. The /// power has to be exercised with great care and due consideration otherwise such an order would create problems in future. ***(10/800)***

Intext Words - ...eradicate.....extra-ordinary ...discretion

.....representation .....warranting

..... assuming .....authenticity ..... Adduced

.....conclusive .....perverse ..... per se

.....preponderance.....cogent .....probabilities

Short Cuts for Speed Writing

Follow these short-cuts for speed writing.-

1. Put sign of s for repeating a word, as -

   .....very very.....I am very very happy

   .....many many thanks

2. Write the second outline again for 'and', as -

   ..... again and again.....over and over again

   .....year and year

3. Repeat the outline for 'after' , as in -

   ....session after session .....year after year

4. 'to' can be represented in the following manner -

   .....day to day .....year to year.....State to State

   .....person to person .....month to month

5. Figures of 19th century can be represented by writing the last two digits below the outline or base line, as in -

   ..In 1973 In the year 1995 ...In 1999

6. For current century, write last 2 figures on the base line, as -

   The budget of 2015 ..In the year 2011

7. Consecutive figures can be represented by a slash after first figure, as -

   ....In 1995-96, ..For the year 1999-2000

8. 'or' can be represented by writing the following figure below the first, as - ..5/6.....5 or 6, ..8/10....8 or 10, ..10/15...10 ot 15, ..2/3....2 or 3

9. 'to' between figures has to represented by its logogram, as -

   2 - 3..two to three, 4..5..4 to 5, 10..12 10 to 12

10. Put Nasal Signs Zero in place of dot vowels and parallel dash in place of dash vowels, as -

    .....Gandini .....Jhansi.....Ranchi ....eent

    .....Boondi.....Gonda .....Oont ..... Moong

GLOSSARY OF (INTEXT WORDS WITH SYNONYMS/MEANINGS)

Absconder-- Fugitive

Absorption-- Incorporation

Accepting-- Tolerant

Accomplice—Partner in Crime

Accusation—Allegation

Acquire--Obtain

Acquisition-- Gaining

Acquit—Find not guilty

Acquittal-- Release

Ad hoc— For one specific case

Adduced-- Abduced

Adjacent-- Neighbouring

Adjudicator-- Judge

Adjudicatory –Concerned adjudicative

Adjustment--Modification

Administered-- *Supervise*

Adversely-- Harmfully

Affidavit—Official declaration

Aforesaid--*Before*-mentioned

Afore-stated—Said

Aggregate-- Collective

Alarm-- Fear, warning

Alteration-- Modification

Altercation-- Argument

Altered-- Distorted

Ambit-- Realm

Amendment-- Adjustment

Analogy--Inference, comparison, faith

Animus—*Bad blood, ill will*

Antique—Very old

Antiquities—Old fashioned items

Appearance-- Look

Appellant--Plaintiff

Append—Add on, affix

Archeological—Related to archaeology

Archeologist— Anthropologist

Argued-- Reason

Arrived—At home

Ascertain- Determine

Assailant-- Attacker

Assaulted-- Reaten

Assent- Agree

Assistance-- Help

Assuming—Presumptuous

At the outset-- Onset

Auction-- Sale

Auctioneer-- Broker

Authenticity-- Genuineness

Available-- *Obtainable*

Bedroom-- A room primarily used for sleeping

Beliefs--- Attitude

Bidder-- Applier

Binding- Compulsory

Bio-data—*Biographical details*

Brother-in-law-- A brother by marriage

Builders--Planners

Bundle-- Package

Categorical--Definite

Challenge-- Confront

Chargeability-- Indictable

Charge-sheet-- Legal blotter

Chop-- Cut

Circumscribed-- Restricted

Classifiable-- Distinctive

Cogent-- Convincing

Cognizance -- Awareness

Commence-- Start

Commencement-- Starting

Compensation-- Return

Complainant-- Plaintiff

Completion -- Conclusion

Compliance-- Fulfillment

Concede-- Grant

Concept-- Idea

Concession-- Allowance

Conclusive-- Decisive

Conduct-- Behavior

Confessional—Confession/agree

Confiscated-- *Legal seizure*

Conjecture-- Guess

Conjunct—Cooperative, United

Connotation--*Suggestion*

Conscious- Aware

Consent-- Permission, ye

Consistent-- Regularity

Conspiracy-- Unlawful pla

Construction--Building ac

Construe-- To mean

Contend-- Contest

Contention -- Argument

Contest-- Contend

Contingencies—Natural

Continuance-- Persistenc

Contradiction-- *Disagree*

Controversy-- Argument

Controverted-- Opposed

Converse—Talk

Convict-- Criminal

Conviction-- Confidence

Corroboration-- Justificat

Counterpart- Complemer

Coupled-- Joined

Cranes—Lifting device

Cross-examination-- Que

Crucial-- Vital

Cryptic-- Mysterious

Culminate-- End

Curiously-- Peculiarly

Cyanide-- Nitrile

Dampening—Moistening

De novo—From the beginning

Declaration-- Statement

Decree -- Ruling

Deduction-- Inference

Default—Non-payment

Deliberation-- Reflection

Delinquent-- Criminal

Denomination-- ***Value***

Denotified-- Cancelled notice

Dental—Relating to the teeth

Dentist—Dental practitioner

Deposition-- Statement

Describe-- Explain

Detained—Under arrest

Deviating-- Different

Deviation-- Departure

Dictionary-- Vocabulary

Dictum-- Saying

Differential—Degree of difference

Dimension-- Measurement

Diploma-- Qualification

Discharge-- Free

Disciplinary-- Penal

Discretion—Carefulness

Dispensation-- Indulgence

Dispensed-- Distributed

Dispensing- Provision

Disproportionate—Uneven

Disregard-- Ignore

Distinct-- Separate

Diversity-- Variety

Doctrinaire-- Rigid

Documentary--Infotainment

Dogmatic-- Inflexible

Dormant-- Latent

Dozers—*Large power truck*

Dumpers—*Dump truck*

Eastern—Situated in the east

Eligibility—State of being eligible

Encashed—To cash

Encumbrances-- Burden

Enthusiasm-- Eagerness

Entirety-- Total

Enumerated-- Itemize

Envisage- Imagine

Equate—Associate

Eradicate-- Eliminate

Erroneous-- Mistaken

Escape-- Flee

Estoppel—Rule of evidence

Eventualities-- *Contingency*

Ex parte-- Prejudiced

Exasperated-- Frustrated

Exceptional-- Outstanding

Exempt-- Excused

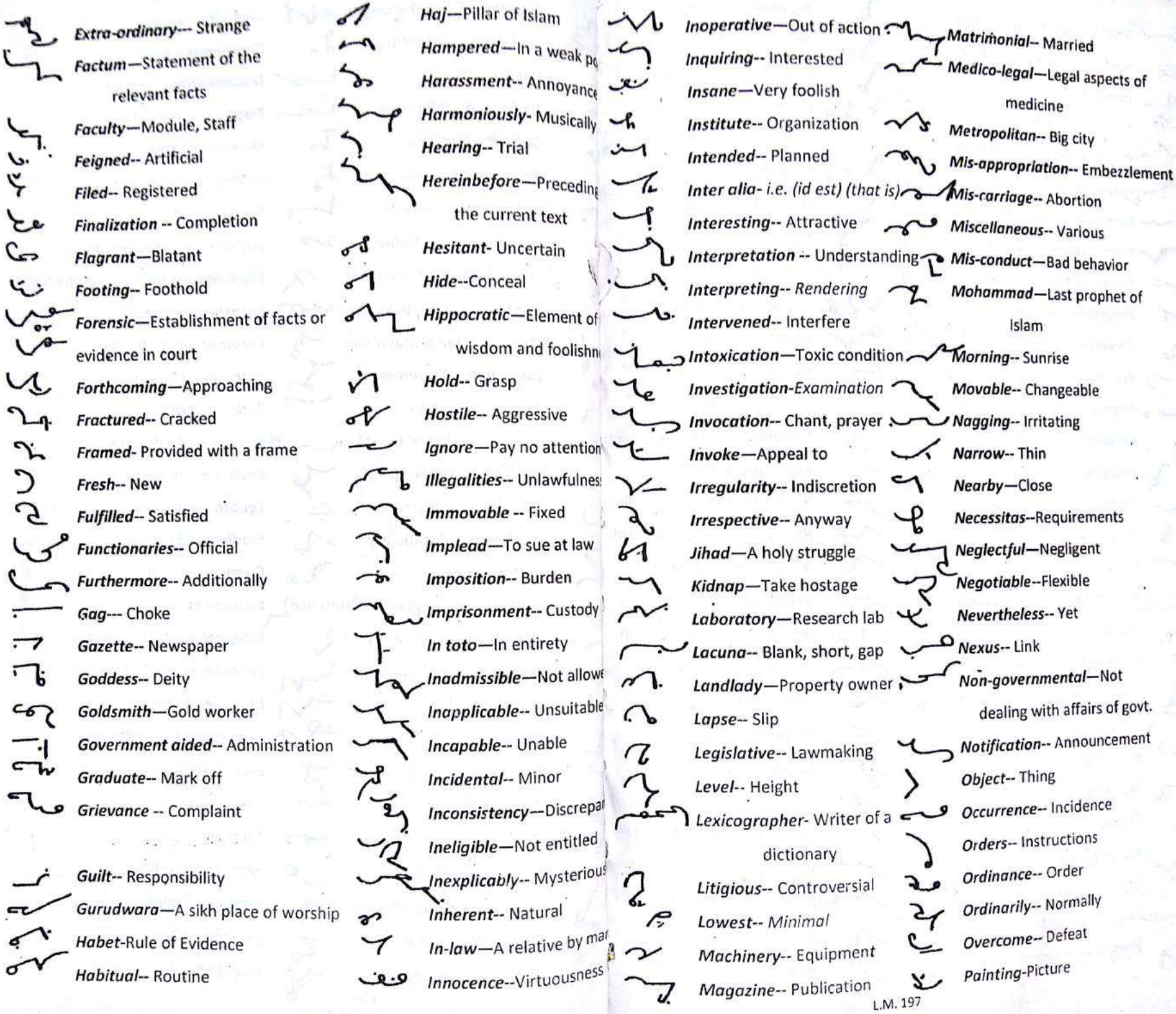
Exemption- Release

Exercise-- Workout

Exhibit-- Display

Exigency-- Demand

Expedient-- Measure


Extra-ordinary--- Strange
Factum—Statement of the relevant facts
Faculty—Module, Staff
Feigned-- Artificial
Filed-- Registered
Finalization -- Completion
Flagrant—Blatant
Footing-- Foothold
Forensic—Establishment of facts or evidence in court
Forthcoming—Approaching
Fractured-- Cracked
Framed- Provided with a frame
Fresh-- New
Fulfilled-- Satisfied
Functionaries-- Official
Furthermore-- Additionally
Gag--- Choke
Gazette-- Newspaper
Goddess-- Deity
Goldsmith—Gold worker
Government aided-- Administration
Graduate-- Mark off
Grievance -- Complaint
Guilt-- Responsibility
Gurudwara—A sikh place of worship
Habet-Rule of Evidence
Habitual-- Routine
Haj—Pillar of Islam
Hampered—In a weak po
Harassment-- Annoyance
Harmoniously- Musically
Hearing-- Trial
Hereinbefore—Preceding the current text
Hesitant- Uncertain
Hide--Conceal
Hippocratic—Element of wisdom and foolishn
Hold-- Grasp
Hostile-- Aggressive
Ignore—Pay no attention
Illegalities-- Unlawfulnes
Immovable -- Fixed
Implead—To sue at law
Imposition-- Burden
Imprisonment-- Custody
In toto—In entirety
Inadmissible—Not allowe
Inapplicable-- Unsuitable
Incapable-- Unable
Incidental-- Minor
Inconsistency—Discrepar
Ineligible—Not entitled
Inexplicably-- Mysterious
Inherent-- Natural
In-law—A relative by mar
Innocence--Virtuousness
Inoperative—Out of action
Inquiring-- Interested
Insane—Very foolish
Institute-- Organization
Intended-- Planned
Inter alia- i.e. (id est) (that is)
Interesting-- Attractive
Interpretation -- Understanding
Interpreting-- Rendering
Intervened-- Interfere
Intoxication—Toxic condition
Investigation-Examination
Invocation-- Chant, prayer
Invoke—Appeal to
Irregularity-- Indiscretion
Irrespective-- Anyway
Jihad—A holy struggle
Kidnap—Take hostage
Laboratory—Research lab
Lacuna-- Blank, short, gap
Landlady—Property owner
Lapse-- Slip
Legislative-- Lawmaking
Level-- Height
Lexicographer- Writer of a dictionary
Litigious-- Controversial
Lowest-- Minimal
Machinery-- Equipment
Magazine-- Publication
Matrimonial-- Married
Medico-legal—Legal aspects of medicine
Metropolitan-- Big city
Mis-appropriation-- Embezzlement
Mis-carriage-- Abortion
Miscellaneous-- Various
Mis-conduct—Bad behavior
Mohammad—Last prophet of Islam
Morning-- Sunrise
Movable-- Changeable
Nagging-- Irritating
Narrow-- Thin
Nearby—Close
Necessitas--Requirements
Neglectful—Negligent
Negotiable--Flexible
Nevertheless-- Yet
Nexus-- Link
Non-governmental—Not dealing with affairs of govt.
Notification-- Announcement
Object-- Thing
Occurrence-- Incidence
Orders-- Instructions
Ordinance-- Order
Ordinarily-- Normally
Overcome-- Defeat
Painting-Picture

Para material-- Fabric, fibre

Partnership—Joint venture

Part-time—Amateur

Per se—As such

Performance-- Presentation

Perfunctory-- Thoughtless

Permanent-- Enduring

Permissible—Allowable

Persuasion—Point of view

Perusal—Examination

Perverse-- Wicked

Pilgrimage—Sacred journey

Pilgrims—*Journeyer, believer*

Plaintiff-- Claimant

Plausible-- Reasonable

Poison-- Fatal

Port Trust-- Faith

Portion-- Piece

Post-mortem-- Investigation

Preclude-- Prevent

Preferred-- Favoured

Preponderance-- Prevalence

Prerogative -- Right

Prevention -- Avoidance

Pro-active –Positive

Probability-- Likelihood

Proceeds-- *Profits, Earning*

Promptly-- Punctually

Pronouncement-- Statement

Property-- Possessions

Prophet-- Diviner

Proportionate-- Balanced

Proposition-- Proposal

Prosecutrix- *A female Prosecutor, Victi*

Proximity-- Nearness

Prudent-- Careful

Punishable—Liable to be punished

Pursuance-- Pursuit

Quarrel-- Argue

Quash-- Cancel

-- Nullify

Rationale—Underlying princ

Reaffirming- Recheck

Realization-- Understanding

Recognize—Be familiar with

Reconstruct-- Rebuild

Recovery—Revival

Redeem—Cash in, en-cash

Redemption-- Salvation

Redundant-- Outmoded

Referred-- Mentioned

Regional- Local

Register-- Record book

Regularization—Making Re

Regularize-- Legalize, regula

Reinstatement-- Return to p

Reiterate-- Repeat

Relentless—Persistent

Religious—*Spiritual*

Rely-- Trust

Rendering-- Description

Rented--Borrowed, in rent

Repelled—Push back

Representation-- Symbol

Repugnant-- Disgusting

Requisite-- Necessary

Requisition--*Command*

Resistance-- Confrontation

Resorted—*Fall back*

Respective-- Individual

Responsive—Respond

Restore-- Bring back

Revenue -- Income

Reversal-- Turnaround

Re-vesting- *Re-invest*

Revision--Amendment

Revocable—Capable of being annulled

Rigid-- Unbending

Rigorous-- Exact, painful

Running—In succession

Sanctioned-- Authorized

Scene-- Sight, view

Searching-- Penetrating

Seizure-- Attack, capture

Sentiment-- Feeling

Separating-- Untying

Set aside—Allow, appropriate

Set-aside -- Keep back

Sexual-- Intimate

Shelf-- bookshelf

Shortest-- Straight, smalles

Shovel—*Hand tool*

Sketchy-- Vague

Sparingly-- Carefully

Specifically-- Specially

Spike-- *Heavy nail*

Sponsored-- *Patronize*

Stationery—Letter paper

Statute-- Decree

Statutory-- Legal

Stay-- Wait

Stereotype-- Typecast

Stigma-- Shame

Stipulation-- Condition

Stitch-- Sew

Stopple—Blockage

Strange-- Odd

Subordinate -- Secondary

Subsequent-- Following

Successive-- Consecutive

Succumb—Give way

Suddenly-- Abruptly

Suit—Set of clothes

Superintendence-- Supervis

Superintendent-- Manager

Suppressed-- Concealed

Survive-- Stay alive

Suspension-- Postponement

Suspicion-- Doubt

Suspicious--Doubtful

Swayed-- *Persuaded*

Synonym(s)-ous—Equivalent word

Tagged—Labeled

Tantamount-- Equal

Tariff -- Tax

Terrorist-- Radical

Testimony-- Indication

Thereto—To it

Thereunder— Under that

Threatened—In danger

Time frame-- Time period

Tolerance-- Broadmindedness

Touchstone-- Standard

Transactions-- Dealings

Tribulations-- Evils

Turned--- Twisted

Turpitude--Depravity

Unavoidable-- Inescapably

Un-biased—Impartial

Uncalled-- Unwanted

Unconscious-- Comatose

Undated-- Dateless

Undeniable-- Indisputable

Unfolded-- Outspread

Unhappiness-- Sadness

Unlawful– Illegal

Unmindful-- Careless

Un-rebut—Not to refute

Unsatisfactory-- Unacceptal

Unskillful-- Untalented

Unsound-- Unsafe

Unworkability—Incompete

Utilized-- *Used*

Vague-- Unclear

Valid -- Suitable

Validation-- Corroboration

Validation-- Support

Validity-- Soundness

Ventilator—Breathing apparatus

Verdict—*Finding of fact*

Versus(Vs)--against

Vesting-- Invest

Violative--*Offensive*

Whereof—Of what

Wield-- Exercise

Withheld-- Suspended

Within-- Inside

Witness-- Observer

Yearning-- Desire

*****