

Your Steno

SPECIAL LEGAL DICTATION MAGAZINE



A Compilation of
Miscellaneous Legal
Dictations by Steno RJ

For More Information Visit Our Youtube Channel
Link:- <https://youtube.com/c/StenoRJ>

Legal Dictation - 1

We are of the view that this issue is no more valid after the clarification given by the firm. These appeals are filed under Section 10 of the Companies Act, 1956 within the permissible period of limitation. On the date of filing these appeals, Section 434 of the Companies Act, 2013 was not notified. In exercise of the power conferred under Section 419 of the Companies Act, 2013, the Central Government constituted National Company Law Tribunal and National Company Law⁸⁰ Appellate Tribunal. On the same day, notification issued for transfer of pending matters or proceedings or cases before Company Law Board to National Company Law Tribunal. Section 434 came into effect from that day. As far as the appeals against the order of Company Law Board are concerned, any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within 60 days from the date of¹⁶⁰ communication of the decision or order of the Company Law Board to him on any question of law arising out of such order. Learned counsel made a comparison of the operative portion of the C.L.B. order ought to be executed and the order passed in execution petition. He submitted that the declaration relief granted and vesting of the property are

behind and beyond the decree. Without following the procedures laid under Civil Procedure Code, the N.C.L.T. had passed the impugned²⁴⁰ order. N.C.L.T. had clearly stated that the properties of V.R. Associates are to be kept as security and only in the event of remote need, the properties of V.R. Associates are to be conveyed to Omega Solutions and 7.80 acres to Jain Brother and Company. Thus, it is very clear through the above observation of the Tribunal that the property is to be held only as security and cannot to be conveyed unless there is remote need. While doing so,³²⁰ the N.C.L.T. erred in vesting the land to the owner of the property without any material or justification of remote need. The property is worth several times the principal amount decreed and interest thereon. The property held as security is greater in value than the money due. Therefore, this property cannot be conveyed. In the instant case, the Company Law Board gravely erred in not considering amount due and the value of the property conveyed which is held only as security.⁴⁰¹

**SUBSCRIBE
STENO RJ**

Legal Dictation -2

Further, the learned counsel appearing for the respondent, that is, Omega Solutions submitted that after the order passed by the Tribunal, the order of the Company Law Board got clarified through the order of the Tribunal. At no point of time in the past, the appellants had sought for extension of time to honor their commitment of repaying the invested money with interest. Due to their failure to pay the money within the time prescribed and no sign of attempt ⁸⁰to pay the money had resulted in the remote need to invoke the second limb of the Company Law Board order, that is, the transfer of the land. The declaration of title and vesting of the property is the natural consequence to the decree and not beyond or behind the decree. The order of the N.C.L.T. constituted under Section 10 of the Companies Act is to be enforced by N.C.L.T. itself. Only in case of inability to execute the order,¹⁶⁰ N.C.L.T. needs to send the case to the Court. Therefore, these appeals lack question of law and they are abuse of law to prevent the original owner from enjoying the fruits of the decree. In exercise of its powers and the discharge of its functions, Company Law Board has to be guided by principles of natural justice and shall act in its discretion. It also has power to regular its own procedure. Section 634 empowers

Company Law Board to execute²⁴⁰ its own order. It enables Company Law Board to send execution petition to a Court in case of its inability to execute such order. It is left to the discretion of Company Law Board that whether it has the ability to execute or not. So, application of Civil Procedure Code in general or order in particular case under Companies Act, 1956 can be executed by the National Company Law Tribunal. N.C.L.T. executes its order. The guiding principle to be followed³²⁰ is the principle of natural justice. The appellant's case is not that executing the order has violated of principle of natural justice. The appellant's submissions proceed on a fundamentally erroneous basis that the scope of this Tribunal's jurisdiction under Section 10 is not limited to adjudication of questions of law arising out of the order, but also extends to questions of facts in certain circumstances. This is a misreading of the judgments of the Supreme Court.³⁹⁶

**SUBSCRIBE
STENO RJ**

Legal Dictation -3

On 14.09.2021, patient visited A.I.I.M.S. Hospital again. As per the document on the record of the case, she visited the A.I.I.M.S. Hospital on 14.09.2021 with the history of hit over the abdomen by her husband at late night on the aforesaid date. She also came with the history of pain in the abdomen and bleeding. On examination, she found to have her B.P. as 160/110. It is also mentioned in the oral examination of the patient that on the aforesaid⁸⁰ date, the patient was in distress and she was having serious injury in the abdomen. On examination of abdomen, uterus was of 34 weeks and heart sound was not localized. She was also having bleeding in vagina. Her ultrasound was also conducted on the aforesaid date and on ultrasound examination, it was found that the heart activity of fetus was absent. As per the opinion of the Medical Officer of A.I.I.M.S. Hospital, the cause of the separation could have been¹⁶⁰ either because of the hit over the abdomen or due to high B.P. On the basis of the aforesaid documents, I cannot say that whether the patient was a case of habitual abortion or not because in pregnancy a patient can develop high B.P. sometimes and there is no record of the previous B.P. of the patient. The tests of the patient were conducted because of her earlier history of having two abortions. In the

cross-examination by the Learned A.P.P.,²⁴⁰ one of the witnesses from defence side stated that it is correct that I personally did not examine the patient nor I had seen her complete case history. Whatever I have deposed today is on the basis of the documents shown to me in the Court. It is correct that miscarriage and pre-mature delivery is not a disease itself and there could be a number of reasons for miscarriage or premature delivery and one amongst the said could also be ³²⁰a hit upon the abdomen or high B.P. The general complications in an advance stage of pregnancy are high B.P., diabetes, etc. On the basis of the documents shown to me in the Court, I can say that the patient was not the case of habitual abortion. Only in case of any complication, the B.P. of the patient can fluctuate. Counsel for the State submits that even the defence witnesses have not supported the case of the prosecution. ³⁹⁸

**SUBSCRIBE
STENO RJ**

Legal Dictation -4

Subject to the provisions of this Section, a confession made by a person before a Police Officer not lower in rank than S.P. shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence and it shall be recorded by such Police Officer either in writing or on any mechanical device like cassette, tape or sound track and sounds or images can be reproduced from it. Provided that co-accused, abettor or conspirator is charged⁸⁰ and tried in the same case together with the accused. Before recording any confession, the Police Officer shall explain to the person making it that he is not bound to make a confession and if he does so, it may be used as evidence against him and such Police Officer shall not record any such confession unless upon questioning the person making it and he has reason to believe that it is being made voluntarily. There is no room for¹⁶⁰ any doubt that the confession made by a person is admissible not only against the person who has made it, but also against others. The link for determining confession is not specific case. A confession may be admissible in any number of cases or none at all. The author of the confessional statement must be an accused and if it is used against other persons, then such other persons must all be co-accused in the

case. On the fulfilment of²⁴⁰ the condition, the same was recorded in consonance with the provisions of the said Act and the others implicated were facing a joint trial. The judgment rendered by this Court has been incorrectly relied upon while applying the conclusions rendered in the same to the controversy in hand. Reliance has not been placed by the accused on any provision. The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall record the statement, if any, made by the accused so produced³²⁰ and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon. Section 18 overrides the mandate contained in Sections 25 and 26 by rendering a confession as admissible even if it is made to a Police Officer not below the rank of Deputy Commissioner of Police. Therefore, confession made in police custody is inadmissible. ⁴⁰⁰

**SUBSCRIBE
STENO RJ**

Legal Dictation -5

Actus reus refers to the act or omission that comprise the physical elements of a crime. Alternately, the actus reus requirement can also be satisfied by an omission. This is true only when the individual had a duty to act and failed to act. Criminal Law classically describes offences as being composed of mens rea and the actus reus. The mens rea is the guilty mind and the actus reus is the guilty act. It is not a crime merely⁸⁰ to think guilty thoughts. Guilty thoughts must be linked to an act. An act which is not the result of a guilty mind is not a crime. Some offences may be committed in the absence of a guilty mind, but such crimes are very much the exception and they are rarely serious. Mens rea and actus reus are elements of criminal activity. For example, let us consider your hypothetical relative Nisha. She has instigated a number of fights with several¹⁶⁰ other women in the last few months. Some of her behaviour could be explained by her being under a lot of stress due to not being able to get her dream job. One day, she saw another woman at the grocery store that she did not like. They had both been dating the same man at one point and Nisha had been hoping to teach the other woman a lesson for a long time. The lesson was to stay away²⁴⁰ from any man Nisha had an interest in. There was a broom

nearby and Nisha took it. She walked up behind the woman and began to beat her with the broom. She purposely attacked the other woman as this was her intention and by hitting her repeatedly with the broom was her action. It is pretty likely that Nisha will face charges for committing a crime because both mens rea and actus reus were involved. Mens rea is the intent³²⁰ a person has behind committing a crime. Typically, there has to be intent behind the crime, but this is not required in every situation. For example, if a person has committed a crime which is a strict liability crime, then the criminal intent element does not have to exist. Actus reus is the action the person takes to perform the criminal act. This is the physical action behind the crime. Nisha may blame her actions on her own temper, but the nature of her crimes tends to make most of us believe that she is probably the one to blame.⁴²⁰

**SUBSCRIBE
STENO RJ**

Legal Dictation -6

This appeal is a sequel to an unfortunate, wherein an advocate, his wife and a child aged about two years were alleged to have been abducted and murdered. The lawyer fraternity in general and the advocates practising at the High Court and the District Courts in the States of Punjab, Haryana and the Union Territory of Chandigarh were not satisfied with the police investigation. The Punjab and Haryana High Court Bar Association demanded a judicial inquiry into the occurrence by ⁸⁰a sitting Judge of the High Court or a District Judge or a Vigilance Judge. Their demand was not acceded to by the State Government. Therefore, the Bar Association went on indefinite strike. Later on, the District Bar Associations in the States of Punjab, Haryana and the Union Territory of Chandigarh also went on strike by stopping the functioning of the Courts throughout the jurisdiction of the Punjab and Haryana High Court. Mr G.S. Grewal, Senior Advocate appearing for the ¹⁶⁰Punjab and Haryana High Court Bar Association, Mr. H.S. Hudda, Senior Advocate appearing for the Bar Council and Mr S.C. Mohanta, Senior Advocate appearing for various other Bar associations vehemently contended that the writ petition was in the nature of a Public Interest Litigation and the same could not be allowed to be

withdrawn. It was further argued that since the lawyers in the States of Punjab, Haryana and the Union Territory of Chandigarh were on strike for more than ²⁴⁰six weeks and were demanding an independent inquiry into the mysterious and tragic death of the advocate and his family, it would be in the interest of justice to finally adjudicate on the points raised in the writ petition. The Bench, however, rejected the contention and dismissed the writ petition as withdrawn. The tone and tenor of the petition is the hardship caused to the litigant public due to the strike by the counsels. No stranger can challenge conviction or ³²⁰other adverse order. Such action can be taken by the person concerned and where such person is under a disability, then it can be done by his next friend, etc. Bar Association of Punjab and Haryana High Court formed an Action Committee for the release of advocate, his wife and two year old son who were alleged to have been abducted or detained by the Ropar Police. They met the Deputy Commissioner, Ropar at his residence and told him about their concern regarding advocate and his family. ⁴⁰⁷

**SUBSCRIBE
STENO RJ**

Legal Dictation -7

Shri Kamal Sehgal, learned counsel argued that Sections 134 or 135 have no application in the present case. Corporation was slashed by an operation of law. The liability of the surety is co-extensive with the principal debtor. This does not affect the right of creditor to recover the amount scaled down by operation of law. Therefore, the fact is that the principal debtor stands absolved by virtue of an order. It will not absolve the surety of its liability in⁸⁰ terms of the fact that he stood as a guarantor. Corporation has a right to recover from the guarantor the amount due and payable by the principal debtor in terms of the guarantee executed by the petitioner. He would submit that the moratorium period has been referred by the Bankruptcy Law Reforms Committee as the calm period and no disturbance is permissible. Other than by way of lease, it is clear that even possession of a corporate debtor is protected.¹⁶⁰ Bankruptcy Law enshrines a calm period where creditors stay their claims. This gives a better chance for the firm to survive as a going concern for the period of 180 days. Committee recommended that the assessment must ensure a calm period where the interest of the creditors can be protected without disrupting the running of the enterprise. During insolvency period,

there is a time bound moratorium against debt recovery actions and if any new case has been filed, moratorium on ²⁴⁰debt recovery action should be done. Since the motivation behind the moratorium was that it is value maximization for the entity to continue operations, there would be no additional stress on the business after the public announcement of the I.R.P. The order for the moratorium imposes a stay not just on debt recovery actions, but also on any claims or expected claims from old lawsuits or on new lawsuits for any manner of recovery from the entity. The moratorium will³²⁰ be active for the period over which the I.R.P. is active. Moratorium period is to ensure the suspension of debt collection actions by the creditors and to provide time for the debtors and creditors to re-negotiate their contract and this requires a moratorium period in which there is no collection or other action by creditors against the debtors. It was observed that there is no difference between a case in which the mortgagor was adjudicated insolvent on the date of the institution of the suit and the case in which the mortgagor is adjudicated insolvent during the pendency of the suit. ⁴²¹

Legal Dictation -8

The essential ingredients of a valid attestation are that there must be two or more witnesses in all cases where a document is required by the Act to be attested. Each witness must have signed either after seeing the executant sign or affix his thumb mark to the instrument or seeing some other person signing the instrument in the presence and by the direction of the executant or receiving personal acknowledgment of his signature or mark or of the signature⁸⁰ of such other person from the executant. Each of the two attesting witnesses must have signed the instrument in the presence of the executant. Conditional transfer is given in Section 25. According to Section 25, an interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible or is forbidden by law or is of such a nature that if it is permitted, it would defeat the provisions of any¹⁶⁰ law or is fraudulent or involves or implies injury to the person or property of another or the Court regards it as immoral or opposed to public policy. Ram gives Rs. 500/- to Mohan on condition that he shall marry his daughter Mary. At the date of the transfer, Mary was dead. The transfer is void as fulfilment of the condition is impossible. Transfer of a right to collect sand for one year from

the riverbed is immovable property because²⁴⁰ it amounts to profit a person. This sand also includes the future sand which will be deposited in the riverbed. A right to pluck or collect leaves for a period of ten years from a forest is an immovable property because the leaves will continue to derive nutrition from the soil over a period of ten years. A person who has no title or interest in an immovable property, he cannot transfer that property. If he does so, the transfer³²⁰ is by an unauthorized person. Section 43 provides that if a person having no authority to transfer an immovable property, then he is estopped from denying the transfer when he acquires such authority. If a person promises more than he can perform, then he must fulfil the promise when he gets ability to do so. If he never gets the authority to transfer, then this would not apply. A transfer made with intent to delay or defeat the creditors of the transferor is called a fraudulent transfer. ⁴⁰⁷

**SUBSCRIBE
STENO RJ**

Legal Dictation -9

Before we proceed to deal with the facts giving rise to this writ petition, we may repeat what we have said earlier in various orders made by us from time to time dealing with Public Interest Litigation. We wish to point out with all the emphasis at our command that Public Interest Litigation is a strategic arm of the legal aid and is intended to bring justice within the reach of the poor masses who constitute the low visibility area⁸⁰ of humanity. It is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public Interest Litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but¹⁶⁰ it is intended to promote and vindicate public interest which demands that violation of rights of large number of poor or ignorant people should not go unnoticed. It forms one of the essential elements of public interest in any democratic form of Government. It does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested

interests of a few powerful or ²⁴⁰rich persons. If the sugar barons and the alcohol kings have the Fundamental Right to carry on their business and to fatten their purses by exploiting the consuming public, have the Chamars belonging to the lowest strata of society no Fundamental Right to earn an honest living through their sweat and toil? The former can approach the Courts with distinguished lawyers paid in four or five figures per day. But, if the Fundamental Right of the poor and helpless victims³²⁰ of injustice is sought to be enforced by Public Interest Litigation, the so called champions of Human Rights frown upon it as waste of time of the Court and according to them, Supreme Court should not engage itself in such small and trifling matters. Poor have no faith in the existing social and economic system. The first objection raises the question of locus standi of the petitioners to maintain the writ petition.³⁹²

**SUBSCRIBE
STENO RJ**

Legal Dictation - 10

The appellant is a businessman doing petty business. The complainant claims to be a tribal and reported to the police on 2nd May, 2021 that the accused obstructed her on public way by catching hold of her bicycle, manhandled her and snatched her bicycle towards a loan. She further alleged that her bangles got broken, she fell down and got injured. An offence punishable under Atrocities Act was registered and the investigation was completed in pursuance thereof. Learned Special Judge⁸⁰ charged the appellant of the offence punishable Under Section 354 of the Indian Penal Code and Section 3 of the Atrocities Act. The accused pleaded not guilty and hence, was put on trial. In its attempt to bring home guilt of the accused, the prosecution examined six witnesses in all. Upon consideration of the evidence tendered before him, the Learned Special Judge held that the prosecution proved the charge for the offence punishable under Section 3 of the Atrocities Act¹⁶⁰ and therefore, proceeded to convict and sentence the appellant as aforementioned. Accused asked her either to stay as his wife or wash utensils in his house. The accused allegedly caught hold of her hand and broken the bangles of her. Next is the question of nature of assault. The complainant had stated in her

deposition that the accused obstructed her on a road near the house of his neighbor and alleged that the complainant owed him money. The complainant also²⁴⁰ spoke of an assault to outrage her modesty by demolishing her bicycle. In cross-examination, she denied that the accused was pulling her bicycle while demanding credit dues from her. She denied having made a statement to this effect before the police. It may be seen from her report that the accused had snatched away her bicycle after manhandling her and kept the bicycle at his house. Then, he showed her a diary of loan taken by her from him and ³²⁰told her that he would not return the bicycle till she paid the loan. While so saying, the accused allegedly manhandled her and as a result of this, her bangles broken and she sustained some injuries. It was also alleged that he made explicit suggestions to her to stay with him as wife or as maid servant and caught her hand. Now, the story given in F.I.R. shows that there were two separate incidents. First is the story where the accused had snatched away complainant's bicycle. ⁴⁰⁶

**SUBSCRIBE
STENO RJ**

Legal Dictation - 11

It would appear from these provisions that the seizure of the said vehicles was carried out with jurisdiction and the order of confiscation was also made. It is also possible to contend that as the said vehicles were sold pursuant to a judicial order, no liability can be attached on the State Government for their disposal by public auction. But, between their seizure and the auction, there was a duty implicit from the provisions of the Act to take reasonable⁸⁰ care of the property seized. This is so because the order of confiscation was not final and was subject to an appeal and a revision before the Revenue Tribunal. State was aware that the order of seizure and confiscation was not final being subject to an appeal and was liable to be set aside either in appeal or in revision. It was also aware that if the said order was set aside, the property would have to be returned to¹⁶⁰ the owner in the same State in which it was seized. In spite of this clear position, the appeal was still pending before the Revenue Tribunal and without waiting for its disposal, it allowed to have it disposed of as unclaimed property. The State Government was fully aware by reason of the pendency of the appeal. The vehicles were and could not be said to be unclaimed property. In the circumstances, the State Government

was under a statutory duty to²⁴⁰ take reasonable care of the said vehicles which were liable to be returned to their owner. Once the order of seizure and confiscation was held to be wrong, the respondent could rely on that obligation and claim the return of the said vehicles. On behalf of the respondent, the contention urged was that the seizure might be lawful, but the State Government was in a position of a bailee and was, therefore, bound to take reasonable care of the said³²⁰ vehicles. No such reasonable care was taken and the vehicles remained totally uncared. State filed the reply that there was no bailment nor can such bailment be inferred. It can arise only under a contract between the parties. This contention is not sustainable. Bailment is dealt only in cases where it arises from a contract, but it is not correct to say that there cannot be a bailment without an enforceable contract. It is not necessary to incorporate into the agreement and to prove a consideration.⁴⁰⁶

**SUBSCRIBE
STENO RJ**

Legal Dictation -12

This reference to the Constitution Bench raises a question in regard to the validity of capital punishment for murder provided in Section 302 of Indian Penal Code. In view of the ratio, the Courts below were not competent to impose the extreme penalty of death on the appellant. It was submitted that neither the circumstance that the appellant was previously convicted for murder and committed these murders after he had served out the life sentence nor the fact that these⁸⁰ three murders were extremely heinous. It is permissible to swing a criminal if the security of State and society, public order and the interests of the general public compel that under Article 19(2). The majority has held that such extraordinary grounds alone qualify as special reasons as they leave no option to the Court, but to execute the offender if State and society are to survive. This does not matter that how gruesome the killing or pathetic the situation was.¹⁶⁰ It is equally beyond the functions of a Court to evolve imposition of death sentence or to make law by cross-fertilization from current national developmental goals. This function belongs only to Parliament. The Court must administer the law as it stands. Learned Solicitor General submitted with some vehemence and persistence that this

case needs reconsideration by a larger Bench if not by the Full Court. Learned counsel opposed the request for referring the matter to a larger Bench because such²⁴⁰ a course would only mean avoidable delay in disposal of the matter. It was made clear that the validity of the death penalty for murder was sought to be challenged on additional arguments and changes in law. These circumstances must be given great weight in the determination of sentence. Some of these factors like extreme youth can be of compelling importance. Child is a person who was less than 18 years of age at the date of murder. He cannot³²⁰ be tried, convicted and sentenced to death or imprisonment for life for murder and cannot be dealt with according to the same criminal procedure as an adult. Juvenile Justice Act provides for a reformatory procedure for such juvenile offenders or children. There are numerous other circumstances justifying the passing of the lighter sentence. Nonetheless, it cannot be emphasized that the scope and concept of death penalty must receive a liberal and expansive construction by the Courts. Hanging of murderers has never been too good for them.⁴⁰⁶

Legal Dictation -13

Transfer means an act by which a property is transferred from one or more living persons to another. Such a transfer can take place in present or in future. A person can transfer his property to one or more living persons or to himself. Transfer of property can take place in the form sale, exchange, gift, mortgage, lease, actionable claim or charge under the Transfer of Property Act 1882. According to the Section 3 of Transfer of Property Act, attestation⁸⁰ means that a person has signed the document by way of testimony of the fact that he saw it executed. A person who is a party to the deed cannot be allowed to sign the instrument as an attesting witness under any circumstances. When an interest is created in the transfer of a property, but the vesting of such interest is dependent on the fulfilment of a condition prior to the transfer, then this condition imposed is called a condition¹⁶⁰ precedent. In other words, the condition must be fulfilled before the transfer is executed by the transferor. The condition imposed must be fulfilled before the actual transfer takes place. The interest created in the transfer will vest in the transferee after the fulfilment of the condition. When the condition precedent becomes impossible or immoral to be performed the transfer will be declared as void.

When the condition imposed is complied with, it is deemed to have been fulfilled. Under Section²⁴⁰ 25, when the condition imposed becomes impossible or unlawful or immoral to be complied with, the interest accruing in the transfer of such property fails. Where the condition is void, the transfer becomes void too. A condition which no longer can be fulfilled in any circumstance is said to be impossible. A condition precedent may become impossible to be performed when the subject matter is destroyed or there is no means to fulfil such a condition. When the condition imposed³²⁰ is unlawful or forbidden by the law or defeat the provisions of law or fraudulent or opposed to the public policy and is immoral or injures any person or property, then the transfer becomes void. Condition subsequent is a condition which is required to be fulfilled after the transfer of a property. The interest vested in the transferee after the transfer of property is affected by the completion or non-completion of a condition after the vesting of the interest resulting from the transfer. ⁴⁰³

**SUBSCRIBE
STENO RJ**

Legal Dictation -14

If reduced into writing, then no statement made by any person to a Police officer in the course of an investigation under this Chapter shall be signed by the person making it or any part of such statement or record be used for any purpose. When any witness is called for the prosecution in such inquiry or trial, then any part of his statement may be used by the accused and with the permission of the Court, it can also⁸⁰ be used by the prosecution to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 and when any part of such statement is so used, then any part may also be used in the re-examination of such witness, but only for the purpose of explaining any matter referred to his cross-examination. Nothing in this Section shall be deemed to apply to any statement falling within the provisions of Section 32 of the Indian¹⁶⁰ Evidence Act, 1872 or to affect the provisions of Section 27 of that Act. An omission to state a fact or circumstance in the statement may amount to contradiction if the same appears to be significant and relevant. It shall have regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. No Police Officer or

other person in authority shall offer or make²⁴⁰ or cause to be offered or made any such inducement, threat or promise as is mentioned in Section 24 of the Indian Evidence Act, 1872. But, no Police Officer or other person shall prevent any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will and consent. Nothing in this Section shall affect the provisions of Section 164 of the Code of Criminal Procedure,³²⁰ 1973. Whether any Metropolitan Magistrate or Judicial Magistrate may have jurisdiction in the case or not, he can record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force or afterwards or before the commencement of the inquiry or trial. No confession shall be recorded by a Police Officer on whom any power of a Magistrate has been conferred under any law for the time being in force. ⁴⁰⁵

**SUBSCRIBE
STENO RJ**

Legal Dictation -15

The appellant has filed a commercial suit against the respondents regarding copyright of two music videos. The appellant has sought a declaration that Respondent No. 1 owns copyright and has prayed for an injunction against Respondent Nos. 2 to 6. In the interim application taken out by appellant in suit, an interim order was passed by consent of parties. However, later on, upon an application filed by Respondent Nos. 2 and 3, the Learned Single Judge has varied the consent⁸⁰ order. Challenging this order, the appellant is before us by this commercial appeal under Section 13 of Commercial Courts Act, 2015. Company was set up to produce sound, audio, music videos and to promote or publish the same. Appellant and Respondent No. 2 each hold 50% shares. Shiv Tandon is the brother of respondent. Similarly, Defendant Nos. 5, 6, 7 and 8 are individual entities in the same profession whom the appellant joined as parties to suit as appellant has¹⁶⁰ alleged that they have colluded with respondents. Appellant filed Commercial I.P. Suit No. 7101/2020 on 11th August, 2020 and made them defendants. The suit was regarding copyright of two music videos. Company has produced the songs by utilizing investment amount. Respondent No. 1 is solely and

exclusively entitled to deal with songs and commercially exploit the same. According to appellant, he has invested a substantial amount in producing songs. Company was the exclusive producer and owner of the copyrights in²⁴⁰ songs and Respondent Nos. 2 to 6 committed infringement of copyrights of Respondent No. 1 and they should be restrained by order of injunction from dealing with songs in any manner. Appellant also sought compensation for the infringement of copyrights. The other reliefs ancillary to the main reliefs were also prayed. In the alternative, it was prayed to modify the order to the extent that they be allowed to release and exploit the suit songs and that they would maintain³²⁰ and submit accounts in Court. Hon'ble Court observed that the interlocutory consent order could be set aside by an application in the same suit, but for that, proper grounds must exist. Thus, the parties should be generally made bound to the consent freely given even in an interlocutory order. Such interlocutory consent order should not be readily set aside or recalled unless the Court is satisfied that there are valid grounds. Having agreed to a particular course of action.

Legal Dictation -16

The appellant is the wife of first respondent. The respondent-husband has filed a petition under Section 13 of the Hindu Marriage Act, 1955 before the Court of Learned District Judge, Ludhiana seeking dissolution of the marriage by grant of a decree for divorce on the grounds of alleged adultery and cruelty. There is no dispute over the fact that out of the lawful wedlock, the appellant has given birth to three daughters and one. There is another son who is⁸⁰ also living with the appellant-wife. The respondent-husband would raise doubts about the details of parentage of the said child. Having regard to the fact that a limited notice has been issued in this case, it is unnecessary to deal with the details with reference to the claims made by the respective parties about the details of income of either of the parties. Notice is confined to the question with regard to the order for conducting a D.N.A. test of the¹⁶⁰ child. The learned counsel for the appellant strenuously contended that the conduct of the parties requires to be adjudicated and it has no relevance at the stage of granting interim or pendente lite maintenance and that the consideration in this regard has to be confined to the criteria specified in Section 24 of the Hindu Marriage Act, 1955. It was also pointed out that

imposition of a condition will operate to deprive the very maintenance order to be paid. The²⁴⁰ conduct of D.N.A. test of the male child in question is not warranted in this case. The limitations to be observed in compelling any person to give a sample of blood against his or her will for D.N.A. analysis is the branding of a child as a bastard and the mother as an unchaste woman. It was made clear that no adverse inference can be drawn against the person for his refusal. Such an order could not and ought not³²⁰ to have been made at this stage. In the matter, the law is governing the consideration and passing of any order in respect of a claim for D.N.A. test. If a party to a proceeding cannot be compelled against his or her wish to undergo any such test, we fail to see that how the Court on its own could have imposed a condition without any consideration of any of the criteria laid down by this Court and whatsoever it is. ⁴⁰¹

**SUBSCRIBE
STENO RJ**

Legal Dictation -17

The deceased was accused of murdering two persons. He murdered his own nephew and the maternal uncle of the killed nephew. The deceased was arrested. According to family members, he was arrested in the night of 22nd January, 2021 and was tortured and beaten in police custody to death on 24th January, 2021. This was reported in the newspapers. People's Union for Civil Liberties has filed the present writ petition. It has annexed those newspaper reports and made the allegations⁸⁰ on the basis of newspaper reports. It was prayed that C.B.I. may investigate the case. Action be taken against erring Police Officers and compensation may be awarded to the next kin of the deceased. The State has filed a counter affidavit. They admit the arrest, but dispute the time. They stated that he was arrested in the afternoon of 22nd January, 2021. They admit that he died in the police custody, but deny any torture. They admit injuries, but stated ¹⁶⁰that injuries are neither cause of the death nor were they caused by police torture. They claim that it was not an unnatural death. Considering this, a Division Bench of this Court directed the District Judge to conduct a detailed judicial inquiry by himself or by other Additional District Judge nominated by him. P.W.-1 Smt. Kanta Devi and P.W.-2

Vimla are widow and daughter of the deceased respectively. They have stated that deceased was arrested in the night of and ²⁴⁰was beaten by boots and the rods. He died because of the torture. D.W.-1 Shri Umesh Mishra was Station House Officer at the relevant time. He has stated that he was present at the time of the arrest. The deceased received injuries during his arrest and was not tortured. D.W.-2 Shri Santosh Kumar, Head Constable and D.W.-4 Shri Satwant Singh, Constable stated that the deceased was arrested in the afternoon and entries in the record were made. He was not³²⁰ tortured in the police custody. D.W.-6 Dr. Basant Kumar Mehrotra, Medical Officer, P.H.C. examined the deceased. He says that the deceased was in his senses. There was no injury on the vital part and was referred to the R.K. Medical College. D.W.-8 Dr. O.P. Bunkar, Medical Officer, R.K. Medical College stated that there was no internal injury. The reason of death could not be ascertained, but it appears that he died due to choking of windpipe by coffee coloured liquid. ⁴⁰⁰

**SUBSCRIBE
STENO RJ**

Legal Dictation - 18

The funds were raised through convertible debentures with a view to raise capital and therefore, it would be capital expenditure. In the case of Punjab State Industrial Development Corporation Limited, it was a case of loan that was held to be not an asset and it was to secure finance for a certain period. A loan has to be repaid, but in the matter of conversion of debenture into a share, the money is never repaid, but appropriated towards capital.⁸⁰ Therefore, convertible debenture is not a loan. Intention in this case was to raise share capital and not to raise the money by way of a loan. Money received is not to be refunded in both the cases. Both are in the nature of securities listed in the Stock Exchanges. In both the cases intention is to get back the investment by the subscribers. No option is given for conversion after allotment of debenture. The calculation of income from share ¹⁶⁰and debenture stocks recognizes the fact that it was potentially a share. It is to raise capital by issue of equity shares via media. The loan or borrowings are retained by converting into equity shares. The expenditure for raising the same could not be held allowable deduction. If interest was not paid on borrowings, then the capital of assessee was held to be not allowable. In this case, the

question was that whether interest paid to the Northern Railway and²⁴⁰ the Punjab Government in respect of the capital borrowed for purposes of the assessee's business was allowable and in that connection, borrowing came up for consideration and it was held that the term borrow has not been defined in the Act and therefore, its dictionary meaning has to be looked up. The meaning of the word borrow given in the Oxford Dictionary as to take a thing on security given for its safe return. To take a thing on credit³²⁰ on the understanding of returning it or an equivalent is borrowing. There has to be a positive act of lending which should be coupled with acceptance by the other side of the money as a loan. Thus, it is clear that an element of refund or repayment is inherent in the concept of borrowing. Corporation may redeem the shares or stocks of the parties. There is no provision in the Act which contemplates the repayment of the capital. Due to statutory provision, the Governments are obliged to provide capital.⁴⁰⁹

**SUBSCRIBE
STENO RJ**

Legal Dictation -19

Section 20 of the Code of Civil Procedure provides that subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction the defendant or each of the defendants actually resides or carries on business or personally works for gain at the time of the commencement of the suit or the leave of the Court is given for the defendants who do not reside or carry on business or personally work for **80**gain or the cause of action arises wholly or in part. In the present case, at Varanasi, Ajay and Manish executed the joint promissory note payable on demand. In other words, the contract was made at Varanasi. It is a settled proposition of law that the making of the contract is a part of the cause of action and as such, a suit can be filed on the basis of the said finding at Varanasi where the cause of action **160**arose. Once the judgment is signed by a Judge, it shall not be altered or amended afterwards except as provided in Section 152 or review. Section 152 of Code states that clerical or arithmetical mistakes in a judgment, decree or order or errors arising from any accidental slip or omission may be corrected by Court either of its own motion or on the application of any of the parties. In the case in hand, the judgment is silent about the **240** interest. The decree has

been drawn up accordingly and the same is not at variance with the judgment. The plaintiff wants the Court to amend the decree by adding an order for payment of interest. This cannot be treated as a clerical or arithmetical mistake arising from any accidental slip or omission. Therefore, the application is liable to be rejected. If Rajesh is aggrieved by the decree, the proper course for him is to apply for a review of the **320** judgment or to appeal from the decree. But, the fact remains that Sections 151 and 152 of the Code are not attracted to such a case. Now, it is settled by a large number of decisions that for a judgment to operate as res judicata between codefendants, it is necessary to establish that there was a conflict of interest between codefendants or it was necessary to decide the conflict in order to give the relief which the plaintiff claimed in the suit and that the Court actually decided the question. **410**

**SUBSCRIBE
STENO RJ**

Legal Dictation -20

Submissions of Learned Attorney General for India must be read as a part of the Fundamental Rights envisaged in the Constitution of India. Courts have often drawn the difference between free speech under the U.S. Constitution and that under the Indian Constitution, but even in the United States, free speech is regarded as the most robust, however, it is not absolute. The restrictions have not been left to the Courts to carve out, but have been exhaustively set out in⁸⁰ Article 19(2). It is for the Parliament to determine the restrictions to impose and the Courts have been entrusted with the task of determining the reasonableness and in the present case, free speech is itself conditioned or qualified by the restrictions contained in Article 19(2) which includes defamation as one of the grounds of restriction and the term defamation has to include criminal defamation and there is nothing to suggest its exclusion. The submission is that defamation is only protective¹⁶⁰ of individual cases between two individuals or a group of individuals and no State action is involved. Contextual meaning of the term defamation represents public interest and it is to preserve reputation as a shared value of the society. It is totally incorrect that criminal defamation under Section 499 I.P.C. is a threat to every dissent and

puts private wrong at the level of public wrong. The legal theorists and thinkers have made a distinction between private and public wrong²⁴⁰ and it has been clearly stated that public wrong affects not only the victim, but injures the public and ultimately, it concerns polity as a whole. It is a misconception that injury to reputation can adequately be compensated in monetary terms. Reputation includes self-respect, honour and dignity. Reputation can never be compensated in terms of money. Even if reputation is thought as a form of property, it cannot be construed solely as property. Property is not a part of individual³²⁰ personality and dignity, whereas reputation is and therefore, the stand that the damage caused to a person's reputation should be compensated by money is not justified. State is under an obligation to protect human dignity of every individual. In such a situation, balancing of rights is imperative and therefore, the Court should not declare the law relating to criminal defamation as unconstitutional as it is neither an absolute right nor can it confer allowance to the people to cause harm to the reputation of others.⁴⁰⁵

Legal Dictation -21

Accused-applicant is involved in Case Crime No. 50 of 2019 and has applied for bail. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case on account of enmity for the purpose of harassment. Applicant committed no offence. A false and fabricated story has been set up by the police. He further submits that in all the cases shown in gang chart against the accused-applicant, he has been released on bail. Applicant is in⁸⁰ jail since 20.08.19. It is further submitted that there is no possibility of the applicant fleeing away from the judicial process or tampering with the witnesses. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail. Learned A.G.A. has opposed the prayer for bail, but did not dispute the factual submissions made by the learned counsel for the applicant and submitted that applicant is a member of gang as shown in gang chart. Considering ¹⁶⁰the facts and circumstances of the case, rival contention of learned counsel for the parties, detention of applicant in jail, severity of punishment in case of conviction, number of cases shown in gang chart and without commenting upon the merit of the case, applicant deserves bail. Let applicant Javed be released on bail in the aforesaid case on

his furnishing a personal bond and two reliable sureties and filing an undertaking to the satisfaction of the Court concerned subject to²⁴⁰ the conditions that the applicant shall not tamper with the evidence or threaten the witnesses. The applicant shall cooperate with the trial and shall not seek any adjournment on the dates fixed for charge, statement under Section 313 Cr.P.C. and argument. During trial, applicant shall not indulge in any criminal activities or case. In breach of any condition enumerated above, Trial Court shall be at liberty to treat it as abuse of liberty of bail and pass appropriate orders in ³²⁰accordance with law. The applicant has invoked the inherent jurisdiction of this Court. The trial is proceeding at snail's pace and till date, the opposite party has not allowed the evidence of the doctors to be completed and the cross-examination is going on by the opposite party since last seven months so as to elongate the proceedings. The witnesses have also not been crossexamined and in this way, the trial is being obstructed. There is specific direction of this Court that the trial may be concluded speedily avoiding undue delay. ⁴¹⁰

Legal Dictation -22

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money is returned by the bank unpaid, then such person shall be deemed to have committed an offence and without prejudice to any other provisions of this Act, he shall be punished with imprisonment for a term which may be extended to two years or with fine which may extend to twice the amount of the cheque or **80** with both. It shall be presumed that the holder of a cheque received the cheque of the nature referred in Section 138 for the discharge of any debt or other liability. It shall not be a defence in a prosecution for an offence under Section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment. If the person committing an offence under Section 138 is a company, then **160** the authorized person is responsible to the company for the conduct of the business of company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. He shall not be liable for punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the

commission of such offence. Where a person is nominated as **240** a Director of a company by virtue of his holding any office or employment in the Central Government or State Government, he shall not be liable for prosecution. Where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or any neglect on the part of any Director, Manager, Secretary or other Officer of the company, then such Director, Manager, Secretary or other **320** Officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. No court shall take cognizance of any offence punishable under Section 138 except upon a complaint in writing made by the payee or the holder in due course of the cheque. Such complaint shall be made within one month of the date on which the cause of action arises. The cognizance of a complaint may be taken by the Court after the prescribed period. **406**

**SUBSCRIBE
STENO RJ**

Legal Dictation -23

Petitioners are aggrieved by twin orders passed by Civil Judge, Junior Division in Regular Civil Suit No. 22 of 2019. Briefly stated, the facts are that petitioners are original defendants and respondents are the legal heirs of the original plaintiff. The original plaintiff, that is, respondent herein filed regular civil suit against the defendants for permanent injunction in respect of the suit property. The original plaintiff expired on 16.04.2015. His legal heirs are the present respondents. The petitioners objected to⁸⁰ the proposed amendment application on the ground of maintainability and limitation. They contended that the proposed amendment would change the nature of the suit and a completely different relief would be introduced and granted by the Court. On the aspect of the limitation, it was contended that the cause of action to seek the relief had arisen immediately on filing the written statement and the application was filed after a period of eight years. I have heard the learned counsel¹⁶⁰ for the respective parties and perused the pleadings. Submissions made by the parties are on the pleaded lines. It is stated that the Courts have a very wide discretion in the matter of amendment of pleadings, therefore, power of Courts must be exercised judiciously and with great care while deciding the

applications for amendment. One of the principal conditions required to be considered by the Court is whether grant of amendment is necessary for determination of the real controversy in²⁴⁰ the suit. If this condition is not satisfied, the amendment cannot be allowed. This is a basic test which should govern the Court's discretion in granting or refusing amendment. The Supreme Court has laid down some basic principles which ought to be taken into consideration while allowing or rejecting the application for amendment. The rule, however, is not a universal one and under certain circumstances, such an amendment may be allowed by the Court notwithstanding the Limitation Law. The fact³²⁰ that the claim is barred by Law of Limitation is one of the factors to be taken into account by the Court in exercising the discretion as to whether the amendment should be allowed or refused, but it does not affect the power of the Court if the amendment is required in the interests of justice. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment. ⁴⁰⁸

Legal Dictation -24

Municipality laid a road for public use. The representatives of the society approached the defendant and his mother and induced them by playing fraud, undue influence and misrepresentation to agree to sell the land in dispute. The representatives of the plaintiff got the agreements prepared behind the back of the defendant. The agreements are, therefore, illegal, unenforceable and unsustainable. By the date of the alleged agreements of sale, the Urban Areas Act came into force and it was repealed afterwards.⁸⁰ The possession of the land was never given to the plaintiff and the defendant has been in possession and enjoyment of the land by paying land revenue to the land and electricity charges for the agricultural pump set. The Government did not grant permission to sell the land. Road was laid in part of the land and the remaining land has to be kept vacant as per the Act. The agreements of sale are frustrated since it became impossible to¹⁶⁰ perform the agreements by virtue of the provisions of the Urban Land Ceiling Act. The suits are not maintainable on account of doctrine of frustration. The learned Counsel for the defendant submitted that in view of the impossibility of selling the property in favour of the plaintiff, the doctrine of frustration applies and the plaintiff

having slept over the matter for a period of 19 years cannot demand the defendant to enforce the agreement at this stage of sky rising²⁴⁰ prices. Therefore, this is void under law. Section 56 of the Indian Contract Act, 1872 deals with the doctrine of frustration. An agreement to do an act impossible in itself is void. The law excuses further performance under the doctrine of frustration where the contract is silent as to the position of the parties in the event of performance becoming literally impossible or only possible in a very different way from that originally contemplated. The doctrine of frustration operates to³²⁰ excuse from further performance where it appears from the nature of the contract and the surrounding circumstances that the parties have contracted on the basis that particular person will continue to be available or that some future event will take place which forms the basis of the contract and before its breach, an event in relation to the matter stipulated in this Section renders performance impossible or only possible in a very different way, but without default of either party.⁴⁰⁰

Legal Dictation -25

When the petitioner's husband was returning home after completing his work, an overhead electric wire fell on him. However, an attempt has been made to rescue, but he died due to electrocution. Medical Officer has clearly noticed electric burn injuries and certified that the death was due to electrocution. Thus, there cannot be any dispute about the cause of death. In their counter affidavits, the respondents have denied the negligence on the ground that due to unprecedented heavy rain, the **80**electric lines were mutilated and in the result, the accident had occurred. They also stated that the electric lines were properly connected. So far as the maintenance of overhead electric wires and the consequential liability of the Electricity Board to pay compensation in case of death are concerned, there are many instances where the objections against claimed maintenance have been rejected. Death due to electrocution is an admitted **160** fact. Fall of electric wire on the petitioner is also an admitted **160** fact. When the petitioner's husband had not committed any act contrary to law or the provisions of the Electricity Act and when the death had occurred due to fall of electric wire, there is no need for the petitioner to go before the Civil Court and establish the cause of

death or negligence. It does not matter that whether the death was caused due to unprecedented rain or act of God. Certainly, the death had not occurred due to negligence **240** of the petitioner. Indisputably, the accident had occurred due to fall of electric wire over him. Therefore, this Court has no hesitation to hold that the Officers of Electricity Board were negligent in properly maintaining the electric wire. It is seen that the mandatory safety measures stipulated under Rule 91 of the Indian Electricity Rules, 1956 were not complied with by the respondents. In other case, the petitioner's husband went out to procure milk from the nearby Saras Milk Booth. **320** It is the case of the petitioner that there was heavy rain and when her husband was passing near a tea shop, he had to step on the live wire and was thrown out due to electrocution. A boy who tried to pull him out was also electrocuted. Two hours later, electric supply was disconnected. In the meantime, the petitioner's husband died. It was found that there was blackening and charring of the skin. The cause of death was due to electrocution. **402**

**SUBSCRIBE
STENO RJ**

Legal Dictation -26

Confession made by the accused before any person other than Magistrate or Court is called as extra-judicial confession. It is deemed to be a weak evidence. But, its weakness or strongness depends upon facts, circumstances and credibility of the witness. As a matter of caution, Courts generally expect corroboration of the extra-judicial confession. The learned counsel went on to point out that the Court below has erred in law and on facts in holding the accused guilty without applying the⁸⁰ relevant principles of law and the relevant test applicable to the appreciation of case based on circumstantial evidence and the acceptance of extra-judicial confession. The learned counsel went on to point out that the conviction and sentence are clearly unsustainable in law. As regards the extra-judicial confession, it has been held in the decisions reported in All India Reporter that it is advisable that the exact words in which the extra-judicial confession is made by the accused is spoken to¹⁶⁰ by the witnesses and it should be as close as possible to the words used by the accused making the extra-judicial confession. The decisions also say that apart from the words used by the accused, the credibility of the witnesses also play significant role in accepting the extra-judicial confession. The fact

that when the accused was being taken to the hospital, he was in an agitated mood and this fact in issue also cannot be lost sight at this moment.²⁴⁰ One may recollect the prosecution case that the incident occurred on 09.09.2021 and the incident of slitting the hand occurred on 15.09.2021 and the accused was arrested on 23.09.2021. The alleged extrajudicial confession is said to have been made on 15.09.2021. In the light of the fact that a general proclamation cannot qualify as an extrajudicial confession and in the light of the difference in words used, it becomes difficult to accept the extra-judicial confession spoken to by PWs 19³²⁰ and 20 as creditworthy and inspiring confidence in the mind of the Court. It is significant to notice that neither P.W.-19 nor P.W.-20 has a case that the extra-judicial confession was made to them. They are uniform in their version that it was a general statement made by the accused to the public. He recorded statements of witnesses and seized the clothes during investigation sent for chemical examination. Afterwards, he was ceased to hold the post of Station House Officer.⁴⁰⁰

Legal Dictation -27

This application has been filed with request that the matter may be referred to the Mediation and Conciliation Centre of this Court in relation to the F.I.R. lodged under Dowry Prohibition Act, 1961 and to quash the entire proceeding. Learned A.G.A. raised preliminary objection that in the present case, F.I.R. and its consequential proceedings are challenged as the investigation is still pending, therefore, application under Section 482 Cr.P.C. is not maintainable in terms of law laid down by Full Bench⁸⁰ of this Court. State of U.P. answered that after lodging the F.I.R., no interference is permissible by this Court in exercise of its inherent powers. Hence, no relief can be granted despite the issue is already resolved in the Mediation Centre. Learned counsel for the applicants has submitted that marriage of applicant No.1 was solemnized with the opposite party and they were enjoying their matrimonial life and out of their wedlock, two children were born, but due to some trivial¹⁶⁰ issues, F.I.R. was lodged. In the present case, investigation was started and mediation was also initiated before the Court below, but the Applicant No.1 was not satisfied with the mediation proceeding initiated before the Court below. The matter was sent to the Mediation and Conciliation Centre of

this Court. The instant dispute is the outcome of strained matrimonial relations between Applicant No.1 and opposite party. It has been submitted by learned counsel for the applicant that the mediation process was²⁴⁰ started to amicably settle the dispute. Due to some wrong advice given by the advocate of the applicants, they could not take part in the mediation process and therefore, one more opportunity be provided to the parties to settle their disputes amicably through the process of mediation. Learned counsel for the opposite party is not having any objection to the request of learned counsel for the applicants. When the Mediation Centre will start functioning, a communication will be sent by³²⁰ the Mediation Centre to the parties and on the first appearance of opposite party, Rs. 15,000/- shall be deposited by the applicants in front of the Senior Registrar and shall be paid to her to meet out her expenses of travelling, etc. Mediation Centre will try its best to persuade the parties to arrive at a settlement and will submit a report to this Court within two months from the start of mediation. Till then, no coercive measure shall be taken against the applicants in the aforementioned case.⁴⁰⁸

Legal Dictation -28

Learned Additional Government Pleader has submitted that the power to summon witnesses under Section 311 Cr.P.C. is purely discretionary. The nature and scope of the power of the Court to summon, examine, recall and re-examine any witness in the context of Section 311 Cr.P.C. was subject matter of consideration and it was held that the power in this regard may be considered essential for a just decision of the case. While considering the power of Court to summon material witnesses⁸⁰ under Section 311 Cr.P.C., it was opined that the said power can be exercised only with the object of finding out the truth or obtaining proper proof of facts which may lead to a just and correct decision. A view was taken that the underlying object of the provision is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the ¹⁶⁰witnesses examined from either side. The power conferred is to be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with great caution and circumspection. It was elaborately considered that the precedents and principles are to be followed by Courts. A conspicuous reading of Section 311 Cr.P.C. would

show that widest of the powers have been invested with the Courts when it comes to the²⁴⁰ question of summoning a witness or to recall or re-examine any witness already examined. It is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of case. Section 138 of the Evidence Act prescribes the order of examination of a witness in the Court. It is, therefore, imperative that the invocation of Section 311 Cr.P.C. and its ³²⁰application in a particular case can be ordered by the Court by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance. ⁴⁰²

**SUBSCRIBE
STENO RJ**

Legal Dictation -29

By filing this petition under Article 226 of the Constitution of India, petitioner seeks a direction to the respondents to forthwith grant and sanction interest on the refund amount after expiry of three months from the respective dates of application till the date of actual refund under Section 11 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. Hence, petitioner did not pay any Service Tax. Subsequently, petitioner received the refund amounts as sanctioned.⁸⁰ However, the refund amounts were sanctioned beyond three months from the date of filing of refund applications. Therefore, petitioner claimed that it was entitled to interest on delayed payment of refund under Section 11 of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994. In such circumstances, petitioner submitted letter dated 15.05.2017 requesting Respondent No. 3 to grant interest on delayed refund for the period after expiry of three months from¹⁶⁰ the date of application till the date of actual refund. However, there was no response to the said letter dated 15.05.2017. Petitioner again requested Respondent No. 3 vide letter dated 02.05.2019 to grant interest on the refund amount sanctioned for the period from June, 2008 to December, 2014. Along with the said letter, petitioner submitted a copy of order dated 09.06.2017 passed by the

Central Excise and Service Tax Appellate Tribunal, Hyderabad in its own case granting interest on the²⁴⁰ refund amount sanctioned belatedly. However, in the said letter, Respondent No. 3 completely ignored the previous letter of the petitioner. Notwithstanding the above, petitioner again renewed the prayer for grant of interest on delayed refund vide letter dated 20.08.2019 followed by reminder dated 10.09.2019. However, petitioner has not received any communication from the office of Respondent No. 3. Upon being aggrieved, present writ petition has been filed seeking the relief as indicated above. Respondent Nos. 2 and 3 have filed³²⁰ a common reply along with affidavit through Shri Milind Sharma, Principal Commissioner of Central Goods and Service Tax and Central Excise. At the outset, an objection has been raised that petitioner has an alternative remedy of filing appeal before the Commissioner (Appeals) against the orders in original declining interest. Since petitioner has not availed the alternative remedy, petitioner may be relegated to the appropriate forum for the reliefs sought. Petitioner was also required to produce all the evidences upon which it intended to rely in support of its claim.⁴⁰⁹

Legal Dictation -30

Plaintiff No. 1 is in the business of branded jewellery. Plaintiff Nos. 2 and 3 hold 49% and 51% equity in the gold business of Plaintiff No. 1. Plaintiff No. 1 designs, markets and sells gold articles of deities and religious symbols under the brand name of Prima Art. Plaintiff No. 1 creates the drawings for each of these articles on computers using specialized softwares through qualified graphic designers in its employment. Based on these drawings, the articles are manufactured⁸⁰ by Plaintiff No. 3 in Thailand and imported from Thailand and sold in India by Plaintiff Nos. 1 and 2. The product drawings are claimed to be original artistic work within the meaning of the Copyright Act, 1957. The plaintiffs have produced these drawings along with the plaint. The plaintiffs claim to be entitled to reproduce this original artistic work in any material form including three dimensional depiction in any material. Defendant No. 1 is a partnership firm. It has¹⁶⁰ been producing identical gold articles of deities and religious symbols with the use of these designs. Plaintiffs have shown brochures of the articles manufactured by the plaintiff and Defendant No. 1 in support of this claim. Defendants changed the original designs of their articles and started copying the plaintiffs' artistic works. If

one has regard to their respective brochures and the respective articles produced by the plaintiffs and defendants, it is quite clear that the defendants' articles are a clear²⁴⁰ imitation of the plaintiffs' articles. Defendants submit that the articles are being manufactured and sold both in India and worldwide by various parties. In this, the plaintiffs seek to illegally claim a monopoly. These articles are manufactured by others in the same forms of expression and depiction. These figures and signs are well-known and are generic. It is submitted that there is a delay of over one year in taking out the present notice. There is nothing to show that³²⁰ the designers were engaged by the plaintiffs. The designs are made by a mechanical process. The thrust of submissions is that there can be no copyright in the images of Gods and religious signs. These images are generic and of common use and when they are developed in different manners, the source being common, similarities are bound to occur and no piracy can be alleged. The images of Gods and Goddesses and religious signs may be a matter of common use. Those are in the realm of ideas.⁴⁰⁸

Legal Dictation -31

In the agreement, it is clearly stated that City Home Finance Limited has been entrusted the software with a specific undertaking that not to give it to any third party without the permission and the alleged conduct is stated to be cheating and committing breach of trust. It is also stated that while the Officers of City Home Finance Limited on the one hand were giving assurance that they will take full care of the said software, but on the⁸⁰ other hand, they were tampering and hacking the software. In this way, the cheating was committed with the complainant. It is also complained that for the purpose of protecting the software created by the complainant, a joint meeting was sought. Without meeting the persons, it is complained that the City Home Finance Limited has sent list of data required to be migrated and it was observed that there was a discrepancy between the list and the list which they sent¹⁶⁰ in August. It is stated that Dr. D.B. Pathak has given opinion that I.P.R. must be honoured and proper method for data migration should be adopted. This was stated to be accepted by the respondent. The further complaint is that on the one hand, City Home Finance Limited has been giving order for data migration and on the other hand, they were accessing the software hacking and

making changes in it and using it and therefore, it amounts to cheating.²⁴⁰ When the complainant has informed to give connectivity, it was refused on the security reason and therefore, a request was made to disconnect server from network and give connectivity by modem to avoid the security problem and that was also refused. Engineer found that changes were made in the software and new external code was inserted. Manager requested to remove the external programme to avoid any error in future, but no efforts were taken to remove the external programme. Respondent³²⁰ has accepted that it will show the new software, but never kept up the promise and the repeated request made by the complainant to remove the new software was not heeded to. It has failed to give connectivity and backup so as to avoid evidence to come to the hands of the complainant regarding hacking of the software. It is stated that when the matter was sent to I.I.T., Delhi for opinion, Dr. Pathak stated that hacking and violation of various aspects was done. ⁴⁰⁴

**SUBSCRIBE
STENO RJ**

Legal Dictation -32

Who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to the Special Juvenile Police Unit or the local police. Every report shall be recorded in writing and be read over to the informant and shall also be entered in a book. Where the report is given by a child, the same shall be recorded in a simple language so that **80**the child understands the contents. In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter shall be provided to the child if he fails to understand the same on payment of such fees as may be prescribed. Where Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then **160** it shall make immediate arrangement to give him such care and protection including admitting the child into shelter home or to the nearest hospital within 24 hours of the report. Special Juvenile Police Unit or local police shall report the matter to Child Welfare Committee and Special Court or where no Special Court has been designated, then Court of Sessions within 24 hours. No person shall incur any civil or criminal liability,

for giving information in good faith. Any personnel **240** of media or hotel or lodge or hospital or club or studio shall provide information to police if he or she comes across any material or object which is sexually exploitive of the child. No person shall make any report or present comments on any child from any form of media or studio without having complete and authentic information because this may affect the reputation and privacy of child. No reports in any media shall disclose the identity of a **320**child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child. It may be done if the Special Court permits to do so in the interest of the child. The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable, it shall be recorded by a woman Police Officer not below the rank of Sub-Inspector. **411**

**SUBSCRIBE
STENO RJ**

Legal Dictation -33

Whoever makes or publishes any imputation that any class of persons cannot bear true faith and allegiance to the Constitution of India or uphold the sovereignty and integrity of India by reason of their being members of any religious, racial, language or regional group or caste or community or asserts, counsels, advises, propagates or publishes that any class of persons shall be denied or deprived of their rights as citizens of India by reason of their being members of any⁸⁰ religious, racial, language or regional group or caste or community, then he shall be punished with imprisonment which may extend to five years and shall also be liable to fine. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, he shall be punished with fine and if he or his agent or manager knows that such offence is being or has been committed or having reason to¹⁶⁰ believe that it is likely to be committed and do not give the earliest notice to the nearest police station and do not use all lawful means in his or their power to prevent it and in the event of its taking place, they do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly, then they shall be punished accordingly. The letter was dispatched by the respondent by

registered post²⁴⁰ and when this was received as well as the cables from the respondent, the appellant wrote in reply a letter sent by registered post and in that letter, he passed severe remarks against her conduct. Ordinary reading of a letter might seem to indicate that the appellant was charging the respondent with improper behaviour and even amounting to sexual immorality through the remarks. In the witness box, the appellant specifically refused that he intended any such imputation and in fact,³²⁰ he made it clear that he was neither basing his petition on any allegation of immorality nor that he ever intended to impute any such conduct to her. Learned Judge accepted this explanation of the appellant and interpreted the letter as the outcome of an angry and grieved husband and was not, therefore, inclined to read the expressions used as imputing unchastity to her. On the other hand, we analyzed the text of the letter and considered that it clearly made false and unfounded imputations of unchastity on the respondent.⁴¹⁰

**SUBSCRIBE
STENO RJ**

Legal Dictation -34

Vodafone issued a duplicate S.I.M. of complainant to fraudsters without cross-checking the documents submitted by them with the identity documents of complainant made available at the time of issue of the original S.I.M. Such negligent act of Vodafone enabled the fraudsters to commit the fraudulent fund transfers and this caused financial loss to the complainant. The mobile phone of the complainant stopped functioning in proper manner. On the next date, the complainants contacted the Vodafone shop through their family driver.⁸⁰ Representative of Vodafone checked the mobile phone and communicated that the instrument was working properly, but the S.I.M. required to be replaced. Since 8th and 9th September, 2013 were holidays, on 10.09.2013, an application was submitted for new S.I.M. with the necessary documentary proofs such as P.A.N. Card, etc. A new S.I.M. was issued, but the calls were getting diverted to some other number. The complainant again contacted the Vodafone and they corrected the fault. The phone started functioning without¹⁶⁰ any problem from evening hours of 10.09.2013. It is the complainant's case that during the period when the mobile phone was non-functioning, the fraudulent transactions took place and an amount of Rs. 19,01,073/- was fraudulently withdrawn. The complainant submitted a complaint to Vodafone. It was revealed to the complainant by Vodafone that a fake

S.I.M. of complainant's number was issued by Vodafone on 06.09.2013 at their franchisee office. Later, the case was transferred to Cyber Crime Cell for further investigation.²⁴⁰ It is the case of Vodafone that a person claiming to be Dr. Medha Sanjay visited store with a request for replacement to S.I.M. made in the prescribed form along with the requisite documents of the subscriber. The request was duly processed and a new S.I.M. was issued to the person who had visited the store and it was activated on the same day. Vodafone received information of the fraudulent transfers through the S.H.O. concerned. On 18.09.2013, on the basis³²⁰ of internal investigation, Vodafone informed the Police Inspector, Cyber Crime Cell that on 06.09.2013, a fraudster had obtained replacement of S.I.M. for the complainant, but the same was issued under the belief that the fraudster was the lawful owner of the S.I.M. Vodafone offered to cooperate with the police and it submitted the relevant documents to the Cyber Crime Cell. The complainants have submitted copy of their bank account statement, copy of the F.I.R. and copy of the correspondence with the bank and its official letters. ⁴⁰⁶

**SUBSCRIBE
STENO RJ**

Legal Dictation -35

Numerous incidents of animal cruelty have been brought to light through media in recent years. Death of a pregnant elephant by explosive, dog beaten to death, puppies set on fire, dogs tied to a scooter, rape of cow and execution of monkeys and putting them on fire just for their own pleasure, etc. These incidents are reported from across the country. As informed to me, the Government has received many suggestions, petitions and requests from various organizations to increase the⁸⁰ existing penalty. See, there are more than 60 Members to speak. Hon'ble Speaker has allowed all the Members to raise their issues. So, I request all the Members to confine their submission to one minute. Sir, I would like to speak in my mother tongue Marathi. Government of Maharashtra is very indifferent towards the issues of reservation of Maratha and O.B.C. It is also very careless about the issue of reservation of Scheduled Castes and Scheduled Tribes and their promotions. ¹⁶⁰These are the issues which I would like to raise today. Supreme Court of India gave its verdict by abolishing the political reservation of OBCs. Now, the Government should postpone the coming State Assembly Election on the basis of this Supreme Court decision and I would like to share my views in this regard. I am not a

spokesperson of any political party and these are my personal sentiments for OBCs. Hon'ble Members, the mike will be automatically switched off²⁴⁰ after one minute. So, frame your speech in such a way that it should be finished within one minute. Sir, I just want to ask one question to Hon'ble Jal Shakti Minister. Sir, the Minister has replied by stating that they have not been given any proposal for the forest. I do have the records with me. We have already sent a proposal across the website. We consider it to be a deemed approval. Sir, I convey my thanks to³²⁰ you for giving me an opportunity to ask a supplementary question. First, I would like to thank the Minister for leading the Ministry by building the highways at a record speed and also allotting major highway projects to my State. Madam, there was a time when the convention of this House was that till the time the House was not in order, no Bill could be discussed. What is happening here is completely unconstitutional. I would like to bring to your kind notice that my State is facing environment pollution. ⁴¹⁰

**SUBSCRIBE
STENO RJ**

Legal Dictation -36

This is mainly due to emission of green house gases and faulty method of fly ash disposal. Supreme Court of India gave the verdict that Maratha Reservation Act is violating the limit of 50% reservation and it should not cross the 50% cap on quotas. Hence, it cannot be permitted. Supreme Court further advised the Central Government to make amendment. I would like to draw the kind attention of the Government towards the need to protect the community of weavers.⁸⁰ With the introduction of new technologies, their skills are not matching with the latest machinery and particularly, youth need more skill training and for the skill training, more skill development centres and technical institutes may be set up by identifying the weavers' interests. Hence, I request the Hon'ble Minister of Textiles to kindly intervene in the matter and do the needful. Sir, my question is about the impact of illegal mining on our surroundings. Heavy chemicals are used for the¹⁶⁰ blast and there is rising incidence of various health issues that villages and its surrounding areas are facing. Has the Government developed any mechanism to resolve such challenges in our villages? Sir, I would like to ask the Minister that whether there is any proposal to increase the allocation of funds in terms of nutrition

and to provide the support to the States. Sir, through you, I would like to bring to the attention of the Member that under the²⁴⁰ leadership and clear vision of our Hon'ble Prime Minister, the Government of India is committed to ensure that the nutritional needs of all children, pregnant and lactating women are met. So far as the expression of the Member about reduction in funds is concerned, on an earlier occasion, I and the Minister of Women and Child Development have replied in this very august House that we have revised the expenditure of our Ministry for various projects. We are in continuous³²⁰ engagement with the various State Governments. Sir, I think that the anomaly that has been expressed by the Member needs to be corrected. It is an effort of the Government of India across all districts and all States of our country. I am very happy to express in this august House that for the first time in the history of independent India, the Hon'ble Prime Minister has ensured that the smart phones are provided to anganwadi centres so that data can be automatically generated and the benefits can be provided to them.⁴¹²

Legal Dictation -37

Judicial Review refers to the power of the Judiciary to interpret the Constitution and to declare any such law or order of the Legislature and Executive void if it finds them in conflict with the Constitution of India. The Constitution of India is the supreme law of the land. The Supreme Court of India has the supreme responsibility of interpreting and protecting it. It also acts as the guardian and protector of the Fundamental Rights of the people. For this⁸⁰ purpose, the Supreme Court exercises the power of determining the validity of all laws with respect to the Constitution of India. It has the power to reject any law or any of its part which is found to be unconstitutional. This power of the Supreme Court is called Judicial Review. State High Courts also exercise this power, but their judgments can be rejected or modified or upheld by the Supreme Court. Both the Supreme Court and High Courts exercise the¹⁶⁰ power of Judicial Review. But, the final power to determine the validity of any law is in the hands of the Supreme Court of India. Judicial Review applies only to the questions of law. It cannot be exercised in respect of political issues. Judicial Review is not automatic. Supreme Court does not use the power of Judicial Review of its own. It can use it only when any law is specifically

challenged before it or when during the course of²⁴⁰ hearing a case, the validity of any law is challenged before it. When a law gets rejected as unconstitutional, then it ceases to operate from the date of the judgment. All activities performed on the basis of the law before the date of the judgment continue to remain valid. While declaring a law unconstitutional, the Supreme Court has to cite the provisions of the Constitution which it violates. The Court has to clearly establish the invalidity of the law concerned³²⁰ or any of its part. The critics describe Judicial Review as an undemocratic system. It empowers the Court to decide the fate of laws passed by Legislature, whereas Legislature represents the will of the people. Constitution does not clearly describe the system of Judicial Review. It rests upon the basis of several Articles of the Constitution. The critics further argue that the Judicial Review can make the Parliament irresponsible as it can decide to depend upon the Supreme Court for determining the reasonableness of a law passed by it. ⁴⁰⁹

**SUBSCRIBE
STENO RJ**

Legal Dictation -38

The word justice means to act in a just and fair manner. Judges are addressed as My Lord during trial in Courts. This means that they must exercise their power in order to bring justice to people in need. People are of the view that most things can be purchased including love and respect. What is justice? Justice is a concept of moral rightness based on ethics, law, equity or religion. It is the act of being just and truthful⁸⁰ to one and all. How many are following the path of justice? We all know that we live in a world where law and order are less cared about. In a country like India, poor had been suffering since the British Raj and they should have been given equal share in country's all resources. People with lack of money and resources suffer and struggle in the society. It would not be wrong to say that being a poor is a ¹⁶⁰curse. People with no money end up doing low paid jobs which leads to no bright future. We can find many endless examples in our own household. People in India still find it hard to get basic amenities needed for survival. There are many rules and regulations set up to fight for these poor people in our country, but all these rules and regulations are operational for a certain section of society. The idea of honesty and hard work can²⁴⁰ barely make a man rich in these circumstances. It is a

world for people with money and resources. It is a world for those people who are unjust and who can offer bribe. It is mandatory that justice reaches poor. Judiciary is an important pillar of democracy and it can use its power to help the poor. Poor people must get basic amenities in order to make sure that they survive well. They not only suffer, but find it difficult³²⁰ to get any respect in the society. Unfortunately, the justice in India is extremely slow and rare to get and they are considered lucky who get justice in a fast and effective manner. Every act of justice must reach out to every citizen in a just and fair manner. Our democracy has given equal Fundamental Rights to all its citizens, but the poor classes are generally devoid of justice due to negligence and poor awareness. NGOs offer a helping hand in promoting equality.⁴⁰³

**SUBSCRIBE
STENO RJ**

Legal Dictation -39

Laws must be enforced strictly to punish the offenders and cheaters. The basic idea of democracy lies in equality and justice. Article 14 of the Indian Constitution clearly states that the State shall not deny any person equality before the law and equal protection within the territory of India. Other than this, Indian Constitution also provides equal and free legal aid with suitable schemes to every citizen through Article 39A. There is a significant number of poor to whom justice⁸⁰ is yet to be delivered. If we live in a democratic country, justice without any argument comes along with it. It is every citizen's right to seek justice and legal aid so that there is no unfair advantage given to any specific community. Poverty is not by choice. Poverty arises due to the lack of resources and due to the backwardness of communities. There are many cases where poor are denied or delayed justice. Many cases take several years to¹⁶⁰ grant justice to the families of victims. Some major reasons why justice is a far dream for the poor is their lack of legal and political awareness. Poor people who do not have access to proper education do not even know their basic rights. They carry the mentality of being okay with the mistreatment given to them by people who have power and money and thus,

they are deprived of the knowledge of their basic rights. Their basic presumption about²⁴⁰ Courts and justice is that Courts take time to deliver justice and need a lot of money to provide speedy justice. Legal procedures need a lot of resources in terms of money and a lot of time is consumed. These all factors lead them to take a step back. When the case is dealing with a wealthier party, they are made to take their case back and be submissive. It must be ensured that justice reaches the poor as a³²⁰ lot of them do not even know about injustice that they go through. They get exploited by people who hire them and work on lower wages. Justice includes social, civil, economical and political justice. While India suffered enough under the British, poor people thought that they would get their fair share in a free country. India's most important document, the Constitution, has made a number of provisions to protect them from atrocities, but in reality, it is far from being achieved. ⁴⁰¹

**SUBSCRIBE
STENO RJ**

Legal Dictation -40

Court is not to see that whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. While considering the tests to be applied by the Court for the purposes of discharge, it was held that reading Sections 227 and 228 together in juxtaposition, it would be clear that at the initial stage of the trial, the truth, veracity and effect of evidence are not to be meticulously judged and ⁸⁰the standard of test and judgment is to be finally applied before recording a finding regarding guilt of the accused is not required to be applied at this stage. The ambit and scope of the exercise of powers while passing an order of discharge under Section 227 of the Code was subject matter of consideration and it was held that while exercising such powers, Court should weigh evidence and form opinion only on the limited question of whether a prima ¹⁶⁰facie case is made out. Court is required to evaluate the material and documents on record with a view to finding out if the facts taken at their face value disclose the existence of all the ingredients constituting the alleged offence and for this limited purpose, the Court may sift the evidence. The prerequisites for framing of charge were also subject matter of consideration and it was held that the Court can frame the charge on

the basis of material ²⁴⁰on record and it can form an opinion that the commission of offence by the accused was possible. The question as to whether the accused committed the offence can only be decided in the trial and at the stage of framing of charge, the probative value of the material on record cannot be gone into and the said material has to be accepted as true. At the stage of Section 227, the Court has merely to sift the elements in ³²⁰ order to find out that there is sufficient ground for proceeding against the accused or not and if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 and if the charge is not framed, then he will discharge the accused. It is not for the Magistrate or a Judge to analyze all the materials including pros and cons, reliability or acceptability and it is at the trial that the Judge has to appreciate credibility of the material and veracity of various documents. ⁴¹⁴

**SUBSCRIBE
STENO RJ**

Legal Dictation -41

During verification, it was noticed that certain malpractices had taken place in the written examination. Meanwhile, several complaints were also received by the R.R.B. stating that certain candidates had indulged in mass copying in some centres including leakage of question papers and impersonation of certain candidates. Since large scale irregularities and malpractices were noticed, it was decided to refer the matter to the State Vigilance Department. The Vigilance Department conducted a preliminary inquiry and submitted its findings which were placed⁸⁰ before the Tribunal as well as before the High Court. Portions of the judgment revealed leakage of question papers, mass copying and impersonation of candidates in the written test. Report indicated the possibility of involvement of some employees of Railways and outsiders in the malpractices detected. Vigilance Department also recommended that the matter be referred to the Central Bureau of Investigation (C.B.I.). Aggrieved by the order, certain candidates filed O.A. No. 975/2020 before the Central Administrative Tribunal who had taken¹⁶⁰ the first written examination. They sought for a declaration that they are eligible to be appointed to Group D posts in the Northern Railway Zone pursuant to the selection held in the month of February, 2016. Alternatively, it was contended that even if the Board had the power to conduct second stage written examination, it should be confined only to

those candidates who had qualified in the earlier written examination. The stand of the Board was that there was no²⁴⁰ illegality in ordering a re-test and Para 18.1 of the selection procedure empowered the Board to do so. Referring to Paragraph 18.4, it was contended that merely qualifying in the written or C.B.T. or P.E.T., a candidate would not get any vested right for appointment, especially since no final list or panel was published. Reference was also made to the inquiry done by Vigilance Department and C.B.I. which prima facie revealed serious malpractices including mass copying, leakage of question papers³²⁰ and impersonation in the written examination. The High Court found no reasons to cancel the first written examination and to conduct a re-test for those candidates who got minimum qualifying marks in the written test which included 62 candidates against whom there were serious allegations of impersonation. Court concluded that the controversy virtually boils down to identifying 62 candidates whose cases stood referred to Northern Railway Zone for their certification and hence, the process of recruitment could be proceeded for the rest of the candidates.⁴⁰⁵

Legal Dictation -42

The order passed by the Magistrate taking cognizance is a well-written order. The order not only refers to the statements recorded by the police during investigation and the statements of witnesses recorded by the Magistrate under Sections 200 and 202 of the Code, but also sets out with clarity the principles required to be kept in mind at the stage of taking cognizance and reaching a prima facie view. At this stage, the Magistrate had only to decide whether sufficient⁸⁰ ground exists or not for further proceeding in the matter. It is well-settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of the Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground¹⁶⁰ for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. Taking cognizance does not

involve any formal action or action of any kind, but occurs as soon as a Magistrate applies his mind to the suspected commission of²⁴⁰ offence. Regarding the procedure involved in taking cognizance, there must be application of judicial mind to the materials and the oral and documentary as well as other information submitted. The litmus test of taking cognizance is making a thorough assessment of the allegations with the facts presented and bringing into focus the law on the subject and applying the facts to the law and arriving at a conclusion by a process of reasoning that all relevant facts have been taken ³²⁰note of and properly analyzed in the light of the law applicable. If note is not taken, then this would result in decision without application of mind because reasoning is the heart of the matter. While exercising discretion and having regard to the facts and circumstances peculiar to each single case, Courts must carefully decide and cautiously examine as to whether the complaint filed is an outcome of personal vendetta or outburst of enmity or originated from evil impact of fickle mind. ⁴⁰²

Legal Dictation -43

Claimant Dr. Anil Kumar Singh had unfortunately died during the pendency of case before the Tribunal and Smt. Jyoti Devi instituted Motor Accident Claim Petition No. 476/2019 before the Tribunal under Section 166 of Motor Vehicles Act, 1988 for grant of compensation on account of the unfortunate and tragic death of their only son, namely, Abhishek who had died in a motor vehicle accident. As per the claim petition, deceased was 24 years old and was student of M.B.A. at ⁸⁰the Institute of Cost and Financial Accountants of India, Hyderabad. It was also contended that the deceased was in part-time employment of R.K. Group of Hotels, Hyderabad and was earning Rs. 13,080/-. As a matter of fact, the case of claimants can be conveniently looked into in its entirety from the particulars furnished. Claimant No. 1 was travelling from Bareilly with deceased in his Car No. UP 70 CC 5472 on Bareilly-Delhi National Highway at a very low speed. Truck ¹⁶⁰No. PB 10 GA 8057 came from the front from Rampur side and was driven very rashly and negligently by its driver and collided into the car on the right side. The deceased was severely injured and was taken by Claimant No. 1 to Guru Nanak Hospital, Bareilly with the help of people, but he died. Claimant No. 1 also received severe shock and injuries. The

deceased Abhishek was the only child of the claimants and student of MBA in²⁴⁰ Institute of Cost and Financial Accountants of India at Hyderabad. It is one of the best institutes of the country. Owing to his excellent performance, he was employed with R.K. Group of Hotels at Hyderabad and drawing a starting salary of Rs. 13,080/- . He was a very promising young man and would have been absorbed by big corporate houses on very high salary of over Rs. 50,000/- per month initially with further rise. He had a very bright future and³²⁰ had also received several awards for his performances. He had no bad habits of drinking, smoking, etc. He was very good natured and was greatly loved in the whole family. Being the only child of the claimants, the life and future of the claimants has been completely shattered by his death and they are left with no one to look after in this old age. The claim petition was contested by the insurer, namely, New India Assurance Company. Insurer filed its written statement. ⁴⁰³

**SUBSCRIBE
STENO RJ**

Legal Dictation -44

Trial Court had decreed the suit of the appellants filed for damages for malicious prosecution and defamation. Accused persons went to their house and came again with a cricket wicket and an iron rod. When the defendant raised hue and cry, neighbours came to the spot to save him. The defendant had fight with other residents of the village. The plaintiff has got no concern with the said incident, but the defendant had filed eviction petitions intentionally and deliberately against⁸⁰ the plaintiff and the Plaintiff No.1 has been pursuing the said eviction petitions in the Court. On the false F.I.R., the plaintiffs have to appear before the Court, take bail and face trial. It was registered on the basis of false complaint by the defendant. In the said trial, the defendant made false evidence against the plaintiffs. After long trial, both the plaintiffs were acquitted by the Court. Defendant made the false allegations against the plaintiffs intentionally, deliberately, knowingly, fully¹⁶⁰ well of the consequences because the sole purpose of the defendant has been to defame, demoralize and pressurize the plaintiffs so that they may not pursue the legal remedies against the defendant and other tenants of the property. By falsely implicating the plaintiffs in a criminal case, the

defendant has caused great defamation to the plaintiffs and also lowered down their reputation in the eyes of other people and persons of the society where the plaintiffs are living. For arriving²⁴⁰ at this conclusion, Trial Court relied only on the factum that the appellants were honourably acquitted by the judgment of the Additional Sessions Judge. For any claim of damages on account of malicious prosecution, the cause of action arises whenever the accused is acquitted without suffering any adverse observation from the Court which pronounced the judgment. Any person initiating the criminal complaint cannot subsequently dictate the term of such acquitted accused that he should not start any proceedings for malicious³²⁰ prosecution. Initiation of criminal proceeding against any person is very serious matter and has very serious consequences in the eyes of general public and any such accused is always entitled claim that his dignity should not have been degraded in the eyes of his relatives or his society. If such acquitted person cannot maintain an action of malicious prosecution, then any person can initiate any criminal proceeding against the other person without any fear of consequences of his falsehood. ³⁹⁹

Legal Dictation -45

The petitioner is the husband of the respondent herein. The petitioner came up with the above petition seeking transfer of the Matrimonial Case No. 67 of 2013 pending on the file of the Additional District Judge, Court No. 2, Kolhapur to the other Court at Satara. On 01.03.2019, this Court ordered issue of notice only for the purpose of referring the matter to mediation. Subsequently, the matter was referred to the Supreme Court Mediation Centre. In the Mediation Centre, the⁸⁰ parties have reached a settlement agreement. The marriage between the petitioner and respondent was solemnized as per Hindu rites on 26.11.1993 at Sangli. Both parties resided together as husband and wife till 22.01.2012. There is one male child, namely, Nangare Manan Raman from this wedlock who is a major. Thereafter, due to the differences between the parties, they started living separately with their respective parents. This Hon'ble Court vide its order dated 06.11.2019 was pleased to refer the matter to¹⁶⁰ Mediation Centre, Supreme Court of India, New Delhi. Comprehensive mediation sessions were held with the parties separately and jointly on 13.12.2019, 22.01.2020 and today, that is, on 23.01.2020 and with the indulgence of counsels and mediators, the parties have arrived at an amicable settlement. In the light of the settlement reached between the parties, the transfer petition is disposed of. The parties shall file a petition

for divorce by mutual consent before the appropriate Court at Kolhapur. The Court in ²⁴⁰which such a petition is filed, shall dispose of the same in accordance with law, keeping in mind the agreement between the parties and ensuring that any inconvenience caused to the parties is kept to the minimum. The petitioner shall visit H.D.F.C. Bank along with the respondent and sign necessary documents for the release of the title deeds and other papers concerning the property at Kanchan Towers, Navi Mumbai. The title suit being pending before the Civil Judge, Senior Division,³²⁰ Gadchiroli filed by the petitioner herein shall stand dismissed as withdrawn. The respondent shall relinquish her share in the property situated at New Panvel, Mumbai and the expenses for execution of all necessary documents shall be borne by the petitioner so that the said property is transferred to the petitioner fully and absolutely. The respondent's name shall be removed from joint ownership of the lockers at Axis Bank, Lower Parel Branch, Mumbai and Dena Bank, Vashi Branch, Mumbai so that the petitioner becomes the sole and absolute owner. ⁴⁰⁸

**SUBSCRIBE
STENO RJ**

Legal Dictation -46

Mischief means causing wrongful loss or damage to the property of public or any person or destruction of property or change in situation of property or destroys or diminishes value or its utility or affecting it injuriously. Under Section 426, punishment for mischief is three months. Under Section 427, punishment for causing mischief to the property is two years or fine. Under Section 428, mischief caused by killing, poisoning, maiming or rendering useless any animal is punishable with imprisonment up⁸⁰ to two years or fine. Under Section 429, mischief caused by killing, poisoning, maiming or rendering useless any cow, buffalo, mule, elephant, horse or camel is punishable with imprisonment which may extend to five years or fine or both. Under Section 430, mischief caused by diminution of water for agricultural purposes or irrigation works or preparation of food or drink for human beings or animals or cleanliness or manufacturing shall be punishable by the imprisonment of five years or fine¹⁶⁰ or both. Under Section 431, mischief caused by causing damage to public drainage, bridge, navigable river or navigable channel which is artificial or natural or which is impassable or unsafe for travelling or conveying of transport shall be punishable with imprisonment of five years or fine or

both. Under Section 432, any inundation or obstruction to public drainage with injury or damage shall be punishable with imprisonment of five years or fine or both. Under Section 433, destruction or removing²⁴⁰ or rendering useless any light house, sea mark, buoy or any other thing placed as a guide for navigator shall be punished with imprisonment of seven years or fine or both. Under Section 435, causing mischief to the property by fire or explosive substance is punishable with the imprisonment which may extend up to ten years, whereas under Section 436, causing mischief by fire or explosive substance for the destruction of building used as a place for worship or human³²⁰ dwelling or place of custody shall be punished with the life imprisonment or imprisonment which may extend to ten years and shall also be liable to fine. Under Section 437, causing mischief by destruction or damage of docked vessel shall be punishable with imprisonment of up to seven years and fine, whereas if the offence of Section 437 is caused by fire or explosive substance, then it shall be punished with imprisonment for life or up to ten years and fine under Section 438. ⁴⁰⁴

Legal Dictation -47

Punjab and Haryana High Court had directed for the re-designation of the petitioners. They were entitled to the benefit of re-designation and equation of the posts of Senior Translators and Junior Translators. It was conceded before the High Court that as per the practice, the State Government was adopting the criteria sanctioned for the Officers and servants of Punjab and Haryana High Court and accordingly, the Chief Justice of the High Court had similarly recommended for the re-designation and equation⁸⁰ of the posts in question. The aforesaid judgment of Punjab and Haryana High Court has been reversed by this Court through its Registrar. These have been equated with the posts of Superintendent in the establishment of Punjab Civil Secretariat. We are absolutely conscious that in the case at hand, the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. Anyone who sleeps over his right is bound to suffer. The seniors cannot be denied¹⁶⁰ the promotion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of Fundamental Rights are infringed. Equality has to be claimed at the right juncture and not after expiry of two decades. It has been said that everything may stop, but not the time.

We all are slaves of time. The defendant resisted the above claim and in doing so, he pleaded that Shyam Singh, President of the D. A. V.²⁴⁰ College Society had not been referred by the D.A.V. Society to institute the suit or to incur any expenditure in this connection. The defendant further averred that site of the building was acquired by it and the building as well was constructed out of its funds and that the plaintiff was incorrect in stating that the said land was acquired by it and the building also was constructed at its cost. The Defendant No. 2 felt aggrieved from the above³²⁰ and filed an appeal in the Court of District Judge, Hoshiarpur. On that basis, respondents represented to the Chief Justice of the High Court to allow them similar benefits. The State of Punjab was reorganized into States of Punjab, Haryana and Himachal Pradesh. After attaining the status of full statehood, High Court of Himachal Pradesh formulated its own Service Rules. It is not necessary for us to examine different qualifications for appointment and as to the mode of their recruitment or placement in the service.⁴⁰⁵

Legal Dictation -48

Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years. All human beings shall be treated with equal dignity and rights. Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child. All decisions regarding the child shall⁸⁰ be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential. There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child. Every child shall have a right to protection of his privacy by all means and throughout the judicial process. Every child shall have¹⁶⁰ the right to be reunited with his family at the earliest. All past records of any child should be erased except in special circumstances. Where a child alleged to be in conflict with law is produced before Juvenile Justice Board, Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under Sections 17 and 18 of this Act.

The inquiry under this Section ²⁴⁰ shall be completed within a period of four months from the date of first production of the child before the Board and this period can be extended for a maximum period of two more months by the Board. A preliminary assessment in case of heinous offences under Section 15 shall be disposed of by the Juvenile Justice Board within a period of three months from the date of first production of child before the Board. For serious or heinous offences,³²⁰ Board can be granted further extension of time for completion of inquiry by Chief Judicial Magistrate or Chief Metropolitan Magistrate for reasons to be recorded in writing. Board shall take effective steps to ensure fair and speedy inquiry. At the time of initiating inquiry, Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person or lawyer or Probation Officer and take corrective steps in case of such ill-treatment. ⁴⁰⁴

**SUBSCRIBE
STENO RJ**

Legal Dictation -49

Appellants are the widow and children of accident victim. They filed a claim petition before the Tribunal claiming a sum of Rs. 2,36,000/- as total compensation. Deceased was aged 35 years when he died and he was earning by doing some business in manufacturing steel utensils. The owner of jeep disclaimed the liability by denying even the fact of accident in which his jeep was involved. Alternatively, he contended that if there is any liability found against him in respect⁸⁰ of the said jeep, the same should be realized from insurance company as the vehicle was covered by valid insurance policy. Tribunal rejected the above contentions of jeep owner. However, Tribunal found that the front wheel of jeep suddenly got burst resulting in disbalance and occurrence of this accident. The rash and negligence act of driver of alleged jeep is not established. Consequently, the Tribunal dismissed the claim for compensation. However, the Tribunal directed the insurance company to pay Rs.¹⁶⁰ 50,000/- to the claimants by way of no fault liability envisaged in Section 140 of the Motor Vehicles Act, 1988. For considering the above question we may refer to the relevant provisions of the M.V. Act. Of course, when accident happened in this case, it was the old M.V. Act which was in force. But, the

old Act contained identical provisions in respect of a lot of matters connected with Claims Tribunal. For the purpose of the appeal only, those²⁴⁰ provisions need to be considered which are identically worded. No fault liability envisaged in Section 140 of the M.V. Act is distinguishable from the strict liability. In the former, the compensation amount is fixed and is payable even if any one of the exceptions can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed³²⁰ under the M.V. Act even without the aid of a statute. The provisions of the M.V. Act permits that compensation paid under no fault liability can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the M.V. Act, an accident victim is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. ⁴⁰⁰

**SUBSCRIBE
STENO RJ**