

DISTRICT COURT : BHANDARA
WORK-SHOP
SUMMARY/GIST OF PAPERS OF
THIRD WORKSHOP HELD ON 15TH MARCH,2015

SUBJECTS :-

**1. COMPENSATION TO VICTIMS (SECTIONS 357,
357-A AND 357-B OF CODE OF CRIMINAL
PROCEDURE).**

**2. ARTICLE 64 AND ARTICLE 65 OF LIMITATION
ACT.**

The workshop on the subjects “compensation to victims (sections 357, 357-A and 357-B of Code of Criminal Procedure) and Article 64 and Article 65 of Limitation Act” was held on 15-03-2015 at District Court, Bhandara under the Chairmanship of Hon'ble Principal District and Sessions Judge, Bhandara. The discussion was opened by reading the summary of paper on the subject “compensation to victims (sections 357, 357-A and 357-B of Code of Criminal Procedure)”. Thereafter the discussion on the topic and case laws relating to the subject was made. After completion of discussions on criminal subject, summary of another paper on the subject “Article 64 and Article 65 of Limitation Act ” was read. Thorough discussions were made on both the subjects. Relevant case laws were discussed. The difficulties raised by the Judicial Officers were discussed and solved.

Que.No. 1 : Whether Magistrate can award any sum as compensation ?

Answer : S.357(3)-No limit is mentioned in the sub-section, and therefore, a Magistrate can award any sum as compensation- Of Course while fixing the quantum of such

compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant- Thus, even if the trial for cheque dishonour was before a Court of Magistrate of First Class in respect of a cheque which covers an amount exceeding Rs.5,000/- the Court has power to award compensation to be paid to the complainant. (*AIR 1999 SC 3762*)

Que.No. 2 : Whether compensation can be awarded to the victim, if the accused is acquitted ?

Answer : Yes, the Hon'ble Supreme Court in *Bodhisatva Gautam v. Subhra Chakraborty's*, *AIR 1996 SC, 922* ruled that compensation to victim under such conditions will be justified even when the accused was not convicted.

Que.No. 3 : Whether interim compensation can be awarded to the victim ?

Answer : Yes, as per ruling cited Supra.

Que.No. 4 : When there is no issue of adverse possession before Trial Court and first appellate Court, whether second appellate Court can give its finding on it ?

Answer : No, Second appellate Court cannot for first time give a finding on it. (*AIR 1998 SC 1132*)

Que.No. 5 : Whether actual physical possession by claimant is necessary for claiming adverse possession ?

Answer : Actual physical possession by the claimant is not necessary. Fact that property in question was in possession of tenants would be of no consequence. (*Smt. Chandrakantaben J.Modi v. Vadilal Bapalal Modi. AIR 1989 SC 1269*)

Que.No. 6 : Whether termination of licence can enable licensee to claim adverse possession ?

Answer : Mere termination of the licence of a licensee does not enable the licensee to claim adverse possession, unless and until he sets up a title hostile to that of the licensor after termination of his licence. It is not merely unauthorised possession on termination of his licence that enables the licensee to claim title by adverse possession but there must be some overt act on the part of the licensee to show that he is claiming adverse title. It is possible that the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence but that itself cannot enable the licensee to claim title by adverse possession. Mere continuance of unauthorised possession even for a period of more than 12 years is not enough. (*Gaya Prasad Dikshit v. Dr. Nirmal Chander. AIR 1984 SC 930*)

Que.No.7 : Whether adverse possession can be claimed without making any plea in the pleadings ?

Answer : With regard to the plea of adverse possession, the appellant having been successful in the two courts below and not in the High Court, one has to turn to the pleadings of the appellant in his written statement. There he has pleaded a duration of his having remained in exclusive possession of the house, but nowhere has he pleaded a single overt act on the basis of which it could be inferred or ascertained that from a particular point of time his possession became hostile and notorious to the complete exclusion of other heirs, and his being in possession openly and hostilely. It is true that some evidence, basically of Municipal register entries, were inducted to prove the point but no amount of proof can substitute pleadings which are the foundation of the claim of a litigating party. The High Court caught the appellant right at that point and drawing inference from the evidence produced on record, concluded that correct principles relating to the plea of adverse possession were not applied by the courts below. The finding, as it appears to us, was rightly reversed by the High Court requiring no interference at our end.