Prosecution of Offenders u/s 198-A(2), UP ZA & LR Act, 1950 & u/s 65(2), 129(2) & 134, UP Revenue Code, 2006

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1. **Law regarding prosecution of offenders re-occupying land allotted to an allottee** : Laws regarding prosecution of offenders re-occupying the land allotted to the allottees of the Gaon Sabha or the lessee of the State Government are as under :

   (i) Section 198-A(2), Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950
   (ii) Section 65(2), Uttar Pradesh Revenue Code, 2006
   (iii) Section 129(2), Uttar Pradesh Revenue Code, 2006
   (iv) Uttar Pradesh Revenue Code Rules, 2016
   (v) Code of Criminal Procedure, 1973

2(A). **Notification No. 78/1879/1-1-2015-15(1)/1998-19TC-3, Rajaswa Anubhag-1, Lucknow, Dated: 18.12.2015** : UP Revenue Code, 2006 has come into force w.e.f. 11.02.2016 vide the said notification dated 18.12.2015 issued by the State Government of UP.

2(B). **UP Revenue Code Rules, 2016 (w.e.f. 11.02.2016) :** UP Revenue Code Rules, 2016 has come into force w.e.f. 11.02.2016 vide Notification No.170/I-1-2016-15(1)/1998-19, Rajaswa Anubhag-1, Luckonw, Dated 10.02.2016 issued by the State Government of UP.

3. **Special Court : Section 65(7) of the UP Revenue Code, 2006 :** For the purpose of speedy trial of offences under Section 65, the State Government, may in consultation with the High Court, by notification constitute special courts each consisting of an officer not below the rank of **Sub-Divisional Magistrate**, who shall, subject to the provisions of the

Code of Criminal Procedure, 1973, exercise, in relation to such offence, the powers of a Judicial Magistrate of the First Class.

4. **Sections 65(2), 129(2) & 198-A(2) Compared**

Section 65(2) of UP Revenue Code, 2006	Section 129(2) of UP Revenue Code, 2006	Section 198-A(2) of UP ZA & LR Act, 1950
Delivery of possession to allottee: Where any person, after being evicted under this section, reoccupies the land or any part thereof, without lawful authority, he shall be punished with imprisonment for a term which may extend to **two years** but which shall **not be less than three months** and also with fine which may extend to **three thousand** rupees. Provided that the Court convicting the accused may, while passing the sentence, direct that the whole or such portion of the fine that may be recovered as the court considered proper be paid to the allottee as **damages** for use and occupation.	**Restoration of possession to allottee or the Government lessee** : The provisions of sub-sections (2) to (8) of Section 65 shall *mutatis mutandis* apply in relation to re-occupation of any land or part thereof after possession has been delivered under sub-section (1) of Section 129.	**Restoration of possession to the allottees of Gaon Sabha or the Government lessee :** Where any person, after being evicted under this section, re-occupies the land or any part thereof without lawful authority, he shall be punishable with imprisonment for a term which may extend to **two years** but which shall **not be less than three months** and also with fine which may extend to **three thousand** rupees. Provided that the Court convicting the accused may, while passing the sentence direct that the whole or such portion of the fine that may be recovered as the Court considers

		proper be paid to the allottee or lessee, as the case may be, as **damages** for use and occupation

5. **Offence u/s 65(2) cognizable and non-bailable** : According to Section 65(8) of the UP Revenue Code, 2006, every offence u/s 65(2) of the Code shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973, be cognizable and non-bailable.

6. **"Cognizable offence" :** According to Section 2(c) of the CrPC, "cognizable offence" means an offence for which and "Cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

7. **Summons Case :** According to Section 2(w) of the CrPC, (summons case) means a case relating to an offence, and not being a warrant case.

8. **Warrant case :** According to Section 2(x) of the CrPC, "warrant case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

9(A). **Summary trial of offences u/s 65(2) :** Section 65(6) of the UP Revenue Code, 2006 provides that notwithstanding anything contained in the CrPC, an offence u/s 65(2) may be tried summarily.

9(B). **Legal effect of a wrong mode of trial : What would be the legal effect when a criminal case triable summarily is tried as a warrant case?** : Once a particular mode of trial is adopted, the procedure laid down for such trial must be adopted throughout. No procedure prescribed for any other mode of trial can be adopted subsequently or in the mid of the trial. Unless prejudice is shown by the accused, a different mode of trial than the one prescribed for trial of a particular offence would not vitiate the trial. See : **Radhey Shayam Agarwal Vs. State (NCT of Delhi), AIR 2009 SC 1712.**

10(A). **Penalty for offences u/s 65(2), 129(2) and 198-A(2)** : Imprisonment upto two years but which shall not be less than three months and also with fine which may extend to three thousand rupees.

10(B). **Object of Sentencing Policy** : Object of sentencing policy should be to see that crime does not go unpunished and victim of crime as also the society has satisfaction that justice has been done to it. See : **Purushottam Dashrath Borate Vs. State of Maharashtra, (2015) 6 SCC 652 (Three-Judge Bench).**

10(C). **Object of Penology :** The object of penology is to protect the society against the criminals by inflicting punishment upon them under the existing criminal law. Social defence is the criminological foundation of punishment. See : **M.H. Hoskot Vs. State of Maharashtra, AIR 1978 SC 1548.**

10(D). **Different Theories of Punishment :** Following are the main theories of punishments to offenders :

(i) Deterrent
(ii) Preventive
(iii) Retributive
(iv) Reformative

10(E). **Punishments awardable to offenders:** Section 53 of the IPC provides for following punishments which can be awarded to offenders:

(i) Death
(ii) Imprisonment for life
(iii) Rigorous imprisonment
(iv) Simple imprisonment
(v) Fine
(vi) Forfeiture of property

10(F). **Relevant Considerations for Determining Quantum of Sentence**: The personality of the offender as revealed by his age, character, antecedents and other circumstances and the traceability of the offender to reform must necessarily play the most prominent role in determining the sentence. A judge has to balance the personality of the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed**.** See :

(i) Sushil Murmu Vs. State of Jharkhand, (2004) 2 SCC 338
(ii) Surjit Singh Vs. Nahar Ram, (2004) 6 SCC 513

10(G). **Undue sympathy to impose inadequate sentence to harm the judicial system & undermine public confidence** : Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and the society cannot long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence by having regard to the nature of the offence and the manner in which it was executed or committed. Imposition of sentence without considering its effect on the social order in many cases may in reality be a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic a view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system. See :

(i) State of Punjab Vs. Bawa Singh, (2015) 3 SCC 441
(ii) State of M.P. Vs. Najab Khan & Others, (2013) 9 SCC 509
(iii) Gopal Singh Vs. State of Uttarakhand, (2013) 7 SCC 545
(iv) Guru Basavaraj Vs. State of Karnataka, (2012) 8 SCC 734
(v) Sahdev vs. Jaibar, 2009 (67) ACC 483 (SC)
(vi) State of M.P. vs. Sheikh Shahid, AIR 2009 SC 2951 (Three-Judge Bench)
(vii) Sevaka Perumal vs. State of T.N., AIR 1991 SC 1463

10(H). **Awarding inadequate sentence illegal :** The Supreme Court, in many recent decisions, has declined to follow the theory of reformation of the accused persons as propounded by the former Supreme Court Judge Hon'ble Krishna Iyer in Phul Singh Vs. State of Haryana, (1979) 4 SCC 413 and has ruled that awarding lesser sentence than the minimum prescribed is illegal. See : **State of MP Vs. Balu, (2005) 1 SCC 108**

11. **Section 65 of the Uttar Pradesh Revenue Code, 2006** : **Delivery of possession to allottee :** (1) Where any land referred to in Section 63 has been allotted for building a house under Section 64, and any person other than an allottee is in occupation of such land in contravention of the provisions of this Code, the Sub-Divisional Officer may, of his own

motion and shall, on the application of the allottee, put the allottee in possession of such land, and may, for that purpose, use or cause to be used such force as he may consider necessary.

(2) Where any person, after being evicted under this section, reoccupies the land or any part thereof, without lawful authority, he shall be punished with imprisonment for a term which may extend to two years but which shall not be less than three months and also with fine which may extend to three thousand rupees. Provided that the Court convicting the accused may, while passing the sentence, direct that the whole or such portion of the fine that may be recovered as the court considered proper be paid to the allottee as damages for use and occupation.

(3) Where in any proceeding under sub-section (2), the court, at any stage after cognizance of the case has been taken, is satisfied by affidavit or otherwise that --

(a) the accused is in occupation of the land to which such proceeding relates, in contravention of the provisions of this Code, and

(b) the allottee is entitled to the possession of such land,

the court may, summarily, evict the accused from such land pending the final determination of the case, and may put the allottee in possession of such land.

(4) Where in any proceeding under sub-section (2), the accused is convicted; the interim order passed under sub-section (3) shall be confirmed by the court.

(5) Where, in any proceeding under sub-section (2), the accused is acquitted or discharged and the court is satisfied that the person so acquitted or discharged is entitled to be put back in possession over such land, the court shall, on the application of such person, direct that delivery of possession be made to him.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under sub-section, (2) may be tried summarily.

(7) For the purpose of speedy trial of offences under this section, the State Government, may in consultation with the High Court, by notification constitute special courts each consisting of an officer not below the rank

of Sub-Divisional Magistrate, who shall, subject to the provisions of the Code of Criminal Procedure, 1973, exercise, in relation to such offence, the powers of a judicial Magistrate of the First Class.

(8) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), every offence punishable under sub-section (2) shall be cognizable and non-bailable.

Corresponding : Section 122-C(6) of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950.

12. **Section 134 of the Uttar Pradesh Revenue Code, 2006 : Ejectment of persons occupying land without title** : (1) Where a person takes or retains possession of any land forming part of the holding of any bhumidhar or asami otherwise than in accordance with the provisions of the law for the time being in force and without the consent of such bhumidhar or asami, such person shall be liable to ejectment on the suit of the bhumidhar or asami concerned, and shall also be liable to pay damages at the rate prescribed.

(2) To every suit relating to any land referred to in sub-section (1), the State Government and Gram Panchayat shall be impleaded as necessary parties.

Corresponding : Section 209 of Uttar Pradesh Zamindary Abolition and Land Reforms Act, 1950.

13. **Section 198-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 : Restoration of possession to the allottees of Gaon Sabha or the Government lessee** : (1) Where any person is admitted as a *bhumidhar* with non-transferable rights of any land, under Section 195, or as an *asami* of any land, under Section 197, (such person hereinafter referred to in this section as the allottee) or where any land is let out to any person by the State Government (such person hereinafter referred to in this section as the lessee) and any person other than the allottee or lessee is in occupation of such land in contravention of the provisions of this Act, the Assistant Collector may of his own motion and shall on the application of the allottee or lessee, as the case may be, put him in possession of such land and may, of that purpose, use or cause to be used such force as he considers necessary.

(1-A). Where any person, after being evicted under sub-section (1) reoccupies the land or any part thereof without lawful authority, the Assistant Collector shall, without prejudice to the proceeding under sub-section (2), direct such person to pay such damages to the allottee as he thinks fit considering the location and potentiality of the land and such other factors as may have bearing on the subject. Provided that the amount of the damages shall not be less than five thousand rupees [and more than] fifteen thousand rupees per hectare per year.

(1-B) A person aggrieved by an order of the Assistant Collector under sub-section (1-A) may, within thirty days of such order, prefer an appeal before the Collector in such manner as may be prescribed and the order of the Collector shall be final.

(1-C) If the person directed to pay damages by the Assistant Collector under sub-section (1-A) or, by the Collector if any appeal is preferred under sub-section (1-B), fails to pay the same within the time fixed by the Assistant Collector or the Collector, as the case may be, it shall be recovered as arrears of land revenue and paid to the allottee.

(2) Where any person, after being evicted under this section, re-occupies the land or any part thereof without lawful authority, he shall be punishable with imprisonment for a term which may extend to two years but which shall not be less than three months and also with fine which may extend to three thousand rupees. Provided that the Court convicted the accused may, while passing the sentence direct that the whole or such portion of the fine that may be recovered as the Court considers proper be paid to the allottee or lessee, as the case may be, as damages for use and occupation.

(3) Where in any proceeding under sub-section (2), the Court, at any stage after cognizance of the case, has been taken, is satisfied by affidavit or otherwise that--

(a) the accused is in occupation of the land to which such proceeding relates, in contravention of the provisions of this Act, and

(b) the allottee or lessee, as the case may be, is entitled to the possession of such land,

the Court may summarily evict the accused from such land pending the final determination of the case and may put the allottee or lessee, as the case may be, in possession of such land.

(4) Where in any proceeding under sub-section (2), the accused is convicted, the interim order passed under sub-section (3) shall be confirmed by the Court.

(5) Where in any proceeding under sub-section (2), the accused is acquitted or discharged and the Court is satisfied that the person so acquitted or discharged is entitled to be put back in possession over such land, the Court shall, on the application of such person, direct that delivery of possession be made to him.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offence under sub-section (2) may be tried summarily.

(7) For the purpose of speedy trial of offence under this section, the State government may, in consultation with the High Court, by notification, constitute special Courts consisting of an officer not below the rank of sub-Division Magistrate, which shall subject to the provisions of the Code of Criminal Procedure, 1973, exercise in relation to such offences the powers of a judicial Magistrate of the First Class.

(8) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under sub-section (2) shall be cognizable and non-bailable.

14(A). **Bail for offences u/s 65(2), 129(2) and 198-A(2) :** Since the offences u/s 65(2), 129(2) and 198-A(2) are non-bailable, therefore, an accused of such offences cannot claim bail as matter of right. Court may or may not grant him bail after considering the merits of the case.

14(B). **Distinction between bailable & non-bailable offences :** In the legislative history for the purposes of bail, the terms "bailable" and "non-bailable" are mostly used to formally distinguish one of the two classes of cases viz. "bailable" offences in which bail may be claimed as a right in every case whereas the question of grant of bail in non-bailable offences to such a person is left by the legislature in the court's discretion. The

discretion has, of course, to be a judicial one informed by tradition methodized by analogy, disciplined by a system and subordinated to the primordial necessity of order in social life. Another such instance of judicial discretion is the issue of non-bailable warrant in a complaint case under an application under Section 319 CrPC. See : **Vikas Vs. State of Rajasthan, (2014) 3 SCC 321.**

14(C). **Offences punishable with imprisonment less than three years are bailable :** The expression "bailable offences" has been defined in Section 2(a) of the CrPC. It means an offence which is either shown to be bailable in the First Schedule of the CrPC or which is made bailable by any other law for the time being in force. The First Schedule the Code of Criminal Procedure consists of part 1 and part 2. While part 1 deals with offences under the IPC, part 2 deals with offences under other laws. Accordingly, if the provisions of part 2 of the first schedule are to be applied, an offence in order to be cognizable and bailable would have to be an offence which is punishable with imprisonment for less than 3 years or with fine only, being the third item under the category of offences indicated in the said part. An offence punishable with imprisonment for 3 years and upwards, but not more than 7 years, has been shown to be cognizable and non-bailable. See : **Om Prakash & another Vs. Union of India & another, 2012 (76) ACC 869 (SC) (Three-Judge Bench).**

14(D). **Amount of P.B. & Bail Bonds :** The decision as regards the amount of the bond should be an individualized decision depending on the individual financial circumstances of the accused and the probability of his absconding. The amount of the bond should be determined having regard to these relevant factors and should not be fixed mechanically according to a schedule keyed to the nature of the charge. The enquiry into the solvency of the accused can become a source of great harassment to him and often result in denial of bail and deprivation of liberty and should not, therefore, be insisted upon as a condition of acceptance of the personal bond. A surety bond is a contract. Surety bond serves a public purpose in criminal cases, Surety bond must not be so unduly strained and construed asto result in defeating it's essential purpose, such a bond is executed for the purpose of ensuring the presence of the accused in the court. The amount of surety bond should not be excessive. See :

1. Mohd. Tariq Vs. Union of India, 1990 CrLJ 474 (All)
2. Hussainara Khatoon Vs. State of Bihar, AIR 1979 SC 1360 (Three Judge Bench)

3. State of Maharashtra Vs. Dadamiya Babumiya Shaikh, AIR 1971 SC 1722

14(E). **Deposit of Bond amount in cash as condition for Bail :** Where the accused already released on bail committed defaults in appearing before the court and NBW was issued against him and was again ordered to be released on bail subject to deposit of Rs. 10,000/- as the amount of personal bond, the Allahabad High Court has held that the condition imposed by court regarding deposit of cash was illegal as no show cause notice u/s 446 CrPC was given to the accused and the amount of the bond was also not forfeited. See :

1. Islam @ Kallu Vs. State of U.P., 2003 (2) JIC 940 (All)
2. Ganesh Babu Gupta Vs. State of U.P., 1990 CrLJ 912 (All)
3. Saudan Singh Vs. State of U.P., 1987(2) Crimes 655 (All) : Except u/s 445 CrPCwhich is in the alternative, there is no other provision that any amount either of P.B. or of the surety bond may be deposited in cash.
4. Hussainara Khatoon Vs. State of Bihar, AIR 1979 SC 1360

14(F). **Notice before forfeiture of Bail Bonds u/s 446 CrPC:** Issuing notice to accused for showing cause or hearing before cancellation of his bail and bonds before forfeiture is not imperative. Court may or may not issue notice to the sureties before forfeiture of their bail bonds. Notice to sureties may be issued even after forfeiture of the bonds of the sureties. See : Ashraf Ali Vs. State of U.P., 2001 (42) ACC 253 (All)

The Supreme Court has held that before a surety becomes liable to pay the amount of the bond forfeited, it is necessary to give notice why the amount should not be paid and if he fails to show sufficient cause only then can the Court proceed to recover the money. See : Ghulam Mehdi Vs. State of Rajasthan, AIR 1960 SC 1185

But in the cases noted below, it has been held by the Allahabad High Court that issuing notice to the surety before forfeiture of surety bond u/s 446 CrPC is mandatory and natural justice also requires that before any adverse order is passed, the person concerned should be given an opportunity of being heard. See :

1. Abdul Mazid Vs. State of U.P., 1994(3) Crimes 437 (All)
2. Mahmood Hasan Vs. State of U.P., 1979 CrLJ 1439 (All)

14(G). **Remission of Bond amount u/s 446(3) CrPC:** "The Court may, after recording its reasons for doing so, remit any portion of the penalty mentioned and enforce payment in part only."

Note: Certain important case laws on Sec. 446(3) CrPC are quoted below :

(i) Kishan Pal Vs. State of U.P., 2005 (52) ACC 859 (All)

(ii) Ayub Vs. State of U.P., 2005 (52) 830 (All)

(iii) Anil Narang Vs. State of Uttaranchal, 2004 (48) ACC 543

(iv) Hargovind Vs. State of U.P., 1980 ALJ 540 (All)

(v) **State of Maharashtra Vs. Dadamiya Babumiya Shaikh, AIR 1971 SC 1722**

(vi) Subsequent events may be considered, under the circumstances of particular case, when a matter of remitting full or any portion of the penalty u/s 446(3) CrPC arises before the court concerned. Those prospective events and circumstances could not be considered in recourse to judge the validity or irregularity of the initial order forfeiting the bonds and ordering realization of their amount by way of penalty. See--Badri Pandey Vs. State of U.P., 1984 AWC 592 (All)

The Supreme Court has held that the forfeiture of bond u/s 446 CrPC entails penalty against each surety and each surety is liable to pay entire surety amount. Sureties cannot claim to share surety amount by half and half. However, court can remit the amount of bond of each surety if there are no allegations against the surety that he had connived with the accused jumping out the bail or for other satisfactory reasons. See : Mohammed Kunju Vs. State of Karnataka, 2000 CrLJ 165 (SC)

14(H). **Discharge of sureties u/s 444 CrPC:** Sec. 444 CrPC is relevant here which reads as under : -

"Sec. 444 CrPC **:** Discharge of sureties—

(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as related to the applicants, and

shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail."

14(I). **Verification of sureties & their papers/status— Relevant C.Ls. & judicial pronouncements thereon** : Where the surety furnishes a surety bond alongwith an affidavit as required by Sec. 499(3), Criminal P.C., the Magistrate can accept his surety bond and can make further enquiry as well and for this purpose order verification from the Tehsil. In such a case the bond is accepted subject to further orders on the receipt of the Tehsil report. The provision in Sec. 500, sub-sec. (1) contemplates that the accused is to be released on the execution of the bonds which should be accepted on their face value in the first instance. Hence, a formal acceptance of a surety bond on a future date does not in any way effect the surety's liability on the bond from the earlier date on which it was first accepted. See :

1. Rajpal Singh Vs. State of U.P., 2003 AAC (Cri) 261 (All)
2. Bekaru Singh Vs. State of U.P., AIR 1963 SC 430

14(J). C.L. No. 3/Admin.(G), dated Allahabad 16.2.2009 now reads as under : "Upon consideration of the direction of Hon'ble court in Criminal Misc. Case No. 4356/08 Shiv Shyam Pandey versus State of U.P. and others and in the wake of receipt of representation of the Bar complaining against considerable delay taking place in respect of verification of the address and status of the sureties filed before the Subordinate Courts, the Hon'ble Court has been pleased to direct that in supersession of earlier Circular Letter No. 44/98 dated 20.8.1998 and Circular Letter No. 58/98 dated 5.11.1998, the following guidelines shall be followed by the Judicial Officers of Subordinate Courts:-

1. In serious cases such as murder, dacoity, rape and cases falling under NDPS Act, two sureties should normally be directed to be filed and the amount of the surety bonds should be fixed commensurate with the gravity of the offence.
2. The address and status verification of the sureties shall be obtained within reasonable time, say seven days in case of local sureties, 15 days in case of sureties being of other district and one month in case of sureties being of other State, positively from the concerned Police and revenue authorities and in case of non receipt of the report within given time, the concerned court may

call for explanation for the delay from the concerned authorities and take suitable action against them and at the same time may consider granting provisional release of the accused person in appropriate cases subject to the condition that in case of any discrepancies being reported by the verifying authorities, the accuses shall surrender forthwith.

3. The Courts must insist on filing of black and white photographs of the sureties which must have been prepared from the negative.
4. The copies of the title deeds filed in support of solvency of status should be verified.
5. In cases where the Court feels that there are chances of plantation of drugs to implicate a person in a case covered un der the NDPS Act, the amount of surety bonds may be suitably reduced."

14(K). <u>Bail u/s 389(3) CrPC by Trial Court on conviction :</u> Sec.389(3) CrPC empowers the trial court to grant bail to a convicted accused under the following conditions :

<u>"Sec. 389(3) CrPC</u> : Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall—

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail.

Order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

15(A).<u>Which Magistrate is competent to pass order upon application u/s 156(3) CrPC</u> ? : A Special Judge for Prevention of Corruption is deemed to be a Magistrate under Section 5(4) of the Prevention of Corruption Act, 1988 and, therefore, clothed with all the magisterial powers provided under the Code of Criminal Procedure. When a Private complaint is filed before the Magistrate, he has two options : he may take cognizance of the offence under Section 190 CrPC or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without

taking cognizance under Section 190, may direct an investigation under Section 156(3) CrPC. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) CrPC. See : Anil Kumar Vs M.K. Aiyappa, (2013) 10 SCC 705 *(para 16).*

15(B). **Which Magistrate is competent to pass order upon application u/s 156(3) CrPC** ? : Magistrate having jurisdiction u/s. 190 CrPC to take cognizable of the offences is competent to pass order upon an application moved u/s. 156(3) CrPC. See-

(i) Lokesh Kumar Dwivedi Vs. State of UP, 2016 (93) ACC 818 (All)

(ii) Mahendra Pal Jha vs. Ram Autar Sharma, 2001 (42) ACC 125 (All)

16(A). **Section 23 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950** : Withdrawal of notice issued under : The mere fact that a notice under Section 198(2) was issued for cancellation of lease deed executed in favour of respondent and the proceedings initiated on the basis of that notice were subsequently withdrawn, would not mean that the lease was valid specially when the Consolidation Officer and the Settlement Officer (Consolidation) both had held that the land which contained a storage tank was in possession of the sugar mill. Proceedings initiated under Section 198(2) of the Act for cancellation of the lease in favour of respondent were initiated and withdrawn without there being any notice ever issued to be sugar mill. See : UP State Sugar Corporation. Ltd. Vs. DDC, (2000) 2 SCC 572=2000(91) RD 165 (SC).

16(B). Occupation of land without lawful authority : Section 198-A provides that if a person is admitted as a bhumidar or as an asami or any land is allotted to him and any other person is in possession of that land in contravention of the provision of this Act, the Assistant Collector may of his own motion and on application of the allottee or lessee as the case may be put him in possession of such land and may, for that purpose, use or cause to be used such force as he considers necessary. If a person evicted reoccupies the land or part of the land without lawful authority, such person is liable to be punished under Section 198-A(2) of the Act. See **:** Smt. Ramwati Vs. Up-Zila Magistrate, 2008 (1) ADJ 293.

16(C). **Special Courts** : Section 198-A(7) of the Act provides that in order to expedite the trial of the offence under this Section, the State government

may, in consultation with the High Court by notification constitute special courts consisting of an officer not below the rank of Sub-Divisional Magistrate. See : **Smt. Ramwati Vs. Up-Zila Magistrate, 2008 (1) ADJ 293.**

16(D). **Show-Cause-Notice** : If the show-cause notice issued to the allottee was withdrawn, it does not necessarily mean that the allotment was valid. See : State Sugar Corporation Vs. D.D.C., 2000 (2) AWC 933.

16(E). **Important Notification** : For purpose of speedy trial of offences under this section see Notification No. 1862/I-I-2002-9-2(5)=2002-105-Rev. 1, dated 07.09.2002, which has been reproduced in Part--Important Notifications of this book.

Important Decisions of the Allahabad High Court on Section 198-A, 65(2), 129(2) & 134, UP Revenue Code, 2006

1. The facts of the case in a nut-shell are that a Patta of the disputed land was executed by the L.C.C. in favour of opposite party No. 1 Asharam. He submitted an application to the S.D.O. under Section 198-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 to evict the revisionist Nathu and Laxman from the land since they were in occupation of the same. The S.D.O. issued a notice to the revisionist upon which they filed an objection that they have been continuing in possession over the land from prior to June 30, 1975 and being Harijan by caste have perfected their title under Section 122-B(4-F) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and are, therefore, not liable to ejectment. They further alleged that a proceeding under Section 122-B had been initiated against them earlier which was dismissed by the Tahsildar by his order dated June 10, 1976 and the revisionists were held tohave accrued the benefit of Section 122-B (4-F) of the the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and were held to be Sirdars. The learned S.D.O. rejected the objection and passed an order for the ejectment of the revisionist and for delivery of possession to the Pattedar Asharam. A revision was filed against that order which was also dismissed, hence this revision. A perusal of the provision of Section 198-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 shows that it is a judicial proceeding and the trial court has to dispose of the matter judiciously by applying the entire procedure of a judicial case. In the present case the learned S.D.O. did not follow the required judicial

procedure and without affording any opportunity to this revisionist to lead or rebut evidence passed a summary order which is against the spirits of law. The procedure adopted by him was, therefore, not lawful, hence his order deserved to be quashed and it is a fit case where the record to be sent back to the S.D.O. to decide the case in a judicial way after hearing both the parties. See : **Nathu Vs. Asha Ram, 1988 R.D. 77 (BR)**

2. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (i) Scope of S.D.O. has to verify first--whether revisionist have occuped the land allotted to allottes--Has to demarcate plot No. 97 and 98. The order of the S.D.O. so far as they related to legal procedure are correct but in case in which the revisionists have alleged that they have not occupied the land allotted to the opposite parties, it was the duty of the S.D.O. to have verified this fact and thereafter he should have taken action. This has not been done in the instant case. Consequently, the revision succeeds and the S.D.O. is directed to demarcate the plot No. 97 and 98 and thereafter he should have to see that the revisionists have occupied the land allotted to allottees then he will deal with the matter in accordance with the provision under Section 198-A(2) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. I find that the revision was decided by the learned Additional Commissioner on October 1, 1984. The learned Additional Commissioner is of the view that the order of the trial court is an administrative order and there is no ground for interference. In Section 198-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 no period has been prescribed for evicting such a person other than the allottee from the land allotted to the person concerned. Section 198-A(2) of the Act reads as thus : "Where any person, after being evicted under this section, reoccupies the land or any part thereof without alwful authority, he shall be punishable with imprisonment for a term which may extend to two years but which shall not be less than three months and also with fine which may extend to three thousand rupees." See : **Shakir Hasan Vs. Mehar Singh, 1987 R.D. 221 (BR)**

3. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 -- Section 198-A--Patta--illegal occupation by any person other than the allottee --Trespasser--Restoration of possession to allottee--Limitation-- Section 209 would be maintainable nor any application under Section 198-A would be entertainable. To provide a separate limitation for

Section 198-A was, therefore, superfluous and has rightly been struck off by theLegislature. The application so moved in the instant case by Malkhey Singh, the pattedar, is, threrefore, within limitation because a period of 12 years had not elapsed from the date of patta. The finding of the learned Additional Commissioner that the application was barred by limitation because it was moved after three years of the patta is, therefore, wrong and is against law and cannot be accepted. Malkhey Singh is admittedly pattedar and there is no dispute about his title over the land allotted to him so he is entitled to be put into possession if he is out of possession or the revisionist has ousted hi. There is, thereore, no illegality or impropriety in the order passed by the learned S.D.O. The revision has wrongly been recommended to this court for being allowed. See : **Mangi Singh Vs. State of UP, 1991 R.D. 478 (BR)**

4. Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950--Section 198-A--Patta--Restoration of possession--Pattedar illegally dispossessed---Occupier filed application for cancellation of Patta--Unless Patta is cancelled the allottee is entitled to be put in possession--Remedy of occupier lies in regular suit u/s 229-B--Possession to allottee rightly restored. See : **Ratiram Vs. Sukhbari, 1991 R.D. 480 (BR)**

5. Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, Section 198-A, 122-C(8)-- Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952, Rules 115-L, 115M--Abadi sites--Allotment to preferential categories etc.--Application for restoration of possession to Gaon Sabha allottees whether maintainable. Section 198-A has been substituted by U.P. Act No. XX of 1982 and the section is in effect from 10.11.1980 in view of previous ordinances. Section 198-A(1) restoration of possession to Gaon Sabha allottees. In the present case the allotment to the applicant was made either under rule 115-L or Rule 115-M and was neither made under Section 197 or 198 or under Section122-C, therefore, any of the provisions of restoration of possession to allottee mentioned above are not applicable. The land allotted to the applicant could not be located on the spot in view of proceedings under Section 41 of Land Revenue Act having ended against him, therefore, the learned S.D.O. acted beyond jurisdiction ordering restoration of possession to the applicant purporting to act under provisions of Section 198-A of Act. 1 of 1951 which are not at all applicable in his case, therefore, the recommendation is accepted and this revision application is liable to be allowed and the order passed

by S.D.O. is liable to be set aside and the application of the applicant is liable to be rejected. In view of the above, this revision application is allowed. The order dated 30.04.1981 passed by learned S.D.O. is set aside and the application of the applicant for restoring possession tohim is rejected. **See : Dori Lal Vs. Dal Chandra, 1986(2) R.D. 326 (BR).**

6. Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950--Section 198-A--Dispossessing complainant from land allotted to him--Acquittal--Legality--Appellants/accused never occupied disputed land --Nor did they ever dispossessed complainant from land allotted to him--Prosecution failed to establish that complainant ever dispossessed by appellants from land allotted to him--Also failed to establish that complainant was ever evicted from disputed land or possession to complainant over disputed land was ever given after evicting appellants--In this way, necessary ingredients to constitute offence found to be not proved --Appellate Court rightly acquitted appellants--Revision dismissed. See : **Daryab Singh Vs. State of UP & Others, 2017 (134) R.D. 714 (Allahabad High Court).**

7. Section 198-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 : The law as it exists today does not contain any limitation in the provisions of Section198-A of UP Act No. 1 of 1951 probably because the limitation provided under Section 210 of UP Act No. 1 of 1951 covers this Section as well. Consequently if no application is made within the prescribed period as provided under Section 210 the trespasser will perfect his title and, therefore, neither any suit under Section 209 would be maintainable nor any application under Section 198-A would be entertainable. To provide a separate limitation for Section 198-A was, therefore, superfluous and has rightly been struck off by the legislature. See : **Mangi Singh Vs. State of UP, 1992 RJ 7.**

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