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Chief Justice

Judge-In-Charge

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TOPIC OF THE MONTH

The Guiding Principles for Extra-judicial Confession*

The functionality of the concept Extra-Judicial Confession with certain nuances may be illustrated through a judgment of the Supreme Court in Sahadevan and Another V. State of Tamil Nadu (Criminal Appeal No. 1405 of 2008) reported in (2012)6 SCC 403 delivered on May 8, 2012, wherein the Hon'ble Court laid down certain conditions precedent for conviction and same are being discussed herein.

The factual matrix of Sahadevan case :

Three accused, including the two appellants, made confession before the president of a Panchayat in the presence of a witness, stating that they had murdered the deceased by strangulating him, and thereafter set his body on fire after putting kerosene oil on it. The said statement of the accused was reduced in writing and after obtained their signatures thereon and appending his own signature, the same was handed over to the police along with the custody of the accused, whereupon the investigating officer (IO) formally arrested all the three accused.

On the basis of confessional statement, the IO recovered three articles- a moped, a bottle smelling kerosene and a match box- allegedly used in the commission of crime. A charge sheet was filed against all the three accused, and they were tried under the relevant provisions of the Indian Penal Code (IPC). However, at the trial, the accused chose not to lead any defence.

The trial court, based on evidence, both oral and

documentary, convicted all the three accused under section 302 of IPC and awarded them sentence of imprisonment for life. Dismissal of appeal against the trial court judgment by the High Court led the two appellants to prefer further appeal before the Supreme Court. In the absence of any eyewitness, the conviction in this case was based on circumstantial evidence that primarily revolved around the extra-judicial confession made by the accused.

For determining the evidentiary value of the extrajudicial confession, the Supreme Court, in the first instance, reflected upon its intrinsic character and then culled the factors from the settled precedents of the apex court that provided credence in relying upon such extra-judicial confessional statements.

Admittedly, the court said, according to the settled principles of criminal jurisprudence, 'extra-judicial confession is a weak piece of evidence'. Nevertheless, 'there is no absolute rule that an extra-judicial confession can never be the basis of a conviction'. Still it should be proved 'like any other fact and in accordance with law'.

Bearing these precepts in mind, the three factors, considered as condition precedent for relying upon extra-judicial confession as an admissible piece of evidence were capable of forming basis of conviction of an accused, may be abstracted from Sahadevan as under-

a) Voluntariness: Extra-judicial confession should be voluntary. It should not be result of any inducement, threat or promise as contemplated by section 24 of the Indian Evidence Act, 1872. It should also be ensured that it has been made 'in a fit state of mind'.

b) Truthfulness: The veracity of the

extra-judicial confession should be affirmed, for no conviction can be based only on the sole basis thereof. Moreover, the confessional statement should be clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime. In short, it should inspire confidence.

c) Corroboration: Extra-Judicial confession should be corroborated by a chain of 'cogent circumstance' or some other material on record to support it. It should not suffer from any material discrepancies and inherent improbabilities.

When these judicially propounded precepts were applied to the fact matrix of Sahadevan, including principally the extra-judicial confessional statement that constituted the prime basis of conviction, the Supreme Court unreservedly set aside the conviction and the sentence of imprisonment for life of all three accused awarded by the High Court, including even that of the non-appealing convict.

Acts of glaring omissions/commissions that deprived the extra-judicial-confession-document of its evidentiary value included the following :-

(i) Omission of examination of the main witness in whose presence confessional statement was made and recorded instantly denuded the document of its credibility, more specially when not only its very execution was denied by the accused by making a statement under Section 313 of the IPC, but also adding that they were falsely implicated in the case. Under Section 27 of the Indian Evidence Act, 1872, such an examination is imperative for unwrapping the cover of ban against admissibility of statement of accused to the police.

(ii) Corroborative evidence was found

to be woefully weak and disappointing to wit as per the autopsy report, the person died in the morning of a particular day, the same deceased person was however stated to be seen alive by the prosecution witness in the afternoon of the same day.

(iii) Failure to connect and establish linkage between the articles recovered and the incident of crime as alleged to have been committed was evident. On the contrary, as per the forensic report, no kerosene was found on the body of the deceased or his belongings, such as clothes and chappals. Omission on this count, said the Supreme Court, creates doubt 'as to whether the recovered items were at all and actually used in the commission of the crime'.

(iv) Relying on the theory of 'last seen together' was least justified as much as it failed to 'complete the chain of circumstances to record a finding that it is consistent only with the hypothesis of guilt of the accused'.

(v) The 'essential' cause of murder by the accused (which included the brother-in-law of the deceased), as stated in the confessional statement was the ill-treatment' by the deceased of his wife. Such a statement was completely falsified by the testimony of the deceased's wife herself, and who even in her cross-examination did not yield the fact of alleged cruelties.

CONCLUSION :

However, the issue that remains to ponder over is how to avoid the sad spectacle or the terrible trend of convicting innocent persons and sentencing them to life imprisonment, when not even a 'single ground' is found to hold them guilty or sustain their conviction by the Apex court ?

Can we think of some extra-judicial

social-security measure for compensating the people, who suffered owing to the sheer ignorance or lack of training of the dispenser of justice? Could we conceive of their continuing rigorous training in the art of appreciation of evidence and application of law in varying concrete fact situations? Can't we use for the attainment of this singular objective in the fora like National Judicial Academy at Bhopal, the Indian Law Institute at New Delhi or even the State Judicial Academies that are operational under the patronage of Hon'ble Chief Justice of the Supreme Court of India or Hon'ble Chief Justice of the State High Courts?

**[Article written by Dr. Virender Kumar, Formerly founding Director (Academics), Chandiarh Judicial Academy and Prof. & Chairman, Department of Law, Dean, Faculty of Law, Fellow, Punjab University and Chairman, UGC Emeritus Fellow]*

ACADEMY NEWS

Refresher course on “Role and Sensitization of Referral Judges in Mediation” for Sub-Judges and Munsiffs of Jammu

Under the guidance and patronage of Hon'ble the Chief Justice (Chief Patron) and Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge Incharge, State Judicial Academy, one day refresher course for Sub-Judges and Munsiffs of District Jammu, Samba, Kathua, Reasi and Udhampur was organized by the State Judicial Academy at Jammu on 18th November, 2012. The programme was conducted by Shri Abdul Wahid, Director, State Judicial Academy.

In his introductory remarks, Director, State Judicial Academy stated that sensitizing the Judicial Officers about their role in referring the cases to mediation centres, is a critical component

in the process of mediation. Judges in the civil courts are in a very pivotal position as the process of mediation start at their end by reference to mediation centres and ends with acceptance of mediation reports from the mediators. The role of referral Judges is thus of paramount importance so far implementation of mechanism of mediation is concerned. He advised Judicial Officers to go through the celebrated authority of Apex Court which is popularly known as AFCON case (2010)8 SCC 24 in which the Hon'ble Supreme Court has interpreted Section 89 read with Order X Rule 1(a) of CPC. In this authority, their Lordship have discussed the roll of referral Judges, the mode and manner in which reference to the mediation for settlement of dispute inter se between the parties is to be made. It is the duty of every Judicial Officer to follow the guidelines laid down in this judgment for effective implementation of Section 89 CPC. If guidelines are followed in letter and spirit, there is no reason not to see the backlog of cases reduced in the courts and also qualitative justice ensured through the process of mediation.



Judicial Officers attending the Refresher course

Shri Bansi Lal Bhat, Spl. Judge (Anti-corruption) for CBI cases, Jammu who acted as Resource person, in his address exhaustively explained the concept of mediation as one of modes of Alternative Dispute Resolution which has

assumed greater acceptance throughout the world and got statutory recognition by incorporating of Section 89 CPC. He exhorted the Judicial Officers to follow the law laid down in AFCON case in letter and spirit. He said that the Judicial Officer is required to record the nature of dispute briefly and seek the option of the parties for reference to various modes of Alternate Dispute Resolution including mediation. He stated that object of Alternative Dispute Resolution is to bring peace and harmony in the society and to create a win-win situation for both the parties. Such type of dispute resolution does not leave the scars so as to leave chance for the parties to get irritated as and when such scars are touched. He emphasized that the Judicial Officers have to change their mindset, attitude, to be sensitive towards the mediation mechanism and encourage the resolution of disputes through mechanism of mediation by spreading awareness among lawyers and litigants. He asked them to refer suitable cases for mediation and have a regular interaction with mediators for better output of mediation qualitatively and quantitatively.

Participants raised some pertinent questions during interaction, about the effective implementation of mediation by suggesting the setting up of mediation centres at sub-divisional and mufassil levels as it was pointed out that given the topography of the State, parties are reluctant and find it difficult to traverse long distance from their areas towards District Mediation centres.

2. Training Session for Ministerial staff and Process Servers of Subordinate Courts of District Srinagar

A Training programme for the

Ministerial staff (including Junior Assistants/Senior Assistants/Head Assistants and Section Officers) of Subordinate Courts posted in the District H.Q Srinagar was organized by the State Judicial Academy on 11th of November, 2012 at High Court complex, Srinagar.

The programme was conducted by Syed Javed Ahmed, District and Sessions Judge (Retd.) and Abdul Hamid Khan, Joint Registrar (Retd.).

In his introductory remarks, Shri Abdul Hamid Khan, Faculty Member of the Academy stated that the Judicial Academy is engaged in providing comprehensive training and judicial education to the ministerial staff on different topics with the aim of improving the justice delivery system. Beside other things, the Academy strive to imbibe Judicial ethics and standard and updating the knowledge of staff. He reminds the officials that they are the facilitating link of dispensation of justice and they should not demean their positions, reputations and importance by resorting to lethargy. Indolent, sloppy work, attitude and tendencies towards fulfilment of temptations are the characteristics antithesis to the judicial system. Ethics demands the virtue of honesty, punctuality, dedication to duties, compassion, obedience to law and loyalty. He exhorted them to discharge their duties and responsibilities with utmost dedication, zeal and sincerity.

Syed Javed Ahmed, District and Sessions Judge (Retd.) explained in-detail, the various facets of the working of the ministerial staff including office management, maintenance of files and registers, issuance of summons and warrants, maintenance of cash books etc. All the officials attentively listened and understand the discourse given on the

topics. Interaction was also held and many misconceptions were removed by the Resource persons during the interaction. Officials were highly satisfied with such educative and instructive training programme and hoped that such programmes will also be held by the Academy in future.

On November 18, 2012, training session for Process Servers was conducted.

The participant Process Servers were made conscious of their crucial role in the justice delivery system and were made aware of their corresponding duties. They were told that proceedings of a case before the court depend on the effective service of a process on the defendant(s) or the witnesses, as the case may be. Therefore, it was imperative on them to be honest and dedicated in the discharge of their functions. They were told that their honest and sincere working could play a vital role in quick dispensation of justice to the litigant public.

They were imparted necessary instructions and guidelines as to the methodology and behaviour to be adopted while approaching a person for service of summons. Instructions were also imparted on them about service of summons and making reports thereabout with special reference to the provisions of Order V Rules 9 to 17 CPC.

NEWS AND VIEWS

Rarest of rare criterion for death penalty is too judge-centric : SC

More than 32 years after it devised the "rarest of rare" criterion to restrict imposition of death penalty to exceptionally heinous and cold-blooded murder cases, the Supreme Court said

the standard was being applied differently by different judges and needed to be looked at afresh.

Referring to the landmark Bachan Singh case in 1980 when the "rarest of rare" category was devised and the subsequent important decisions on death sentence, a Bench of Justices K.S. Radhakrishnan and Madan B. Lokur said there was "little or no uniformity in the application" of this principle.

In fact, the bench seemed to even concede that categorizing crimes - the basis for ranking them and assessing which all meet the "rarest of rare" standard - might be difficult. In short, the court suggested that the present system was not working.

The Bench also barred Governments from granting mass remission of sentence to convicts for their release on Independence Day, Republic Day or Mahatma Gandhi's birth anniversary. The Supreme Court observed that there was "little or no uniformity in the application" of the "rarest of rare" principle for the death penalty.

"In the sentencing process, both the crime and criminal are equally important. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing," Justice Lokur, who authored the judgment for the Bench, said.

The court had in 1980 classified the nature of cases to carve out the "rarest of rare" category, while identifying mitigating circumstances which it held should enable a judge to consider awarding life sentence even in convictions warranting imposition of death penalty.

Justice Radhakrishnan and Justice

Lokur said the mitigating circumstances enumerated in the Bachan Singh judgment, which gave discretion to a judge to commute death sentence to life term, had not been uniformly applied through the years.

They said, "The constitution bench of this court has not encouraged standardization and categorization of crimes and even otherwise, it is not possible to standardize and categorize all crimes."

The Bench made the observation while commuting to life imprisonment the death sentence awarded by trial court and the high court to two persons for wiping out an entire family in Haryana. Other accused in the case were awarded life imprisonment.

While deciding the fate of the duo on death row, the bench moved on to explore the application of "rarest of rare" criterion.

Justice Lokur said, "It does appear that in view of the inherent multitude of possibilities, the aggravating and mitigating circumstances approach has not been effectively implemented. Therefore, in our respectful opinion, not only does the aggravating and mitigating circumstances approach needs a fresh look but the necessity of adopting this approach also needs a fresh look in the light of conclusions in Bachan Singh."

It said despite the Bachan Singh judgment reiterating the aggravating and mitigating circumstances requiring imposition of life sentence, the courts have continued to focus only on the severity of the crime and ignored the circumstances.

(TOI/22-11-2012)

Legal briefs from High Court of J&K

[Case No. : LPA 71 of 2011

**Director Rural Development Kashmir
v. Abdul Qayoom Dar & Ors.**

Date of Decision: 03-07-2012

**Coram : Hon'ble Mr. Justice M. M.
Kumar, Chief Justice and Hon'ble Mr.
Justice Hasnain Massodi, Judge**

(Per M. M. Kumar, CJ)

Subject Index: Industrial Disputes Act, 1947 – Ss 17B, 25B – Award of the Tribunal – Challenged thereto in writ petition – Stay of operation of the Award – Application by Workman seeking back wages as last drawn by him – Application supported by an Affidavit – Pleaded that Workman not gainfully employed – Application allowed by the Writ Court – Letters Patent Appeal filed – Challenge to order passed by the Writ Court – Dismissed.

Held: It is well settled that there are four prerequisites for invoking Section 17B of the Act. Firstly, the award of the Tribunal should have reinstated the workman by setting aside his unfair termination.... The second requirement is that in the proceedings initiated by the employer in the higher court, the award should have been stayed....The other condition which needs to be satisfied is that the workman should not have been gainfully employed in any establishment during the pendency of the proceedings. Lastly there should be an affidavit in support of the same.

Once all the necessary conditions for invoking Section 17B are satisfied, we find no legal infirmity in the view taken by the learned Single Judge while allowing the application of the workman-

respondent under Section 17B of the Act.

[Case : Civil Revision No : 61 of 2010

Gian Chand v. Mangi Ram

Coram : Hon'ble Mr. Justice J.P. Singh.

Date of Decision : 29-03-2012.

Subject Index : Code of Civil Procedure - Sec. 51 read with Sec. 58 - Maximum period for which a judgment debtor can be sent to civil imprisonment in execution of a decree - three months.

During the course of execution proceedings initiated for execution of decree, petitioner was ordered to be detained in Civil Prison on three occasions of one month each by the Sub-Judge, Reasi for his omission to file Undertaking to comply the terms of the decree. Petitioner was ordered to be sent to the Civil Prison for the fourth time - order challenged in civil revision.

Held : the maximum period for which a judgment debtor may be detained in Civil Prison having been prescribed under Section 51(c) as not exceeding the period specified in Section 58 of the Code of Civil Procedure i.e. **Three month**, the petitioner's detention in Civil Prison, when he had already remained in Civil Prison for three months, cannot, therefore, be justified in view of the intendment of the legislature demonstrated by the provisions of Section 51 and 58 of the Code of Civil Procedure - Revision allowed - impugned order set aside.

**[Case : Cr. Rev. No.53 of 2011 c/w Cr.
Rev. No. 62 of 2011**

Iqbal Deep Singh v. State

**Coram : Hon'ble Mr. Justice
Mohammad Yaqoob Mir.**

Date of Decision : 15-06-2012]

Subject Index : J&K Juvenile

Justice Act, 1997 - Grant of bail to Juvenile - Petitioner, a juvenile, booked for the commission of offence u/s 302, 341, 34 RPC - moved an application for bail before CJM, Jammu - bail refused on the ground that the investigation is in progress - Revision filed against the order refusing the bail - During pendency of the Revision petition, the case was committed to Sessions Judge, Jammu and the petitioner remanded to judicial custody - Another revision against the said order.

Held : That the bail to a juvenile is to be refused only on any of the three grounds enumerated in Section 18 of the Juvenile Justice Act - As the order of the CJM doesn't reflect that the bail was withheld on any of these grounds, so refusing the bail simply on the ground of non-completion of investigation is not proper - order of committal as far as it pertains to juvenile also found not proper as in case of juvenile Section 24 of the Juvenile Justice Act was to be observed - both the revision petitions allowed and both the orders set aside - CJM directed to consider the bail of petitioner strictly in accordance with Section 18(1) of the Juvenile Justice Act.

Case: 561-A Cr. P. C. No.179 of 2011

Imtiyaz Ahmad Bhat v. FIL Industries Ltd.

Date of decision: 02-06-2012

Bench: Hon'ble Mr. Justice Hasnain Massodi, Judge

Subject Index: The Negotiable Instruments Act, 1881 S. 138 Court located within territorial jurisdiction of collecting bank whether has jurisdiction to entertain and deal with the complaint; Held: No.

The Negotiable Instruments Act, 1881 Section 138(b)(c) Demand notice place of issue, despatch, receipt of

whether determinative of jurisdiction of Court; Held: No.

Held: the offence under Section 138 of the Act is complete only when the series of events linked with each other, i.e., (1) Cheque is drawn by the drawee; (2) It is presented to the Bank; (3) It is returned by the drawee bank without payment; (4) Demand notice is given / issued to the drawee; and (5) the drawee fails to make payment within 15 days of the receipt of the notice. "The payee or holder in due course, in the circumstances has option to file complaint under Section 138 of the Negotiable Instruments Act, 1881 in any of the courts having jurisdiction over any of the places within territorial limits of which any of the acts was done / occurred. However, we have to make distinction between the material events and the steps that the payee of the cheque or its holder in due course may have to take in connection with any of the material events. The place where any step is taken as would only aid or facilitate the one or more material events, is not determinative of jurisdiction of the court competent to entertain and deal with the complaint".

Further held: "[T]he expression 'giving notice in writing' and 'receipt of the said notice' in proviso (b), (c) to Section 138 of the Act is to be interpreted as having reference to the place where the notice is received by the drawer of the cheque".

Cases cited:

K. Bhasakaran v. Sankaram Vaidhyan Balan & anr., AIR 1999 SC 3762; *M/s Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd.*, (2009) SC 1166; *M/s Rohit Motors & anr. v. M/s Punjab Tractors Ltd.*, 201(1) SLJ, 193 : 2010(2) JKJ 894; and *Jambu Kumar Jain & anr. V. Tata Capital Ltd. & ors.*, AIR 2012 (NOC) 10 (BOM).