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From the Editor's Desk

Judges in the District Judiciary have always been making individual efforts in enhancing excellence, thereby contributing to efficient justice delivery system. Individual efforts have only resulted in scattered enhancement of judiciary as an institution. Collective and concerted efforts are needed to work for overall excellence of the judicial institution in the State.

It is a fact that every judicial officer is endowed with knowledge and skill. Sharing of knowledge and best practices by each of the officers would result in great improvement in justice delivery. ICT and Social media platforms are effective tools in dissemination of knowledge. As of now judicial officers are, in one or the other way, interconnected through these platforms, and are doing their bit in the direction of knowledge sharing. The process has been slow and is hardly resulting into adoption of best practices. It is, therefore, needed to have structured platform which would bring every judicial officer in the State on a common platform and then a concerted effort would be a possibility. Active participation of every judicial officer in knowledge sharing deliberation shall further improve and update the knowledge and skills needed for effective justice dispensation.

State Judicial Academy is making efforts to develop a platform where all the judicial officers can be brought on board for collaborative efforts. In this direction consultation process is on and suggestions are also sought from all the officers, which shall help in developing effective tools in that direction. Devising effective training programmes and developing programme modules is also being worked out to achieve optimum results. Modern trends in judicial education would also be studied and implemented in the training programmes and developing of training modules. Consultative process in this direction is scheduled to be held at National Judicial Academy, Bhopal. All the Judicial Academies are expected to present their best practices experiences, which can be helpful in improving the effectiveness of training programmes.

LEGAL JOTTINGS

“In a parliamentary democracy with a written Constitution in which three organs of the Government are clearly marked out, it becomes a primary duty of the State to provide for fair and efficient administration of justice. Justice must be within the easy reach of the lowest of the lowliest. Rancour of injustice hurts an individual leading to bitterness, resentment and frustration and rapid evaporation of the faith in the institution of judiciary. Two vital limbs of the justice system are that justice must be within the easy reach of the weaker sections of the society and that it must be attainable within a reasonably short time, in other words, speedily.”

D.A.Desai, J. in S.P. Gupta v. Union of India, 1981 supp SCC 87, para 741

Criminal

Criminal Appeal No.180 of 2019 Deep Narayan Chourasia v. State of Bihar Decided on February 25, 2019

Hon'ble Supreme Court held that it will be a travesty of justice delivery system where an accused, who is convicted of a lesser offence (Section 27 of the Arms Act alone) and was acquitted of a graver offence (Section 302/149 IPC) is made to suffer conviction for commission of a graver offence (Section 302/149 IPC) without affording him an opportunity to defend such charge at any stage of the appellate proceedings.

Hon'ble Supreme Court observed as under:

“29. In our view, an order, which is based entirely on wrong factual premise once held illegal by a superior Court at the instance of one accused, cannot be allowed to stand against other non-appealing accused persons also.”

Criminal Appeal No(s). 174 of 2019 Department of Customs v. Sharad Gandhi Decided on February 27, 2019

It is held that a prosecution under Sections 132 and 135(1)(a) of the Customs Act, 1962, is not barred in regard to the antiquities or art treasures.

Customs Act will apply except where it is inconsistent with the Antiquities Act. The Antiquities Act will, therefore, prevail over the Customs Act in case of an inconsistency. In view of the clear provisions contained in the Act, the word “any other law” in Section 30 of the Antiquities Act, would not include the Customs Act, 1962.

Criminal Appeal Nos. 1008-1009 of 2007 Ankush Maruti Shinde and others v. State of Maharashtra Decided on March 05, 2019

Hon'ble Supreme Court held that the omissions in this case were major omissions and improvements which were fatal to the case of the prosecution, and it created reasonable doubt on the trustworthiness and the reliability of the prosecution witness No. 8 (para 9.4). When she was confronted with such omissions/improvements, in her cross-examination, she stated only that she told this to the police but she did not know why the police had not recorded the same which was not corroborated by any other evidence, more particularly the deposition of the IO and/or the magistrates (para 9.9).

It is further held that fair trial includes fair investigation as envisaged by Articles

20 & 21 of the Constitution of India. The role of the police is to be one for protection of life, liberty and property of citizens, and that the aim of investigation is ultimately to search for truth and to bring the offender to book.

Hon'ble Court also noted the observation made in "Darya Singh v. State of Punjab, AIR 1965 SC 328," that the prosecution must act fairly and honestly, and must never adopt the device of keeping any evidence back from the Court only because the evidence is likely to go against the prosecution case.

Hon'ble Court also held that it was a fit case for further investigation under section 173 (8) of the Code of Criminal Procedure qua those four persons, who were identified by PW8 on 7.6.2003, the reference of whom is made in the statement recorded by PW13, while observing that those four persons were identified by PW8 on 7.6.2003, which was just after two days' of the incident. (para 13)

**Criminal Appeal Nos. 428-430 of 2019
Digamber Vaishnav and another v. State of Chhattisgarh
Decided on March 5, 2019**

Hon'ble Supreme Court reiterated the following law:

1. There is no rule of practice that in every case the evidence of a child witness has to be corroborated by other evidence before a conviction can be allowed to stand, but as a prudence, the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record, and that the only precaution which the court has to bear in mind while assessing the evidence of a child witness is that witness must be a reliable one.
2. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional

circumstance, if other circumstances unfailingly point to the guilt.

3. If two views are possible on evidence adduced in the case, one binding to the guilt of the accused and the other to his innocence, the view which is favourable to the accused, should be adopted.
4. It is not the discovery of every fact that is admissible, but the discovery of relevant fact is alone admissible.
5. If the last seen evidence does not inspire confidence or is not trust worthy, there can be no conviction. To constitute the last seen together factor as an incriminating circumstance, there must be close proximity between the time of seeing and recovery of dead body.

Hon'ble Court also held the inconclusive findings of hair analysis to be not sufficient to substantiate the presence of the appellants at the scene of occurrence.

**Criminal Appeal Nos. 473-474 of 2019
Sachin Kumar Singhraha v. State of Madhya Pradesh
Decided on March 12, 2019**

Hon'ble Supreme Court reiterated that life imprisonment is the rule to which the death penalty is an exception. The death sentence must be imposed only when life imprisonment appears to be an altogether inappropriate punishment, having regard to the relevant facts and circumstances of the crime.

Hon'ble Court referred from the case of "Santosh Kumar Singh v. State through C.B.I., (2010) 9 SCC 747," that sentencing is a difficult task and often vexes the mind of the Court, but where the option is between life imprisonment and a death sentence, and the Court itself feels some difficulty in awarding one or the other, it is only appropriate that the lesser punishment be awarded.

Finding the sentence of life imprisonment simpliciter as grossly inadequate in the instant case, a sentence of life imprisonment with a minimum of 25 years' imprisonment (without remission), was imposed.

Criminal Appeal No. 465 OF 2019
Bhagyan Das v. State of Uttarakhand and another
Decided on 11 March, 2019

In a case involving offence under Section 420 IPC, it is held that the discretion can be exercised by the court having regard to nature of offence, even if an offence is compoundable under Section 320 CrPC, and that had been rightly held in the impugned judgment that the offence for which appellant was convicted and sentenced, will have its own effect on the society at large.

Criminal Appeal No.505 OF 2019
Harveer Singh & Anr. v. State of U.P
Decided on March 15, 2019

In a case where a revision petition had been dismissed as none appeared for the petitioner, Hon'ble Supreme Court held that the revisional Court should have applied its judicial mind to the factual and legal aspects arising in a case, and then passed appropriate orders.

Criminal Appeal No. 456 of 2019
Periyasami and others v. S. Nallasamy
Decided on March 14, 2019

Hon'ble Supreme Court reiterated the law laid in "Hardeep Singh v. State of Punjab (2014) 3 SCC 92," that the additional accused cannot be summoned under Section 319 of the Code in a casual and cavalier manner, in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge, but which is less than the satisfaction required at the time of conclusion of the trial for convicting the accused.

In Hardeep Singh's case, it was also held that power under Section 319 CrPC is a discretionary and an extraordinary, and has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Such power should be exercised only where strong and

cogent evidence occurs.

Criminal Appeal No. 5 of 2009
Sukumaran v. State represented by the Inspector of Police
Decided on March 7, 2019

From the perusal of evidence of the witnesses apart from eye witnesses and two more witnesses who were declared hostile, the prosecution was held not to have been able to prove the manner in which the incident had occurred.

Hon'ble Court reiterated the following limitations on the right of private defence:

1. the right does not arise if there is time to have recourse to the protection of public authorities;
2. It does not extend to the infliction of more harm than necessary for the purpose of defence;
3. When death is caused, the person exercising the right must be under reasonable apprehension of death, or grievous hurt, to himself, or to those whom he is protecting;
4. And in the case of property, the danger to it must be of the kind specified in section 103 IPC.

Hon'ble Court also reiterated the 10 principles laid in "Darshan Singh v. State of Punjab & another (2010) 2 SCC 333," after analyzing Sections 96 to 106 IPC.

CRAA No. 45/2010
State of J&K v/s Asgar Ali
Decided on March 01, 2019
(High Court of J&K)

Hon'ble High Court held that while trying an accused on charge of rape, Court must deal with the case with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of witnesses which are not of substantial character.

However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the

defense to explain as to how and why in rape case the victim and other witness have falsely implicated the accused.

Further, the Hon'ble Court held that prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defense.

**CRR No. 34/2014,
Jasbir Singh v/s Santnam Kour and ors.
Decided on: February, 22, 2019
(High Court of J&K)**

Hon'ble High Court held that Section 488 of CrPC is a social legislation; strict law of pleading is not applicable. Procedure is of summary nature. Maintenance is right which accrues to a wife against husband the minutes former gets married to latter. It is not only a moral obligation but also a legal duty. The primary object of granting maintenance to a deserted and destitute wife and children is for ensuring that they should not be left beggared. The remedy provided under section 488 CrPC is a summary remedy for securing reasonable sum by way of interim maintenance. Major daughter is entitled for maintenance from her parents till her marriage u/s 488 of CrPC read with section 23 of Hindu Adoption and Maintenance Act.

**CRAA No.21/2007
State Vs Naresh Kumar Parwakar
Decided on: March 03, 2019
(High Court of J&K)**

Hon'ble High Court held that to attract Section 471, it is not necessary that the person held guilty under the provision must have forged the document himself or that the person independently charged for forgery of the document must necessarily be convicted. Before the person using the forged document, knowing it to be a forged can be convicted, it must be established or proved that the document used was a forged one. The necessary ingredients under Section 471 are fraudulent and dishonest use of the document as genuine. The act need not be both dishonest and fraudulent. The use of document as contemplated under Section 471 RPC must be voluntary one. For

sustaining conviction under Section 471 it is necessary for the prosecution to prove that accused knew or had reason to believe the document to be a forged one. Whether the accused knew or had reason to believe the document in question to be a forged has to be adjudicated on the basis of materials on record and the finding recorded in that regard is essentially factual.

**CRAA No. 48/2007
Raman Gupta Vs Satish Kumar Gupta
Decided on: : March 01, 2019
(High Court of J&K)**

Hon'ble High Court held that once a complaint under Section 138 of Negotiable Instrument Act has been dismissed in terms of Section 247 of the CrPC, the only remedy available with the complainant is to file acquittal appeal and revision would not be maintainable. Further acquittal appeal in terms of Section 417 of code can be preferred only when leave to file such appeal is granted by the High Court to the complainant.

Deciding 2nd issue, the Court held that perusal of the file reveals that case was transferred from City Judge to Railway Court (JMJC) and the exemption from personal appearance to the complainant was granted by first Court which was not cancelled. So judicial propriety demands that the transferee Court should have issued notice to the complainant of such transfer, if his presence was required. Thus, appeal was allowed and dismissal of complaint for non-appearance of complainant was set aside.

**CRR No. 43/2017
Zulfikar Ali Vs Tawkeer Yousuf Khan
Decided on: : February 22, 2019
(High Court of J&K)**

In the instant case it is held that CJM was not competent to conduct the trial as the complaint was triable by Court of Session in view of Section 18(c) read with Section 27(b) (II) of Drugs and Cosmetics Act, 1940.

Held that under Section 32 (2) of Drugs and Cosmetics Act, 1940, it is evident that complaint was triable by Court of

Session and Magistrate was thus not competent to conduct trial. In terms of judgement titled as “Banu Enterprises Vs State of Jammu & Kashmir and Ors,” decided on 22-9-2016, it becomes clear that Magistrate has only to commit the case to the Court of Session and not to conduct trial itself. Therefore, the whole trial conducted by trial Court in the complaint was without jurisdiction.

CRR No. 90/2017

State of J&K Vs Sheela Devi

Decided on: March 01, 2019

(High Court of J&K)

Hon'ble Court discussed the Law with regard to acquittal appeal, as has been reiterated recently in “Mohd Akhter Kari Vs State of Bihar and Anr 2018 SC 1211” and in the light of other Supreme Court Judgments on the point.

The court observed that it is well established that in on appeal under Section 417 of CrPC the High Court has full power to review the evidence upon which the order of acquitted was founded, but it is equally well established/settled that the presumption of innocence of accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses at the time of recording their evidence can be reversed only for very substantial and compelling reasons, such as:

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1. Trial Courts concerned with regard to facts is probably wrong.
2. Its decision was based on erroneous view of Law.
3. The trial court has ignored the evidence or missed the material evidence.

The list is intended to be illustrative, not exhaustive.

Further the Court held that it is the cardinal principal of Criminal Jurisprudence that prosecution must prove its case beyond reasonable doubts, because personal liability of a person is involved.

CRR No. 23/2010

Mohammad Muzaffer Vs State of J&K

Decided on: : March 01, 2019

(High Court of J&K)

Revisional powers of High Court provided under section 435 of CrPC were discussed in the light of Judgments of Supreme Court.

The Court held that from the bare perusal of section 435, it is evident that High Court has limited power to see the correctness, legality or propriety of any finding, sentence or order recorded or passed by subordinate courts. It was also held that Revision is the art of examining irregular or improper exercise or non exercise of jurisdiction by lower courts. Revision is like re-working and rewriting. Revision means the action of revising, especially critical or careful examination or perusal with a view of correcting or improving. In its revisional Jurisdiction the High Court can call for and examine the record of any proceeding for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order.

CRA No 14/2014

Mohd Muqbool Raina. Vs. Intelligence Officer, Narcotic Control Bureau Jammu, Zone Unit, Jammu

Decided on: : February 22, 2019

(High Court of J&K)

Hon'ble Court discussed the law laid down in various Judgments of Hon'ble Supreme Court touching different issues of NDPS Act.

The Court made it clear that through law laid down in “Mohan Lal Vs State of Punjab 2008 SC 914” which talks about fair investigation is the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. Above case law applies only to future cases in terms of latest judgment of Apex Court titled as “Virender Kumar Vs State of Himachal Pradesh” (Criminal Appeal No 2450-2451 of 2010 decided on 11-02-2019), where Apex

Court made it very clear that law laid down in (Mohan Lal) (Supra) is not allowed to become a spring board for acquittal. Therefore, Supreme Court held that all criminal prosecutions, trials and appeals prior to the law laid down in Mohan Lal (Supra) shall continue to be governed by individual facts of the case.

CRMC No. 9900003/2012
Basharat Hussain Vs State of J&K
Decided on: : March 25, 2019
(High Court of J&K.)

While dealing with a petition filed under 561A CrPC for quashment of order dated 25-07-2009 passed by Additional Sessions Judge, Rajouri whereby he had dismissed the application of petitioner (herein) seeking release of his seized property by the police, the Hon'ble High Court discussed the law laid down on this point by Apex Court in "N. Madhavan Vs State of Kerala," reported in 1879 O AIR (SC) 1829, while commenting upon the scope of Section 517 CrPC enunciated that words "May make such order as thinks fit" in the Section, vest the Court with a discretion to dispose of the property in any of the three modes specified in the Section. But exercising such discretion is inherently a judicial function. Lordship observed that it is well recognized principle regarding choice of the mode and manner of disposal of property is that when after enquiry or trial the accused is discharged or acquitted, the Court should normally restore the property which is seized and in custody of Court to a person from whom it was recovered. Departed from this statutory rule of practice is not to be lightly made, when there is no dispute of doubt. The trial Court is failed to comply with this rule and findings of learned Judge is contrary to law. Hence order dated: 25-07-2009 is hereby quashed and property should be restored to the petitioner herein.

CRA No. 9900013/2003
Bansi Lal Zijoo Vs State Through CBI
Decided on: : February 22, 2019
(High Court of J&K)

Hon'ble High Court held if a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.

OWP No. 66/2011
Jaffar Ali Vs. State & Ors,
Decided on: : March 19, 2019
(High Court of J&K)

Petition in the above titled case had sought directions upon the respondents to reopen the above case and conduct investigation either by crime Branch or some other impartial agency.

Hon'ble Court held that petitioner after accepting the closure report can't turn around and challenge the same after more than 19 years, which stands closed. Delay in approaching the Court is fatal for the relief sought by the petitioner.

CRMC No. 367/2016
Rajeshwar Singh v/s State of J&K
Decided on: : March 19, 2019
(High Court of J&K)

Hon'ble High Court of Jammu & Kashmir held that the Court is not required to act as a post office or to act casually in framing the charge but where the material collected by the investigating agency give rise to grave suspicion of the commission of offences, it can be treated as sufficient ground for framing of the charge and to proceed ahead with the trial. And for framing of charge no detailed order is required to be jotted down. The Court relied on judgment of the Apex Court in Om Wati's Case.

“It must always be remembered by every judicial officer that administration of justice is a sacred task and according to our hoary Indian tradition, it partakes of the divine function and it is with the greater sense of responsibility and anxiety that the judicial officer must discharge his judicial function, particularly when it concerns the liberty of a person.”

P.N. Bhagwati, J. in Kasambhai Abdulrehmanbhai Sheikh v. State of Gujrat, (1980) 3 SCC 120, para 2



Civil

Civil Appeal Nos. 1799-1800 of 2019
Bharat Heavy Electricals Ltd. v. Mahendra Prasad Jakhmola and others
Decided on February 20, 2019

Hon'ble Supreme Court held that even a concession on facts disputed by a respondent in its written statement cannot bind the respondent. Equally, where a question is a mixed question of fact and law, a concession made by a lawyer or his authorized representative at the stage of arguments cannot preclude the party for whom such person appears from re-agitating the point in appeal.

Civil Appeal No. 2024 of 2019
Vinod Jain v. Santokba Durlabhji Memorial Hospital and another
Decided on February 25, 2019

While reiterating the principles relating to medical negligence laid down in “Kusum Sharma & others v. Batra Hospital & Medical Research Centre & others (2010) 3 SCC 480,” and “Jacob Mathew v. State of Punjab (2005) 6 SCC 1,” Hon'ble Supreme Court held that a doctor cannot be said to be negligent if he is acting in accordance with a practice accepted as proper by a reasonable body of medical men skilled in that particular art, merely because there is a body of such opinion that takes a contrary view.

Civil Appeal Nos.10629-10631 of 2014
The Competent Authority Calcutta, Under the Land (Ceiling And Regulation) Act, 1976 And Anr. v. David Mantosh & Ors.
Decided on February 26, 2019

Hon'ble Supreme Court held that the jurisdiction of civil court in this case is barred on account of inter alia the following reasons:

1. the Act in question gave finality to the orders passed by the appellate authority.
2. the Act provided adequate remedies in the nature of appeals, such as first appeal to the Tribunal and second appeal to the High Court.
3. the Act was a complete code in itself and gave overriding powers on other laws.
4. the Act expressly excluded the jurisdiction of the Civil Court in relation to the cases falling under Sections 30 and 40.

The law laying seven tests in “Dhula Bai v. State of MP, (AIR 1969 SC 78),” to determine the issue of express or implied bar to a civil suit, was also relied in this case.

Civil Appeal No. 1782 OF 2019
Murigan and others v. Kesava Gounder THR. LRS. And others
Decided on February 26, 2019

Hon'ble Supreme Court reiterated the law laid in “Narayan Vs. Babasaheb and Others, (2016) 6 SCC 725,” that a suit by minor for setting aside the sale of his property by his guardian is governed by Article 60 of Schedule II to the Limitation Act. When sale deed was executed by the guardian, he purported to convey the right of the minor, the same was voidable and not void, and the plaintiff could not rely on Article 65. And a suit for setting aside sale of minor's property by his de-facto guardian, being void, is governed by Article 65 of the Limitation Act.

It is also reiterated that sale deed in violation of Section 8 (1) and 8 (2) Hindu Minority & Guardianship Act, 1956, is a voidable sale Deed.

Hon'ble Court reiterated the law laid in “Madhegowda (Dead) by LRs. vs. Ankegowda (Dead) by LRs. and others, (2002) 1 SCC 178,” that section 11 of the Act

contains a statutory prohibition on “de-facto guardian” of the minor from disposing of the property of the minor, the transfer made by de facto guardian is void and can be repudiated in any manner, and that it is well settled that it is not necessary for a minor or any person claiming under him to file a suit for setting aside a void deed, the same can be ignored.

Civil Appeal No.6878 of 2018
M/s Anjaneya Jewellery v. New India Assurance Co.Ltd. & Ors.
Decided on March 07, 2019

Hon’ble Supreme Court held that the Commission does have the jurisdiction to dismiss a consumer complaint in limine, and decline its admission without notice to the opposite party, in the light of amendment made in Section 13 of the Act. However, such jurisdiction to dismiss the complaint in limine has to be exercised by the Commission having regard to facts of each case, i.e., in appropriate case.

Civil Appeal No. 7292 of 2009
R.Dhanasundari @ R. Rajeswari v. A.N. Umakanth and others
Decided on March 06, 2019

It is reiterated that the object of Rule 10 of Order I CPC is essentially to bring on record all the persons who are parties to the dispute relating to the subject matter of the suit so that the dispute may be determined in their presence and the multiplicity of proceedings could be avoided.

Hon’ble Court also held, with respect to Rule 1-A of Order XXIII CPC (transposition of defendant as plaintiff), that the very nature of the provision leaves nothing to doubt that the powers of the Court to grant such a prayer for transposition are very wide and could be exercised for effectual and comprehensive adjudication of all the matters in controversy in the suit. The basic requirement for exercise of powers under Rule 1-A would be to examine if the plaintiff is seeking to withdraw or to abandon his claim under Rule 1 of Order XXIII, and the defendant seeking transposition is having an

interest in the subject-matter of the suit and thereby, a substantial question to be adjudicated against the other defendant. In such a situation, the proforma defendant is to be allowed to continue with the same suit as plaintiff, thereby averting the likelihood of his right being defeated and also obviating the unnecessary multiplicity of proceedings.

In this case, a right for withdrawal of suit under Order XXIII Rule 1 was claimed. But the principle of harmonious construction appears to have been followed in this case, in view of the other provisions contained in Order I Rule 10 CPC as to addition etc of parties and Order XXIII Rule 1-A as to transposition of defendant as plaintiff.

Civil Appeal Nos.5051-5052 of 2009
Estate Officer Haryana Urban Development Authority & Another v. Gopi Chand Atreja
Decided on March 12, 2019

Hon’ble Supreme Court held that non taking of timely steps by the lawyer, resulting in delay in filing of appeal cannot be regarded as a sufficient cause within the meaning of Section 5 of the Limitation Act. It was equally the duty of the appellants to see that the appeal was filed in time. If they noticed that their lawyer was not taking interest in attending the brief in question, then they should have immediately engaged some other lawyer to ensure that the appeal was filed in time by another lawyer. A delay of 1942 days (4 years 6 months) was held to be wholly inordinate, and the cause pleaded for its condonation also was held to be unexplained by the appellants.

Civil Appeal No. 2960 of 2019 Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by LRs
Decided on March 13, 2019

Hon’ble Supreme Court referred T. Arivandandam v. T.V. Satyapal (1977) 4 SCC 467 and other judgments wherein it was held that if on a meaningful — not formal — reading of the plaint, it is found manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, power under Order 7 Rule 11 CPC should be exercised

while taking care to see that the ground mentioned therein is fulfilled. Also, if clever drafting has created the illusion of a cause of action, that should be nipped in the bud at the first hearing by examining the party under Order 10, CPC. An activist Judge is the answer to irresponsible law suits.

Hon'ble Supreme Court also referred "Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust (2012) 8 SCC 706" wherein it was held that while scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action.

With respect to the limitation being a mixed question of law and facts, which can be decided only after the parties lead the evidence, It is held that the plaint can be rejected in exercise of powers under Order 7 Rule 11(d) of the CPC if it is found on consideration of averments in the plaint that the suit is clearly barred by law of limitation (See para 8).

**Civil appeal No(s). 3135-316 of 2019
Lahari Sakhamuri v. Sobhan Kodali
Decided on March 15, 2019**

Hon'ble Supreme Court held that the crucial factors which have to be kept in mind by the Courts for gauging the welfare of the children equally for the parent's can be inter alia, delineated, such as (1) maturity and judgment; (2) mental stability; (3) ability to provide access to schools; (4) moral character; (5) ability to provide continuing involvement in the community; (6) financial sufficiency and last but not the least the factors involving relationship with the child, as opposed to characteristics of the parent as an individual.

While referring earlier judgments in this regard, Hon'ble Court also held that the doctrines of comity of courts, intimate connect, orders passed by foreign courts having jurisdiction in the matter regarding custody of the minor child, citizenship of the parents and the child etc. cannot override the consideration of the best interest and the welfare of the child, and that the

direction to return the child to the foreign jurisdiction must not result in any physical, mental, psychological, or other harm to the child.

**Civil Appeal No. 2557 OF 2019
Shoda Devi v. DDU/Ripon Hospital Shimla
and others**

Decided on March 7, 2019

Hon'ble Supreme Court held that the requirement in cases of disablement due to medical negligence, is of awarding just and reasonable compensation to the victim, while keeping in view the pecuniary damages as also the non-pecuniary damages like pain and suffering and loss of amenities of life.

Hon'ble Court also held that ordinarily, the general damages towards pain and suffering as also loss of amenities of life deserve to be considered uniformly for the human beings, and the award of compensation cannot go restrictive when the victim is coming from a poor and rural background; rather, in a given case like that of the appellant in this case, such a background of the victim may guide the adjudicatory process towards reasonably higher amount of compensation (of course, after having regard to all the attending circumstances).

**Writ Petition No. 191 of 2019
National Lawyers Campaign for Judicial
transparency and reforms and others
v. Union of India and others
Decided on: March 12, 2019.**

Hon'ble Supreme Court held that when contempt is committed in the face of the Court, judges' hands are not tied behind their backs. The majesty of this Court as well as the administration of justice both demand that contemptuous behavior of the kind involved in this case, be dealt with sternly.

Hon'ble Court referred "Leila David v. State of Maharashtra, (2009) 10 SCC 337," wherein it was held that although section 14 of the Contempt of Courts Act, 1971, lays down the procedure to be followed in cases of criminal contempt in the face of the court, it does not preclude the court from taking recourse to summary proceedings when a deliberate and willful contumacious incident

takes place in front of their eyes for.

M.A. No. 160/2016
Sunita and Ors Vs Jammu Pigments Pvt. Ltd & Ors
Decided on: February 28, 2019
(High Court of J&K)

Hon'ble High Court held that Section 4 (A)(b) of Workmen's Compensation Act provides that the issue regarding penalty or the quantum thereof cannot be effectively decided unless a specific notice to that intent had been issued to the employer.

The interest on of compensation shall not be payable from the date of determination thereof by the commissioner or from the date on which claim application is filed, rather it would be payable from the date of accident.

OWP 104 No. 154/2017,
Sham Lal and others Vs Ramesh Kumar and others
Decided on: February 25, 2019
(High Court of J&K)

Hon'ble High Court held that object of filing of counter claim at the time of filling of written statement under order VIII is to avoid multiplicity of judicial proceedings and save the court's time, as also to avoid the inconvenience to the parties. It enables claim and counter claim, that is, all disputes between the same parties being decided in the course of the same proceedings. It is a settled law that a plea for filling a counter claim can be permitted with the leave of the court even subsequent to filing of the written statement.

CSA No. 06/2011
Kuldip Raj Vs Pawan Kumar
Decided on: February 28, 2019
High Court of J&K

Hon'ble High Court held that the scope of interference in a second appeal by the High Court is very limited. Once the Courts below have taken a possible view on appreciation of entire evidence, merely because a different view, is also possible, interference in the judgement and decrees of the Courts below will not be called for.

AP/ No 27/ 2018
M/S Fazal Rehman Dar Vs. Chief Engineer, PMSY and Ors
Decided on : February 22, 2019
(High court of J&K)

The petition U/Sec 11 of J&K Arbitration and Conciliation Act, 1997 was filed for reference of dispute to an independent Arbitration.

Court held that some parties have expressly excluded jurisdiction of Arbitration and Conciliation Act 1997 under clause 25 of their Arbitration Agreement, they can't recourse to some other Division for referring their dispute to arbitration.

MA No. 480/2012/C/W MA No. 238/2013
High Court of Jammu & Kashmir Thakur Ali and anr Vs The New India Assurance Co. Ltd and anr
Decided on: March 15, 2019
(High Court of J&K)

Hon'ble High Court held that the minimum wages payable to a skilled labourer is entitled to higher wages than an ordinary labourer. And this distinction should be borne in mind by the tribunal while determining the notional income of a deceased. Reliance in this regard has been placed on the judgment of the Apex Court in Pranay Sethi. And age group of the deceased is also to be taken into consideration for awarding compensation.

MA No. 556/2014
New India Assurance Co. Ltd Vs. Inderjeet Kour and Ors.
Decided on: March 25, 2019
(High Court of J&K)

Dealing with an appeal filed by New India Assurance Co. Ltd against the award passed by Commissioner under Employees Compensation Act, 1923 the Court held that it has already decided a similar issue in case titled as "Kour & Ors decided on 20-08-2018 and the said judgment would be also applicable to the present facts and circumstances of the case. The Court applied the principle of "Res-ipsa loquitur" which means "things speak itself". The

circumstances in which deceased met with untoward death speak for themselves and there should be no manner of doubt about the death of deceased was nothing but as a result of stress and strain of driving and was caused with in the course of his employment. Hence, the Commissioner has rightly decided the case after appreciating evidence.

Deciding on the reward issue, the Court laid that law is well settled that interest on the delayed payment of compensation is payable from the date of accident and not from the date of application. In terms of law laid in “Vagher Mamad Husein Gadh v. Gujrat electricity Board, 1996 Lab IC 368 (Guj)”

Please read the judgment in Civil Appeal No. 1638 of 2019 {Arising out of Special Leave Petition (C) No. 103/2019} titled M/S SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. & others, decided on February 12, 2019, noted in February 2019 issue of News Letter, in the context of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.

-Editor



Activities of the Academy

OATH CEREMONY

Jammu and Kashmir State Judicial Academy organized Oath ceremony for newly enrolled Advocates of Kashmir and Ladakh province at J&K State Judicial Academy complex, Mominabad Srinagar on 16th March, 2019. Mr. Rajeev Gupta, Director, J&K State Judicial Academy administered oath to the newly enrolled advocates and welcomed them to the profession of law. 250 number of newly enrolled advocates received their absolute licenses to practice law. In his address to the advocates Mr. Gupta deliberated upon the sanctity of oath ceremony and of professional ethics and conduct for the Advocates. It was further told that Legal education does not stop on admission to the bar but it is a continuous process. Law is a profession that demands constant learning. New laws are being passed with regularity which needs constant updating of knowledge. Success in the profession is going to depend to a large extent on what advocates would learn through practice, research and interaction with colleagues and Judges rather than on what they already know. Compared to the years gone by, most of the lawyers are now entering the profession with more education and technological skills. It is hoped that extra skills, competencies and capabilities would

assist lawyers in coping with the fast changing legal landscape. He stressed upon the newly enrolled Advocates that integrity and conduct is vital in all professions and all walks of life, and in the legal profession particularly, honesty, dedication and industry of the lawyer is matter of the utmost importance. Most worthy and effective advertisement possible for a young lawyer on establishing well merited reputation, professional competence and trust of the courts of law. Newly enrolled advocates were further guided that in dealings in and outside the court they should always bear in mind that every member of the Bar is a trustee of the glory, honour and prestige of the profession as a whole.

Workshop on “The bottlenecks responsible for causing delay in disposal of Civil Cases and suggested measures for tackling backlogs and pendency”.

Jammu & Kashmir State Judicial Academy organised a Workshop on “The bottlenecks responsible for causing delay in disposal of Civil Cases, and suggested measures for tackling backlog and pendency” on 23 rd March, 2019 in the J&K State Judicial Academy, at High Court Complex, Jammu. This Workshop was organised in connection with Research Project allotted to the State Judicial

Academy by the Department of Justice, Central Government under the heading "Physical verification of case files of two Districts, Udhampur and Budgam of Jammu and Kashmir with the data on pendency available on National Judicial Data

Grid (NJDG) to identify causes for pendency and map a way forward to reduce delay and introduce effective data collection mechanisms, identifying the bottlenecks responsible for causing delay in disposal of civil cases in courts and possible policy and procedural changes necessary for reduction of pendency and a study on Court Management techniques for improving the efficiency of subordinate courts". In this Workshop, eminent lawyers practicing Civil law in the Courts at Jammu participated in the deliberations.

Mr. D.C. Raina, Advocate General, State of J&K also participated in the workshop and opened deliberations. He highlighted the need for bringing about appropriate changes in the procedural and substantial laws in view of the changing dynamics of the law, pattern of Litigation and the working atmosphere. It was told that law has to keep pace with the changing dynamics of the society. Mr. Raina shared his personal experiences in dealing with Civil and Constitutional matters for more than four decades and said that the problem of delays needs to be tackled by the concerted efforts of the bar, bench and other stakeholders in the profession of law.

Mr. Rahul Bharti, Mr. M. U. Salaria, Mr. Ajay Gandotra, Mr. G. S. Thakur, Ms. Deepika Mahajan, Ms. Seema Anand, Ms. Vandana Sharma, Ms. Neena Mishra, Ms. Rashmi Bajaj, Ms. Vandana Mehta and Ms. Deepali Sharma were the prominent speakers in the workshop. It was suggested by the speakers that in order to clear the backlog and to tackle with enormous and ever increasing pendency, it is needed to have sufficient number of Judges, keeping pace with increasing population. The Judicial system has to be modernised and the latest ICT tools and techniques are required to be adopted to facilitate the Judicial processes. It was also discussed that the lawyers also

need to constantly update their knowledge of law and to develop modern skills and techniques essential for practice of law. Able assistance of lawyers would then ensure quality dispensation of justice in timely manner.

The Research Team headed by Director, J&K State Judicial Academy as Project Director, Mr. Harbans Lal, Retired, District & Sessions Judge and Professor Sameer Gupta participated in the workshop and triggered debate on various aspects of backlog and pendency in the Courts and as to the way forward. Ideas gathered in the workshop have been collated for the purpose of completing the research work. It is expected that the Research Teams shall complete the project shortly and report would be submitted, which would give insight into the genesis of backlog and pendency in the Courts, especially in Civil Cases. Measures would also be suggested to clear the backlog and to streamline the justice delivery system to ensure timely disposal.

One-day refresher programme for Judicial Officers on "Pre-cognizance and Cognizance stages in Criminal Cases: Practice, Procedure & Adopting common approach".

The Jammu and Kashmir State Judicial Academy (JKSJA) held a one-day refresher programme on 31st Marc, 2019 for Magistrates of Jammu, Udhampur, Samba, Kathua & Reasi of 2011 and subsequent batches.

Former Judge of J&K High Court, Justice Janak Raj Kotwal was the Resource Person for the programme. During the deliberations, Justice Kotwal touched upon various aspects of the Criminal Cases at pre-cognizance and cognizance stages. The resource person elaborated upon various aspects of the topic under discussion. Justice Kotwal exhorted the Judicial Magistrates to minutely examine at the initial stage all the criminal matters filed in the court and to adopt a pragmatic approach in dealing with them. Officers were told that in the criminal matters where the

police machinery has to be set in motion for investigation, directions of Supreme Court must be adhered to and further it be ensured that investigation is carried out in compliance of such orders of magistrates. At the cognizance stage of the cases, magistrates were told, to follow the procedural mandate and to ensure that only those matters are entertained for trial which clearly reveal commission of offences punishable under law. Observance of provisions requiring prior sanction or permission of competent authority, must also be ensured. It was highlighted that summoning of an accused affects his right to liberty, as such care needs to be taken at the stage of issuance of process. Magistrates were told to adopt best practices emerging from the discussion.

Director JKSJA, Rajeev Gupta conducted and moderated the training session and thanked Justice Kotwal for the fruitful session and for clearing confusions among the judicial officers.

Special Training Programme for Trainee Munsiffs of 2018 Batch at Delhi Judicial Academy.

State Judicial Academy collaborated with Delhi Judicial Academy in organising a special training programme for the trainee Munsiffs of 2018 Batch at Delhi Judicial Academy from 11th March to 19th March, 2019. The programme was focussed at personality development and minimising bias. Detailed report in this regard prepared by the trainee Officers is included in this issue of eNewsletter.

Judicial Officers' Column

Golden rules for interpretation concerning procedural laws

Procedural laws are made to ensure that the ends of justice are served in a well defined and certain manner, and there is no ambiguity in the mode and manner by which the ultimate aim of providing justice through a fair trial is achieved. Now, it is well established by judicial precedents that the procedural laws are the hand-maid, and not the mistress, in the administration of justice.

In Blyth case 1966 (1) All E. R 524 (HL), it was held that procedural laws should not ordinarily be construed as mandatory, and that the procedural laws are always subservient to, and in aid of justice, and that and interpretation which eludes or frustrates the recipient of justice, is not to be followed.

Interpretation of a procedural law which came to be considered prominently in recent years, is the provision as to time frame for the filing of written statement. The same was considered in the case Shaikh Salim Haji Abdul Khayumsab v. Kumar and others AIR 2006 SC 396 wherein the Honøble Supreme Court held that the Court had the power to grant extension of time beyond the prescribed maximum 90 daysøperiod for filing of written statement. Honøble Court has held that the provision though negatively worded, is procedural, and directory, and also that the

object is to expedite the hearing and not to scuttle the same.

Honøble Court also held in the said case that all the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

Though the above stated is the settled position of law yet it cannot be said that the procedural laws are of no effect or consequence. Rather consequences are also provided with respect to particular procedural laws. And the Courts are under a legal obligation to ensure compliance of all procedural laws. However, balance has to be struck between the substantive laws and the procedural laws. But the golden principle which acts as the criteria for interpreting a procedural law remains the same

that the said laws are only the hand-maids of justice, and the rules of procedure are not mandatory but directory.

ô **Mr. Mohammad Ashraf Bhat,**
Sub-Judge, Bijbehara.

Principles governing amendment of plaint

Hon'ble Supreme Court of India in **M/s Revajeetu Builders and Developers Vs. Narayana swmay and Sons and ors, (2009) 10 SCC 84**, laid down law with regard to amendment of the pleadings under O VI rule 17 of Civil Procedure Code.

The Hon'ble Supreme Court of India stated that the purpose of order VI, rule 17 of CrPc is to allow either party to alter or amend the pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of Justice. Amendment cannot be claimed as a matter of right. Courts while deciding such prayers should not adopt hyper technical approach. Liberal approach should be the general rule particularly in cases where other side can be compensated with the costs. Courts while dealing with amendment applications must satisfy that such amendment is necessary to determine the right of the parties but if such amendment causes prejudice to other party, leave to amend should not be allowed. Courts must exercise this power judiciously, while granting leave to amend and imposing costs, certain things need to be taken into consideration by the courts, Following observations may be taken note of:

“FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

67. 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.

(1) Whether the amendment sought is

imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

— **Ms. Masarat Jabeen,**
Trainee Munsiff, 2018 Batch

A brief overview about the Training Programme attended by trainee Munsiffs of J&K in Delhi Judicial Academy scheduled from 11th to 19th of March, 2019

J&K State Judicial Academy in collaboration with Delhi Judicial Academy organized a 9 days Training Programme for Trainee Munsiffs of 2018 batch of the State in Judicial Academy Delhi from 11th to 19th March, 2019. The programme was also

attended by Trainee Munsiffs of 2017 batch. The main emphasis of the programme was on Personality Development, Bias Management, Anger Management and Stress Management. The programme was enlightened by distinguished and eminent speakers who were highly knowledgeable and experienced on these topics.

During this programme Officers were benefitted by vast experience and knowledge of these renowned Resource Persons. Essential feature which made this programme an interesting and stimulating one was its activity oriented approach. All the trainee officers were allowed to participate in different activities viz, Learning Dining etiquettes, Dressing sense, communication skills and other important activities, which enhance the personality of an individual and makes him more attractive and confident. The important topics covered during the programme were Neuro Linguistic Programming, Anger Management, Bias Management and Personality Development.

On Neuro Linguistic Programming (NLP) officers were enriched about its benefits. NLP is an approach to communication, personality development and Psychotherapy created by Richard Bandler and John Grindler in California, USA in 1970. NLP is like learning the language of your own mind. Through NLP it is possible to achieve certain goals in life by changing ones behavior. In NLP there is a link between Neurological process language and behavior of an individual.

Bias management was another aspect covered during the programme. The Trainee Officers were made aware about different kinds of cognitive biases viz, Availability bias, Anchoring bias, Desirability bias, Fundamental Attribution error, Confirmation bias etc., and were told as to how these common biases influence our perception of the world and can lead us to poor decision making.

Lastly, the most important aspect of the programme was Personality development. Officers were apprised as to how Personality Development makes one attractive, impressive, gives confidence, credibility and recognition in the public. It was said that Personality development comprises of numerous things viz, communication skills, body language, manners, dining etiquettes, dress sense etc. it was said that Personality Development grooms an individual and helps him to make a mark of his own and is required to be possessed by every Judicial Officer.

The Trainee Officers were also taken to the Parliament and District Courts Saket on 18th of March, 2019. At the Parliament, Officers were addressed by Joint Secretary, Mr. Ravindera Garimella and Additional Secretary, Lok Sabha, Smt. Kalpana Sharma, on functioning of Lok Sabha and Rajya Sabha, passing of bills and different proceedings conducted in the Parliament. In the second Session Trainee Officers met Secretary General, Lok Sabha, Smt. Snehlata Srivastava. It was a proud moment for Officers of J&K to meet such dignitaries. In addition Trainee Officers also visited Houses of Lok Sabha and Rajya Sabha, Parliament Library and Parliament Museum.

In the second half of the same day, Officers were taken to Saket District Court, Complex where they met different Judicial Officers working in different Courts, who shared their experience with the Trainee officers. The Officers also visited vulnerable witnesses room, Judicial Custody, Mediation Centre and different Court Chambers.

Training Programme at Delhi, Judicial Academy was immensely enriching and it was a great experience gathered in the beginning of service career, which shall go a long way in grooming their Personality as Judicial Officers.

