



SJA NEWSLETTER

Monthly Newsletter published by the
Jammu & Kashmir State Judicial Academy

Volume - 3, Issue 6

June, 2010

Topic of the Month

Chief Patron
Hon'ble Justice
Dr. Aftab Hussain Saikia
Chief Justice

Judge-In-Charge
Hon'ble Mr. Justice
Hakim Imtiyaz Hussain

Editor
Rajeev Gupta
I/c Director SJA

Contents	
Topic of the Month.....	1
Academy News.....	2
News & Views.....	2
Legal Jottings.....	4
Case Comments.....	8

SUBSCRIPTION RATES

Single Copy : Rs. **20.00**
Annual : Rs. **240.00**
(Payment only through D.D. in favour of the
Jammu & Kashmir State Judicial Academy)

The Editor
SJA Newsletter
Jammu & Kashmir
State Judicial Academy
Janipur, Jammu-180001
Ph: Jammu: 0191-2530871
Srinagar: 0194-2472078
Fax: Jammu: 0191-2530783
Srinagar: 0194-2472078
E-mail: jkja@nic.in

Compiled, Composed & Layout by :
Pankaj Kumar Gupta
Deputy Registrar

“It is not uncommon for any criminal case to drag on for years. During this time, the accused travels from the zone of "anguish" to the zone of "sympathy". The witnesses are either won over by muscle or money power or they become sympathetic to the accused. As a result, they turn hostile and prosecution fails. In some cases, the recollection becomes fade or the witnesses die. Thus, long delay in courts causes great hardship not only to the accused but even to the victim and the State. The accused, who is not let out on bail, may sit in jail for number of months or even years awaiting conclusion of the trial. Thus, effort is required to be made to improve the management of prosecution in order to increase certainty of conviction and punishment for most serious offenders. It is experienced that there is increasing laxity in the court work by the police personnel, empowered to investigate the case.

Judiciary today is more deserving of public confidence than ever before. The judiciary has a special role to play in the task of achieving socio-economic goals enshrined in the Constitution while maintaining their aloofness and independence. Judges have to be aware of the social changes in the task of achieving socio-economic justice for the people.

The Indian judicial system is constantly exposed to new challenges, new dimensions and new signals and has to survive in a world in which perhaps the only real certainty is that the circumstances of tomorrow will not be the same as those of today. The need of the hour is to erase misconception about the Judiciary by making it more accessible by utilizing the resources available to improve the service to the public, by reducing delays and making courts more efficient and less daunting.

(Taken from 230th Report of Law Commission of India, Paras 1.22 to 1.24, at Page 16)

ACADEMY NEWS

1. A programme was organized by the Jammu and Kashmir State Judicial Academy on 4th of June, 2010 at Jammu, for the Judicial Officers posted at Head Quarter, Jammu, to familiarize the Judicial Officers with the speech technology and its utility in recording court orders and judgments.



Shri Manjeet Rai while giving demonstration of Speech Software to the Judicial Officers

Shri Manjeet Rai, City Munsiff, Srinagar gave demonstration/presentation on the use of software 'Dragon Naturally Speaking', which he has been using to write judgments and orders.



Demonstration of Speech Software in progress

The Judicial Officers attending the programme were greatly benefitted, as they learnt the use of 'Speech to Text Conversion' Software, which can substantially reduce their dependence on Steno/Typists in writing Judgments and Orders.

The officers desired to have and make use of such Software for efficient and timely dispensation of Justice.

2. 'Share Our Library' project

Jammu & Kashmir State Judicial Academy has initiated a unique project named 'Share Our Library'. In this programme, the serving Judicial

Officers would be given Law and related books available in library of Academy, on sharing basis. Every Judicial Officer would get books, preferably of his/her choice, for a fixed period of time and after said period the books will be taken back and circulated to other officers. In this process each officer would be able to read most of the books available with the Academy, without being required to spend on purchase of such books.

In the first phase, all the officers have been requested to give their choice of books, so that Academy is able to purchase the books which are not available in the Academy's Library. Few books have already been taken by some Judicial Officers at Jammu and similar exercise is being undertaken at Srinagar.

NEWS AND VIEWS

Parliament approves Green Tribunal Bill for speedy justice

Parliament has approved the National Green Tribunal Bill, 2010, that seeks to provide speedy disposal of environment-related cases in the country.

Replying to the debate on the Bill, Union Environment and Forests Minister Jairam Ramesh agreed with the contention that the setting up of five benches was inadequate. Saying that he was willing to look into the matter once the tribunal began functioning. He told the House that in view of the financial allocation given, it was decided to set up five benches immediately at different places, including at Bhopal and Kolkata. However, in the event of increase in workload, he expressed willingness to expand in the first year itself.

Noting that a total of 5,616 cases were pending before various courts, he said the Bill sought 'to throw open the doors of the tribunal but geographically the country needed a larger footprint and five benches were not enough'. While the chairperson would be chosen after consultations, the Minister was of the view that the members should comprise persons with a specialized knowledge who could give scientific inputs to adjudicate cases while not ruling environmental activists.

He also clarified that no cap had been provided as members believed and the fine of Rs 25 lakh was the penalty imposed on the party which failed to implement the Tribunal's order and was a huge jump from the Rs 25,000 plus fine currently imposed in such cases.

Earlier, Mr Ramesh said the proposed National Green Tribunal would be set up in Bhopal,

which witnessed the greatest industrial disaster, so that it could be identified with environment friendly measure also.

(UNI/05.06.2010)

Law graduates must pass new bar exam to practise in India

For the first time, some 60,000 law graduates passing out of India's 1,000-odd law colleges and schools after 3-5 years of education must now on pass an All India Bar Examination to practise in the country.

Announcing this in the presence of Law and Justice Minister M Veerappa Moily, Bar Council of India chairman Gopal Subramaniam said the idea was to strengthen 'every Indian lawyer' and 'the legal profession'.

According to the Council website,'Any law student graduating in Academic Year 2009-10 onwards would have to appear for the All India Bar Examination-- after enrolment as an advocate-- in order to practise law in India.' The first such test will be conducted on December 5, 2010 and 'shall be mandatory for all law students graduating from the academic year 2009-2010 onwards'.

Asked what will happen to graduates who flunk the test, the Council chief said the candidate may take it again every six months until he or she clears it.

He said an 'advocate would have to pay Rs 1,300 as fees to appear for the All India Bar Examination, which will include the cost of receiving preparatory materials' and are required to pay only Rs 700 for making repeat attempts.

Subramaniam said the Examination would serve as a benchmark test to ensure a basic level of skills and knowledge in possession of those entering the legal profession or those who intend to practise law in India.

(UNI/03.06.2010)

Absence of postmortem report no ground for rejecting claim'

An insurance company cannot reject a claim on the ground of absence of policyholder's postmortem report, a consumer court has said.

"In the absence of the postmortem report, the (personal accident insurance) claim could not have been repudiated," the Delhi District Consumer Forum, Central has said.

The Forum passed the order on a petition of the wife of a policy holder, who died in a train accident, seeking directions to the National Insurance Company

to pay the claim along with compensation for causing harassment.

It noted that the insurance company did not look into the documents provided by Kamlesh, the wife of the deceased, but merely insisted upon the postmortem report.

"The documents placed on the file, were sufficient for the insurance company to believe the case of Kamlesh that her husband died in a train accident.

Therefore, non-passing of the claim so far, is deficiency in service. It has caused not only the financial losses but also harassment and mental agony to the widow of the assured," the forum bench, comprising president B.B. Chaudhary and member S R Agrawal, said.

The forum directed the insurance company to pay accidental insurance amount of Rs two lakh along with compensation of Rs 15,000 to the widow.

Ashok Kumar Srivastava, the policy holder died in 2004 after he fell from the train. The claim was repudiated by the company as his postmortem report was not submitted.

(HT/06.06.2010)

HC raps banks for harassing customers

The Delhi High Court has warned multinational banks against resorting to a "witch hunt" against their clients for payment recovery.

Justice Kailash Gambhir said, "The bank in their witch hunt use arm-twisting tactics, making the citizens regret owning a credit card." The judge said banks use goons in guise of recovery agents who use violent methods to harass citizens.

The ruling came after Rahul Nath, managing director FCM Travel Solutions, filed a petition in the High Court against HSBC Bank officials for making incessant calls to him daily regarding payment of his credit card bill. Nath said the bank never sent him his credit card statement for December 2009 and raised a colossal credit of Rs 3.7 lakh.

Joginder Sukhija counsel for the HSBC Bank had on June 1 told the High Court that the entire amount had to be deposited with the Registrar General of High Court within four weeks.

Nath's counsel Sunil Dalal told HT, "We have deposited the entire amount with the Delhi High Court but still Nath, who is in London at present, is receiving calls from HSBC Bank officials."

The court in the order restrained the bank and its recovery agents from invading the privacy of the

petitioner and his family members.

“Bank and their agents have tortured the petitioner mentally, physically and emotionally. It has acted in defiance of the guidelines of the RBI and the Apex Court,” said the judge.

Dalal said the bank officials had flouted the High Court order, and the recovery agents had not stopped making the calls.

(HT/10.06.2010)

LEGAL JOTTINGS

Legal briefs from Supreme Court

(Case No: Civil Appeal No. 5292 of 2004)

Fuljit Kaur versus State of Punjab & Ors.

Date of Decision : 03-06-2010.

Judge(s): Hon'ble Dr. Justice B.S. Chauhan and Hon'ble Mr. Justice Swatanter Kumar [Vacation Bench].

Subject Index : Allotment of residential plot the Administration issued the allotment letter in favour of the appellant within 48 hours of submission of application making it clear that as the proper calculation could not be made and tentative price had not been determined, the allottee has to deposit provisional price of Rs. 93000/-. Subsequently additional demand of Rs. 2,19,000/- was made, however, instead of depositing the said amount, appellant challenged the said Demand Notice contending that the additional demand was arbitrary and unreasonable. However, the said writ petition been dismissed by the High Court - appeal - the High Court considered all statutory provisions and calculations made by the respondents as under what circumstances the "tentative-price" had been fixed and concluded that the demand was justified - nothing produced on record to show that the tentative price determined by the State could be unreasonable or arbitrary and it is not the case of the allottee that the market value of the land has not been enhanced while deciding the reference under the Act 1894 - appeal dismissed - no costs - Arbitrary and discriminatory allotment of land to influential persons, strongly disapproved.

(Case No: Civil Appeal No. 5987 of 2007 with Civil Appeal No. 5982 of 2007)

PSC, Uttaranchal versus Mamta Bisht & Ors.

Date of Decision : 3-06-2010.

Judge(s): Hon'ble Dr. Justice B.S. Chauhan and Hon'ble Mr. Justice Swatanter Kumar (Vacation Bench).

Subject Index: Selection list - Commission issued an advertisement inviting applications for posts of Civil Judge, (Junior Division) with clarification that the reservation policy adopted by the State in favour of SC/ST/OBC and horizontal reservation in favour of handicapped, and women etc. belonging to Uttaranchal would be applicable - respondent No. 1 qualified in the written examination but was not selected in the interview. Respondent No.1 filed petition challenging the selection list mainly on the ground that women candidates belonging to Uttaranchal had secured marks making them eligible to be selected in general category and had it been done so, respondent No.1 could have been selected in reserved category being a woman of Uttaranchal - High Court concluded that last selected woman candidate who was given benefit of horizontal reservation for Uttaranchal women had secured marks higher than the last selected candidate in general category. Thus, the said candidate ought to have been appointed against the general category vacancy and respondent No.1 ought to have been offered the appointment giving her the benefit of horizontal reservation for Uttaranchal women - High Court allowed the writ petition only on the ground that the horizontal reservation is also to be applied as vertical reservation in favour of reserved category candidates - Hon'ble Supreme Court held the impugned orders of the High Court not in consonance with law - set aside - appeals allowed.

(Case No: Civil Appeal No. 2754 of 2007)

The District Collector, Srikakulam & others versus Bagathi Krishna Rao & Anr.

Date of Decision : 2-06-2010.

Judge(s): Hon'ble Dr. Justice B.S. Chauhan and Hon'ble Mr. Justice Swatanter Kumar (Vacation Bench).

Subject Index: Declaration of title and possession of the suit land - Civil Procedure Code, 1908 - Rule 1, Order XXVII and Section 79 - appellants/defendant contended that the suit land being forest land had vested in the State of Andhra Pradesh according to which possession and enjoyment of land in dispute was shown to be in favour of the Forest Department. However, the learned trial Court decreed the suit in favour of respondent/plaintiff - appellate Courts also affirmed the impugned orders of the trial Court - appeal - the State of Andhra Pradesh had not been the appellant/party before the High Court though it was defendant no.1 before the Trial Court as well as before the First Appellate Court - Hon'ble Supreme Court held that writ cannot be entertained without

impleading the State if relief is sought against the State, thus, the State of Andhra Pradesh was necessary party and the second Appeal filed by the officials was not maintainable - appellants permitted to file an application for impleadment of the State of Andhra Pradesh as appellant - impugned orders of the High Court set aside and matter remanded back to the High Court to decide afresh after framing the substantial question of law - appeal allowed - no costs.

(Case No: Civil Appeal No. 2255 of 2006)

May George versus Special Tahsildar & Ors.

Date of Decision: 25-05-2010.

Judge(s): Hon'ble Dr. Justice B.S. Chauhan and Hon'ble Mr. Justice Swatanter Kumar (Vacation Bench).

Subject Index: Land Acquisition Act, 1894 Sections 4 and 6 - notification and declaration issued for acquisition covering the area to the extent of 30.80 acres - award under Section 11 was made in respect of entire land - appellant claimed that she had never been aware of the acquisition proceedings and she was not served with notice under section 9(3) of the Act - appellant approached the High Court challenging the Award which was dismissed by the learned Single Judge. However, the Division Bench gave liberty to the appellant to move an application for making reference under section 18 and further directions to the Collector to make the reference and further to the Tribunal to decide the same within the stipulated period - appeal - once Award was made and possession had been taken, land stood vested in the State free from all encumbrances, it cannot be divested even if some irregularity is found in the Award - whether the provisions of Section 9(3) are mandatory in nature and non-compliance thereof, would vitiate the Award and subsequent proceedings under the Act - no - the writ Court was fully satisfied that notice had been affixed on the land, satisfying the requirement of law and the Award had been made within limitation. The acquisition proceedings/Award have been challenged at a belated stage after a decade of taking possession of the land in dispute, thus, difficult to presume that appellant had no knowledge of the acquisition proceedings - appeal dismissed.

(Case No: Civil Appeal No. 907 of 2006 with Civil Appeal No. 897 of 2006)

H.P. Public Service Commission versus Mukesh Thakur & Anr.

Date of Decision: 25-05-2010.

Judge(s): Hon'ble Dr. Justice B.S. Chauhan and Hon'ble Mr. Justice Swatanter Kumar (Vacation Bench).

Subject Index: Re-valuation of the answer-sheets - appellant advertised 13 vacancies of the Civil Judge (Junior Division) on providing the eligibility criteria and mode of selection - respondent No.1 was not found eligible to be called for interview/viva-voce for the reason that he failed to secure 45% marks in the paper of Civil Law - II, though he had secured 50% marks in aggregate - respondent filed writ petition seeking direction for revaluation of the paper of Civil Law - II - the High Court passed an order directing the appellant to arrange for a special interview for the respondent in view of the fact that there had been some inconsistency in framing the Question Nos.5 and 8 and in evaluation of the answer to the said questions. Further, the High Court passed an order to send the answer sheet of the said respondent to another examiner who awarded him 119 marks. Thus, the High Court directed the Commission to issue Letter of Appointment to the respondent No.1 - appeal - the fact not disputed that the Regulations 2005 do not contain any provision for revaluation - whether it is permissible for the court to take the task of Examiner/Selection Board upon itself and examine discrepancies and inconsistencies in the questions paper and valuation thereof - whether Court has the power to pass a general order restraining the persons aggrieved to approach the court by filing a writ petition on any ground and depriving them from their constitutional rights to approach the court, particularly, when some other candidates had secured the same marks and stood disqualified for being called for interview but could not approach the court - whether in absence of any statutory provision for revaluation, the court could direct for revaluation - held no - impugned orders of the High Court set aside - appeals allowed - no costs.

Case No: Civil Appeal No. 1591 of 2006

Punjab & Haryana High Court at Chandigarh versus Megh Raj Garg & Anr.

Date of Decision: 20-05-2010.

Judge(s): Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Mr. Justice C.K. Prasad (Vacation Bench).

Subject Index: Punjab Civil Service Rules - amendment of the date of birth in the service book after 10 years of joining of service as Sub-Judgecum-Judicial Magistrate, II Class, respondent No.1 submitted an application to the concerned authority of Punjab University for amendment of the date of birth recorded in the matriculation certificate by asserting that his correct date of birth was 27.03.1938 but by mistake the same was recorded as 27.3.1936 - necessary changes were made in the matriculation certificate of respondent No.1. Thereafter,

respondent No.1 represented to the State Government for making corresponding change in the date of birth recorded in the service book but the State Government, in consultation with the High Court, rejected the prayer of respondent No.1 - the trial Court declared that rejection of the representation made by respondent No.1 for correction of his date of birth was illegal and void. Further issued a mandatory direction for alteration of the date of birth recorded in the service book of respondent No.1 from 27.3.1936 to 27.3.1938 - the said orders were affirmed by the lower appellate Court and the learned Single Judge - appeal - whether the decision taken by the Syndicate of the Punjab University to entertain and accept the application made by respondent No.1 for changing the date of birth recorded in his matriculation certificate was binding on the State Government and the High Court of Punjab - no - whether the suit filed by respondent No.1 for ordaining correction of the date of birth recorded in his service book was maintainable - no - as per the Punjab Civil Service Rules, the declaration of age made at the time of or for the purpose of entry into government service is conclusive and binding on the government servant and an application made by a government servant for correction of age after two years of his entry into service cannot be entertained by the competent authority, thus, held that the High Court or the State Government did not have the power, jurisdiction or authority to entertain the representation made by respondent No.1 after more than twelve years of his entering into service - impugned orders and decrees passed by the lower Courts set aside - suit filed by the respondent No. 1 dismissed - appeal allowed.

Legal briefs from High Court of J&K

(Case No. OWP No. 720 of 2007)

Kerosene Oil Retailers Association versus State of J&K & Ors.

Date of Decision : 04.03.2010

Judge(s) : Hon'ble Mr. Justice Muzaffar Hussain Attar

Subject Index: Articles 14 and 19 of the Constitution of India – State Government canceling Kerosene Oil License of the Members of the petitioner-Association on the basis of report of a committee, which had found irregularities committed by some Kerosene Oil Dealers. Individual cases were not considered and members were not given opportunity of hearing before passing of the order canceling the Licences of the dealers - no effort has been made by the respondents to consider the case of the members of the petitioner-association individually. There could be allegations against some

persons of one nature and against some persons of a different nature and may be that there would not be any allegations against some of the members of the petitioner-Associations. Nothing on record to show as to which of the member of Association was not functioning properly - The impugned order is not only non descriptive but is vague as well - Held - The order on this count also is rendered arbitrary and violative of the guarantees as contained in Article 14 of the Constitution of India. The order deserves to be quashed on one more count viz. the proviso appended to Rule 7 of the order of 1974 provided that before proposing action for cancellation of the license, a reasonable opportunity of hearing has to be afforded. The impugned order is silent about the compliance of the above said provision – Order quashed – Respondents directed to provide opportunity of hearing to members of the Association individually.

(Case No. 561-A No. 141/09)

M/S Kuldeep Electronics & anr. versus M/S Videocon Industries Ltd.

Date of Judgment: 15.03.2010

Judge(s) : Hon'ble Mr. Justice Muzaffar Hussain Attar

Subject Index: Sections 177 / 190 CrPC – Taking of cognizance – (A) Section 190 empowers the Magistrate to take cognizance of the offence if he is satisfied that the allegations/averments made in the complaint do prima facie disclose the commission of offence. It is not in all circumstances necessary that the complaint should contain all the particulars about the ingredients of any offence, which is alleged to have been committed by the accused. If material particulars relevant for taking cognizance are disclosed in the complaint, the Magistrate can take cognizance of the offence. The ingredients of the offence are to be proved during the trial of the case.

(B) Section 177 CrPC refers to jurisdiction of the Magistrate to try a case. After the cognizance is taken the Magistrate is under statutory obligation to apply his judicial mind to the facts of the case to find out as to whether he has jurisdiction to try the complaint.

(Case No. C. Rev. No. 171/2009)

Abdul Ahad Bhat versus Mst. Tabasum Manzoor

Date of Judgment: 08.04.2010

Judge(s) : Hon'ble Mr. Justice Hasnain Massodi

Subject Index: Section 25 Guardians and Wards Act & Order VI Rule 17 CPC – Either of the parties to the proceedings under the Guardians and Wards Act can press into service Order VI Rule 17 CPC to amend their respective pleadings.

(Case No. SWP No. 1397 of 2006)

Parshottam Singh versus State & Ors.

Date of Judgment: 08.04.2010

Judge(s) : Hon'ble Mr. Justice Mansoor Ahmad Mir

Subject Index: Service Law - Compulsory Retirement - The order of compulsory retirement can only be interfered with while keeping in view the guidelines, parameters and tests laid down by the Apex Court in Baikuntha Nath Dass & another Vs. Chief District Medical Officer, AIR 1992 SC 1020, which are as under:-

An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of mis-behaviour. The order has to be passed by the Government on forming opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government. Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this court would not examine the matter as an appellate Court, they may interfere with, if they are satisfied that the order passed is (a) mala fide, or (b) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material, in short; if it is found to be a perverse order.

(Case No. C.Rev. 03/2009)

Abdul Ahad Sofi versus Ghulam Ahmad Sofi

Date of Judgment: 17.04.2010

Judge(s): Hon'ble Mr. Justice Muzaffar Hussain Attar

Subject Index: Section 48 CPC – Article 182 Limitation Act – (A) In the J&K Laws, Vol. III, words 'not being a decree' in Section 48 CPC are missing which changes the entire tenor and text of this Section.

(B) From a plain reading of Section 48, it becomes writ large on the face of the statute that execution of an injunction decree is not barred and execution of other decrees would be barred if the same are made after expiration of twelve years from the date of decree sought to be executed. The injunction decree thus can be put into execution at any point of time.

(Case No. C.Rev. 42/2010)

Noor Din Rather versus Sulla Rather & ors.

Date of Judgment: 19.04.2010

Judge(s): Hon'ble Mr. Justice Muzaffar Hussain Attar

Subject Index: Order VII Rule 6-A CPC – Counter Claim – A complete procedure is provided in

this Rule for filing Counter-claim. Counter-claim is to be treated as a plaint and is to be governed by Rules applicable to the plaints. When Counter-claim is made, it has the same effect as the cross suit so as to enable the court to pronounce a judgment. The Counter-claim on the plain language of the statute has to be in the same manner as that of the plaint. A pleading in written statement put up as a defence to the case projected by the plaintiff in a plaint would not tantamount to Counter-claim in law, the Counter-claim has to be in accordance with the provision of law like a plaint.

(Case No. CIMA No. 60 of 2004)

Union of India versus Barrinder Kumar Sharma

Date of Judgment: 23.04.2010

Judge(s): Hon'ble Mr. Justice Sunil Hali

Subject Index: Arbitration Act: Sections 30/33 – Misconduct - Power of the Court under Section 30/33 of the Arbitration Act to set aside an award is permissible only if the Arbitrator has misconducted himself or the proceedings. A legal misconduct has been held to be erroneous application of law constituting the very basis of the award and improper and incorrect findings of fact, which without closer and intrinsic scrutiny, are demonstrable on the face of the materials on record. The Court cannot reappraise the evidence intrinsically with a close scrutiny for finding out that the conclusion drawn from some facts, by the Arbitrator is according to the understanding of the Court, erroneous.

Arbitrator only entering upon reference and drawing up award with respect to the dispute referred to him by the Court, and not deciding the issue raised by the party – Held – Arbitrator has neither misconducted himself nor the proceedings.

(Case No. 561-A Cr PC No. 149 of 2009)

Shabir Ahmad Shah versus State & Ors.

Date of Judgment: 23.04.2010

Judge(s): Hon'ble Mr. Justice Sunil Hali

Subject Index: Exercise of power under Section 561-A CrPC – Quashment of FIR - When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. The inherent powers can be exercised only under three contingencies, namely:-

(i) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) Where the allegations in the first information

report of complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

(Case No. CIMA 218 of 2003)

Chintpurni Devi versus Chander Mohan and Ors.

Date of Judgment: 30.04.2010

Judge(s): Hon'ble Mr. Justice Hasnain Massodi

Subject Index: Motor Accident Claim – (A) First information report or police investigation is not always condition precedent for awarding the claim. Claim could be awarded if the same is proved by admissible evidence with all probabilities. The claim case or its victim could not be left in every case on the mercy of the police. The court is empowered to examine and adjudicate the case on available evidence, even in those cases in which the police neither registered the offence nor investigated the same.

(B) A petition under Motor Vehicle Act filed by a person injured in a motor vehicle accident for compensation for personal injuries loss of income etc shall abate with the death of such person provided the death is not direct result of such injuries but such a petition would sustain and may be prosecuted by his/her legal representatives if it relates to “loss to the estate” of deceased person due to injuries sustained in such accident.

(Case No. SWP No. 127/2005)

Malook Khan versus State & ors.

Date of Judgment: 30.04.2010

Judge(s): Hon'ble Mr. Justice Mohammad Yaqoob Mir

Subject Index: Service Law – Rule 30 J&K CSR (Classification, Control and Appeal) Rules – Dismissal from service – Withholding of inquiry – The three situations as envisaged by proviso to sub-section 2 of Section 126 of the Constitution of J&K State as well as by proviso to sub-rule 2 of Rule 11 of Rule 359 of the Police Rules provide that the requirement of giving opportunity can be waived, one where a person has been convicted on a criminal charge, second where the authority is satisfied, for reasons to be recorded in writing, that it is reasonably impracticable to give that person an opportunity to show cause, and third where the Governor is satisfied that in the interest of security of the State it shall not be expedient to give to that person such an opportunity.

CASE COMMENTS

**Rameshbhai P. Headu v. State of Gujarat
(AIR 2010 SC 1877)**

In this case, Hon'ble Supreme Court has distinguished the procedure to be adopted by the Magistrate u/s 156(3) CrPC and u/s 202 CrPC. The Hon'ble Court while deliberating upon law held as under :-

“The power to direct an investigation to the police authorities is available to the Magistrate both under Section 156(3) CrPC and under Section 202 CrPC. The only difference is the stage at which the said power may be invoked. As indicated hereinbefore, the power under Section 156 (3) Cr.P.C to direct an investigation by the police authorities is at the pre-cognizance stage while the power to direct a similar investigation under section 202 is at the post - cognizance stage. The Learned Magistrate has chosen to adopt the latter course and has treated the protest petition filed by the Appellant as a complaint under section 200 of the Code and has thereafter proceeded under Section 202 Cr.P.C and kept the matter with himself for an inquiry in the facts of the case. There is nothing irregular in the manner in which the learned Magistrate has proceeded and if at the stage of sub-section (2) of Section 202, the learned Magistrate deems it fit, he may either dismiss the complaint under Section 203 or proceed in terms of Section 193 CrPC and commit the case to the court of Session”.

*(Kamlesh Pandita)
Sub-Judge, Katra*

**Kanti Lal v. State of Rajasthan
(AIR 2009 SC 2703)**

Hon'ble Apex Court, in this case, held as under :-

“...the important tests of the credibility of the dying declaration is that the person, who recorded it, must be satisfied that the deceased was in a fit state of mind. For placing implicit reliance on dying declaration, court must be satisfied that the deceased was in a fit state of mind to narrate the correct facts of occurrence. If the capacity of the maker of the statement to narrate the facts is found to be impaired, such dying declaration should be rejected, as it is highly unsafe to place reliance on it. The dying declaration should be voluntary and should not be prompted and physical as well as mental fitness of the maker is to be proved by the prosecution”.

*(Rajesh Kumar Abrol)
Sub-Judge, Batote*