



# SJA NEWSLETTER

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## Topic of the Month

(I)t is essential for a Judge to be creative in his ideas, and also be a great thinker, ahead of his times, who is able to identify and justify the needs of society, and suggest ways to address them. This not only requires an application of knowledge, but also necessitates immense personal integrity.

To be creative means to be original, to free oneself from the shackles of established norms and delve deep into the pursuit of new ideas that reshape the norm of the day and provide a new vista of law and legal understanding and interpretation to the world. For this creative legal development to find success, the Judge must have this skill deeply engrained within his personality, in order to subconsciously apply it and hone it with each passing day. A creative mindset makes the legal process purposive and solution-centric.

An independent character is the bedrock of impartiality, and the former forms a means to the latter. No Judge worthy of the seat he sits on would allow himself to be darkened by the cloud of prejudice that may loom above him, trying to influence his decision.

Independence from oneself is another facet of this asset, and perhaps the most challenging. A Judge often faces great pressure not only from society, but also from within himself. In such circumstances, it is imperative for a Judge to stand by his conscience, and do what it says is right. To be concerned with how a decision would appear to the eyes of others would be quite damaging to the concerns of justice.”

*Excerpts from the lecture delivered by Hon'ble Shri Justice K.G. Balakrishnan, Chief Justice of India on 15-12-2007 at Jodhpur, (2008)3 SCC J-13.*

## TRAINING PROGRAMMES OF THE STATE JUDICIAL ACADEMY, APRIL - 2008

In terms of the approved training calendar for the year 2008, four - one day Workshop/Refresher courses on the subjects/topics of “Speedy disposal of Matrimonial Cases”, “Computation of Court Fees including the possible fallout and defective computation in the light of the provisions of the Court Fees Act and Suit Valuation Act”, “Criminal Justice Administration” and “Understanding the field of Litigation u/s 138 of Negotiable Instrument Act” were held by the State Judicial Academy at Jammu on 15th, 17th, 18th and 19th of April, 2008 in each workshop/refresher course, twenty Judicial Officers of the rank of Sub-Judges and Munsiffs posted in different districts of Jammu province participated.



Proceedings during the Orientation Course

Resource persons were nominated among the senior, past and present, Judicial Officers of the District and Sessions Judge level.



Proceedings during the Orientation Course

On 15th of April, 2008 four sessions were held on the topic of “Speedy Disposal of Matrimonial cases”. In 1st Session, Shri Suresh Kumar Sharma, Registrar Judicial, High Court wing, Jammu while delivering the lecture and interacting with the participants mainly laid stress on resorting to alternate dispute resolution and was of the view that counsellors and psychologists should be

associated for resolution of matrimonial disputes.

In the 2nd Session, Shri Ch. Vidya Sagar, Senior District & Sessions Judge (Retd.) who while interacting with the participants cited so many instances which were regarding the period when he was in active judicial service and told participants that for the resolution of matrimonial disputes, traditional ways of dealing with these matter do not yield positive results and in fact parties shall be made to understand the detrimental effects of the matrimonial disharmony.



Proceedings during the Orientation Course

Shri B.L. Saraf, Senior District & Sessions Judge (Retd.) in 3rd session laid stress on adhering to the procedural law in letter and spirit and avoid giving adjournments in matrimonial cases on flimsy grounds and matrimonial disputes can be resolved by adoption of means of ADR such as mediation and conciliation. He further mentioned that the dead lines provided in Hindu Marriage Act for disposing of the matrimonial cases shall be strictly observed and which, according to him, are rarely adhered to.



Participants in the Orientation Course

Shri Sanjay Dhar, Secretary, High Court Legal Services Committee in concluding session tried to convince the participants that the alternate dispute resolution methods are the very effective

methods for resolution of matrimonial disputes because according to him on such resolution no body is vanquished or victor among the parties. He dealt with the method of mediation in detail as he has by virtue of present assignment gained expertise in mediation as well as in conciliation in addition to conducting of Lok Adalats for resolution of suits of different nature, in particular, matrimonial disputes.



Proceedings during the Orientation Course

Participants took active part in the programme and interacted with Resource persons and tried to gain from experience of the Resource persons in the field of resolution of matrimonial cases. M/s Kikar Singh Parihar, Rajesh Sekhri, R.N. Watal, Sanjay Parihar, and Rajeev Gupta, Sub-Judges showed more enthusiasm in mutual interaction as well as in getting requisite information for resolution of matrimonial disputes from the resource persons.



Participants in the Orientation Course

On 17th of April, 2008 - Workshop was held on the topic of “Computation of Court Fees including the possible fall out and defective computation in the light of the provisions of the Court Fees Act and Suit Valuation Act”. Shri Janak Raj Kotwal, Principal District and Sessions Judge, Jammu while opening the first session gave the background in which the Court Fees Act and the Suit Valuation Act were passed and also object which was to be achieved by these two Acts. He freely interacted with the participants and tried to cover all the aspects of the Court Fees as well as Suit Valuation.

Shri D.K. Kapoor, Member, J&K Special Tribunal, Jammu in addition to mentioning the salient features of the Court Fees Act and the Suit Valuation Act dwelt on the topic and told the participants as to how the two Acts are interdependent. He also freely interacted with the participants and replied several questions and queries put forth by the participants. He made the topic very interesting and satisfied the participants regarding their pointed queries.



Proceedings during the Orientation Course

Shri Bansi Lal Bhat, Presiding Officer, M.A.C.T., Jammu mainly dealt with the technical aspects of the two Acts and told the participants as to when the computation of defective court fees can prove fatal for the lis. He also told the participants as to whether the abolition of court fee will be in the overall interests of common masses and whether it will serve the interests of social justice.



Participants in the Orientation Course

On 18th of April, 2008 - one day programme was held on the topic of “Criminal Justice Administration”. Shri Ashok Kumar Koul, Additional District and Sessions Judge, Jammu while opening the first session dealt the topic in a scholarly manner and his way of dealing with matter was appreciated by the participants. He interacted with the participants and made the topic interesting. He also impressed upon the participants the importance and vastness of the topic and cited some instances whereby he wanted to convey that non-adherence to provisions of procedural law generally results in miscarriage of justice as well as protraction of lis.



Shri Ch. Vidya Sagar Gupta, Senior District & Sessions Judge (Retd.) gave numerous instances which he has come across during his active Judicial career and told the participants that although criminal law is in need of some amendments but the desired results of speedy and substantial justice can be achieved on the basis of present criminal justice system provided every limb of criminal justice system acts in accordance with the provisions of law.

Shri Harbans Lal, Senior District & Sessions Judge (Retd.) while interacting with the participants gave his impressions gathered during his active service and told the participants that if one really works with missionary zeal, litigant will certainly get substantial and expeditious justice. He pointed out some weaknesses in the system but at the same time told the participants that a well meaning Judicial Officer can overcome these loopholes and serve the society by dispensing speedy and substantial justice.

Shri B.L. Saraf, Senior District & Sessions Judge (Retd.) who is presently teaching law in some law colleges & University after retirement, told the participants that blaming the existing criminal justice system is generally unfounded because existing laws if implemented honestly and in letter and spirit can restore the faith of litigants in the justice delivery system.

Participants took active part in the programme and interacted with Resource persons and tried to gain from experience of the Resource persons in the field of criminal justice administration.

On 19th of April, 2008 - one day programme was held on the topic of "Understanding the field of Litigation u/s 138 of Negotiable Instrument Act". The discussion on the topic was initiated in the morning session by Shri Bansi Lal Bhat who impressed upon the participants to keep in mind the fact that this provision has been incorporated to provide speedy justice to the people who fall prey to the malpractices of some traders and businessman etc. He further told the participants that industrialization and commercialization of society results in explosion of litigation under this provision of law as has already happened in Delhi, Mumbai, Bangalore etc.

Shri D.K. Kapoor, Member, J&K Special Tribunal in mid session of the topic told the participants that a complaint under section 138 of Negotiable Instrument Act is warranted to be decided within six months but it very rarely happens because the Judicial Magistrate wastes much of the time in getting the service effected, although latest mode of service available at present can be pressed into

service so that the service is effected with due dispatch and matter is disposed of as expeditiously as possible.

Shri Suresh Kumar Sharma, Registrar Judicial, High Court wing, Jammu told the participants about the importance of this provision of law and gave some instances to show as to how this provision of law can come to the rescue of people who become victim of unfair trade and business practice. He also discussed various aspects of this provision and told the participants that in the same manner in which Section 488 Cr.P.C has been incorporated in Code of Criminal Procedure to provide immediate maintenance to the persons entitled to it, this provision has been incorporated in the Negotiable Instrument Act to provide immediate and speedy relief to the victim of unfair trade and business practices.

On the whole, training programme was very successful and profitable to the participants.

## NEWS AND VIEWS

Pursuant to decision taken in the work shop held on 9-01-2008 at New Delhi with Registrars/CPC's of all the Hon'ble High Courts, a meeting of all the District & Sessions Judges of the State was convened on 22-04-2008 at Jammu under the chairmanship of Hon'ble Shri Justice Hakim Imtiyaz Hussain, Chairman E-Court Committee to brief the participants on the significance of the E-Court project, various project activities and the role of District Judges in the successful implementation of the project and to review progress of site preparation work under E-Court computerization projects.

In the meeting, various issues pertaining to E-court project beside site preparation for computerization and video conference were discussed and it was resolved that all the sites for E-court computerization Projects will be completed by 30th of May, 2008 and installation of the required equipments of computerization will start thereafter, except in the courts which were pointed out by the District Judges on the basis of shortage of space or in the courts which are run in the rented premises. The implementation of the projects in these courts will be taken up separately.

Hon'ble Shri Justice Hakim Imtiyaz Hussain drew the attention of all the District & Sessions Judges towards the utility of the implementation of this computerization by using the Projector which reflects as to how the computerization will be helpful to them

in all the three fields i.e. judicial side, Financial side and Administrative side. In judicial side, it will help to maintain institution/filing, scrutiny of court files, registration, assignments etc. In Administrative side, it will help to maintain ACRs of Judicial Officers, Service Record, Statistics, Library and Correspondence and in Financial side, it will help to maintain Budget, Salary, Cash book, Deposits, Accounts Books/Registers, Contingency, T.A and Dead stocks.

Problems of Judicial Officers in not having satisfied training of computers was taken note of and Officers were assured that the matter will be taken up with the concerned quarters.

## LEGAL JOTTINGS

**(Case No: Civil Appeal No. 3321 of 2008)  
Sudhir Kumar Rana Appellant versus Surinder Singh & others Respondents.**

**Date of Decision: 6/5/2008**

**Judge(s): Hon'ble Mr. Justice S.B. Sinha and Hon'ble Mr. Justice Lokeshwar Singh Pantia.**

Subject Index: Motor Vehicles Act, 1988 section 166 petition under appellant driving a two-wheeler 17½ yrs. old met with an accident did not possess driving licence guilty of contributory negligence if a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck which was being driven rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident the impugned judgment cannot be sustained which is set aside accordingly. Appellant is entitled to the said sum of Rs. 30,000/- by way of compensation with interest at the rate of 7½% per annum from the date of the award till making of the payment.

**(Case No: Civil Appeal No. 2997 of 2008)  
Jagdish Singh Appellant versus Madhuri Devi Respondent.**

**Date of Decision: 28/4/2008**

**Judge(s): Hon'ble Mr. Justice C.K. Thakker and Mr. Justice D.K. Jain**

Subject Index: Divorce decree passed by trial court challenged in appeal before High court High Court reversed the judgment of trial court appeal to the Supreme Court by the husband mediation at Tis Hazari Delhi the High Court has 'virtually' reached a conclusion without recording reasons in support of such conclusion. When the Court of original jurisdiction has considered oral evidence and recorded findings after seeing the demeanour of witnesses and having applied its mind, the appellate court is enjoined to keep that fact in mind. It has to deal with the reasons recorded and conclusions arrived at by the trial court. Thereafter, it is certainly open to the appellate court to come to its own conclusion if it finds that the reasons which weighed with the trial Court or conclusions arrived at were not in consonance with law so-called conclusions reached by the High Court, therefore, cannot be endorsed and the decree passed in favour of the wife setting aside the decree of divorce in favour of the husband cannot be upheld. The order, therefore, deserves to be quashed and set aside and is hereby set aside.

**(Case No: Criminal Appeal No. 740 of 2008)  
Dr. Narendra K. Amin Appellant versus State of Gujarat and another Respondents.**

**Date of Decision: 28/4/2008**

**Judge(s): Hon'ble Dr. Justice Arijit Pasayat & P. Sathasivam and Mr. Justice Aftab Alam**

Subject Index: Criminal Procedure Code, 1973 section 439(2) order of cancelling the bail granted to the appellant challenged once it is found that bail was granted on untenable grounds, same can be cancelled. The stand that there was no supervening circumstance has no relevance in such a case irrelevant materials have been taken into account and/or relevant materials have been kept out of consideration. That being so, the order of granting bail to the appellant was certainly vulnerable. The order of the High Court does not suffer from any infirmity to warrant interference. The appeal is dismissed.

**(Case No: Criminal Appeal Nos. 413 of 2000)  
Anjani Kumar Appellant versus State of Bihar and another Respondent.**

**Date of Decision: 24/4/2008**

**Judge(s): Hon'ble Dr. Justice Arijit Pasayat and Hon'ble Mr. Justice P. Sathasivam**

Subject Index: Criminal Procedure Code, 1973 section 482 petition under dismissal by High Court challenged in this appeal section 197(1) provides that when any person who is or was a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government and (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government certainly mala fides were involved apart from the applicability of Section 197 of the Code. It is no doubt true that at the threshold interference by exercise of Section 482 of the Code has to be in rare cases. The present case appears to be of that nature and falls under category (7) indicated in State of Haryana and Ors. v. Bhajan Lal and Ors. (1992 Supp (1) SCC 335). The continuance of the proceedings by the prosecution would amount to abuse of the process of law. The criminal proceedings in the Court of learned Chief Judicial Magistrate, Begusarai in PS Case No.63/1993 are quashed.

**(Case No: Civil Appeal No. 2897 of 2008)**

**MG. Dir., Bangalore Metropolitan Tpt. Corp. Appellant versus Sarojamma & another Respondents.**

**Date of Decision: 22/04/2008.**

**Judge(s): Hon'ble Mr. Justice S.B. Sinha and Hon'ble Mr. Justice V.S. Sirpurkar.**

Subject Index: Motor Vehicles Act, 1988 section 163-A claim petition filed the Tribunal estimated the income of the deceased at Rs.3,000/-p.m. One-third was deducted from the said amount towards his personal expenses. An appeal was preferred thereagainst by the appellant. By reason of the impugned judgment, the High Court while allowing the multiplier of 15 instead of 16 increased the rate of interest from 7% to 10%. Respondent No. 1 was held to be entitled to a total sum of Rs. 3,64,500/- no finding has been arrived at by the Tribunal that the age of the claimant was 45 or below. Why the multiplier of 16 had been applied by the Tribunal was not stated. The High Court has also not laid down the

legal premise upon which it had applied the multiplier of 15. It, however, appears that the learned counsel for the appellant himself stated that the correct multiplier would be 15 and not 16 which has been accepted by the High Court no interference.

**(Case No: Transfer Petition (civil) 950 of 2007)**

**Amisha Hinduja Appellant versus Manish Hinduja Respondent.**

**Date of Decision: 21/04/2008.**

**Judge(s): Hon'ble Mr. Justice Ashok Bhan and Hon'ble Mr. Justice Dalveer Bhandari.**

Subject Index: Code of Civil Procedure, 1908 section 25 transfer petition filed by the wife respondent-husband states that there is a danger to the respondent's life if he goes to Raipur and prays that this case be transferred to any other place than Raipur. Per contra, counsel appearing for the wife assures that no harm shall be caused to the husband on his coming to Raipur to attend the proceedings if any untoward incident happens, the respondent is put at liberty to approach this Court for transferring this case to a place other than Raipur the transferor court is directed to transmit the entire record related to the aforesaid case to the transferee court forthwith.

**(Case No: Criminal Appeal No. 687 of 2008)**

**Gampa Govindu Appellant versus State of Andhra Pradesh Thr. Public Prosecutor Respondent.**

**Date of Decision: 21/04/2008.**

**Judge(s): Hon'ble Mr. Justice B.N. Agrawal and Hon'ble Mr. Justice G.S. Singhvi.**

Subject Index: Indian Penal Code, 1860 section 326 conviction under When the matter was taken to the High Court in revision, the conviction and sentence under Section 326 I.P.C. have been set aside and the appellant has been convicted under Section 324 I.P.C. and sentenced to undergo rigorous imprisonment for a period of one year. Before this Court, a joint petition of compromise has been filed wherein it has been stated that the parties have settled their disputes; as such, they be permitted to compound the offence. prayer just and must be granted.

**(Case No: Criminal Appeal No. 662 of 2008)**

**T.K. Soman Appellant versus Amitha Kumari and Others Respondents.**



**Date of Decision: 15/04/2008.**

**Judge(s): Hon'ble Mr. Justice B.N. Agrawal and Hon'ble Mr. Justice G.S. Singhvi.**

Subject Index: Indian Penal Code, 1860 Section 420 complaint under the petition of complaint does disclose an offence under Section 420 of the Indian Penal Code; as such, the High Court was not justified in quashing the prosecution. The criminal appeal is, accordingly, allowed and the impugned order is set aside.

**(Case No: Civil Appeal No. 1055 of 2002)**

**Waheed Baig Appellants versus Bangi Lakshamma & others Respondents.**

**Date of Decision: 21/04/2008**

**Judge(s): Hon'ble Dr. Justice Arijit Pasayat and Hon'ble Mr. Justice P. Sathasivam.**

Subject Index: Code of Civil Procedure, section 100 second appeal under challenge in this appeal is by the defendant No. 1 who was the respondent No.1 in the Second appeal filed by the respondents 1, 2 & 3. The second appeal filed in terms of Section 100 of the Code of Civil Procedure was allowed by the High Court by the impugned judgment the suit was filed by the plaintiffs for the specific performance of agreements of sale (Ex.A-1 and A-4) by passing a decree in favour of the plaintiffs, to convey the plaint schedule property in favour of the plaintiffs by executing a proper sale deed, and if the specific performance of the suit contract is not possible, to repay an amount of Rs.22,475.30 received by the defendant towards the sale consideration with interest thereon at 12% per annum from the date of suit till the date of realization, and to deliver vacant possession of the plaint schedule property to the plaintiffs the direction given by the first appellate Court for refund of the amount paid stands restored.

## CASE COMMENTS

**Sunil Poddar and Ors. v. Union Bank of India  
AIR 2008 SC 1006**

The Hon'ble Supreme Court has laid down the principle in case Sunil Poddar and Ors versus Union Bank of India that once a summons is published in newspaper having wide circulation in locality, it is no excuse to the person sought to be served that he was

not aware of such publication as he was not reading the said newspaper.

Order 5 Rule 20 of the Code of Civil Procedure provides for substituted service where the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. The normal mode of substituted service is by affixing a copy of the summons at the court-house and at the last residence or place of business or work and by advertisement in a daily newspaper circulating in the locality in which the defendant last known to have actually and voluntarily resided, carried on business or personally worked for gain.

In view of the aforesaid legal position and the principle laid down by the Hon'ble Supreme Court, it can be concluded that the substituted service is not personal service and it is immaterial whether the persons sought to be served were the subscribers of the said newspaper having wide circulation and whether they were reading it.

*Jaffar Hussain Beg  
Sub-Judge*

**National Insurance Co. Ltd. v. Cholleti  
Bharatamma  
AIR 2008 SC 484**

Liability of Insurance Company to indemnify owner of the vehicle in respect of death of passengers travelling in goods vehicle.

The recent pronouncement of the Hon'ble Apex court in National Insurance Co. Ltd. V. Cholleti Bharatamma reported in AIR 2008 SC 484 sets at rest the conflict of judicial opinion as regards liability of Insurance company to indemnify the owner of vehicle in respect of death of passengers traveling in Goods carriage. After noticing legislative changes brought about by Motor Vehicle Act, 1988 and amendment introduced by Motor Vehicles amendment Act, 1994 the Hon'ble Apex court reiterated the view taken by a three Judge Bench of Hon'ble Apex court in New India Assurance Company Ltd. v. Asha Rani & Ors. Reported in (2003)2 SCC 223 that the provisions of Motor Vehicle Act, 1988 do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger traveling in a goods carriage and the insurer would not be liable therefor. Noticing development of law on the subject it was held that the expression 'injury to any person' in Section 147(1)(b)(I) of Motor Vehicles Act refers to a 3rd party and not a passenger traveling by a goods

carriage whether gratuitous or otherwise. It was observed that the legislature intended to prohibit carrying of passengers in a goods vehicle. Laying emphasis on the expression 'Goods Carriage' it was observed that such vehicle is solely for the carriage of goods and carrying of passengers in a goods carriage is not contemplated. Section 147 of Motor Vehicles Act embodies a mandatory provision for compulsory coverage against death or bodily injury to any passenger of public service vehicle. Such compulsory coverage in respect of driver and conductor of public service vehicle and employees carried in goods vehicle is limited to liability under the Workmen's Compensation Act.

'Goods Carriages' bears no reference to any passengers. Thus Motor Vehicles Act does not saddle the owner of the goods carriage with liability to get his vehicle insured for any passengers and the insurer has no liability to indemnify the owner against death of or bodily injury to any passenger of goods carriage.

Again in Smt. Thokchom Onogi Sangeeta and anr. V. Oriental Insurance Co. Ltd. and Ors. reported in AIR 2008 SC 245 the Hon'ble Apex court after noticing the legislative changes reiterated the view taken in NIC v/s Cholleti Bharatamma's case (supra) that the legislature's intent was to prohibit goods vehicle from carrying any passenger and compulsory coverage against death or bodily injury extended only to passengers of public service vehicle. Referring to proviso u/s 147 Motor Vehicles Act, it was held that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle is limited to liability under the Workmen's Compensation Act. Thus Motor Vehicles Act does not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passengers travelling in a goods carriage and the insurer cannot be saddled with liability therefor.

*Bansi Lal Bhat*  
(District Judge)

*Motor Accident Claim Tribunal*  
*Jammu*

**State of Madhya Pradesh v. Babulal**  
**AIR 2008 SC 582**

The Apex court has held that once a person is convicted for an offence of rape, he should be treated with a heavy hand and undeserved indulgence or liberal attitude in not awarding adequate sentence in such cases would amount to allowing or even to encouraging potential criminals. The Apex court has

held that sexual violence apart from being a dehumanizing act is also an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and leaves behind a traumatic experience. It has been rightly said that whereas a murderer destroys the physical frame of a victim, a rapist degrades and defiles the soul of a helpless female. The Courts are, therefore, expected to try and decide cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized Judge is a better armour in cases of crime against women than long causes of penal provisions, containing complex exceptions and complicated provisos.

Once a person is convicted for an offence of rape, he should be treated with a heavy hand. An undeserved indulgence or liberal attitude in not awarding adequate sentence in such cases would amount to allowing or even to encouraging 'potential criminals'. The society can no longer endure under such serious threats. Court must hear the loud cry for justice by society in cases of heinous crime of rape and impose adequate sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court.

**Vineet Kumar Chauhan v. State of U.P.**  
**AIR 2008 SC 780**

As to whether the expert opinion is necessary in an offence committed by fire arm, when there is sufficient direct evidence to prove the offence committed by the fire arm, the Apex court has held that it can not be laid down as a general proposition that in every case where a fire-arm is allegedly used by an accused person, the prosecution must lead the evidence of a Ballistic Expert to prove the charge, irrespective of the quality of the direct evidence available on record. It needs little emphasis that where direct evidence is of such an unimpeachable character, and the nature of injuries, disclosed by post-mortem notes is consistent with the direct evidence, the examination of Ballistic Expert may not be regarded as essential. However, where direct evidence is not available or that there is some doubt as to whether the injuries could or could not have been caused by a particular weapon, examination of an expert would be desirable to cure an apparent inconsistency or for the purpose of corroboration of oral evidence.

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