



SJA NEWSLETTER

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Topic of the Month

The concept of judicial independence has been described in golden letters in one of the judgments of the Supreme Court of India. “To keep the stream of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or of any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office-holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behaviour of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law”. [C. Ravichandran Iyer v. Justice A.M. Bhattacharjee, (1955)5 SCC 457, para 23, per K. Ramaswamy, J] Unless the Judges function without fear and favour, the question of their being impartial or independent does not arise. “Judges owe their appointment to the Constitution and hold a position of privilege under it. They are required to ‘uphold the Constitution and the laws’, ‘without fear’ that is without fear of executive; and ‘without favour’ that is without expecting a favour from the executive. There is thus a fundamental distinction between the master and servant relationship between the government and the judges of High Courts and the Supreme Court”. [Union of India v. S.H. Sheth, (1977)4 SCC 193].

(Quoted from M.C. Setalvad Memorial Lecture ‘Canon of Judicial Ethics’ delivered by Hon’ble Shri Justice R.C. Lahoti, Chief Justice of India on 22.02.2005)

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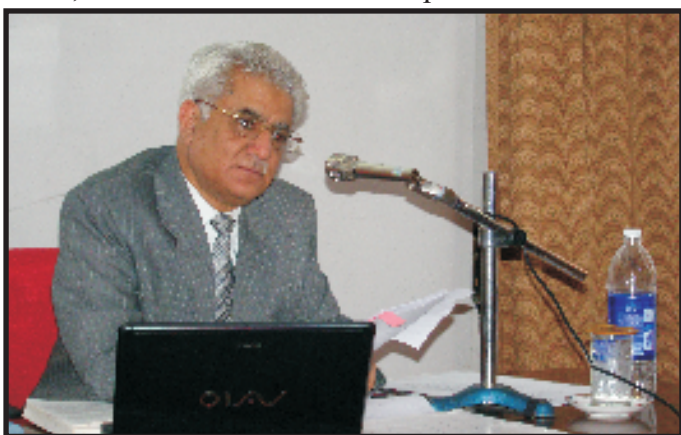
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ACADEMY NEWS

One day workshop on the topic of “Delay in Dispensation of Justice : Causes and the Remedies” was held by the State Judicial Academy at Jammu on 19th of April, 2009. Workshop was conducted by Hon’ble Shri Justice Hakim Imtiyaz Hussain, Judge Incharge, State Judicial Academy and attended by 15 Judicial Officers of District and Sessions Judges, Chief Judicial Magistrates/Sub-Judges and Munsiffs ranks, from Jammu and Kashmir provinces.



Hon’ble Shri Justice Hakim Imtiyaz Hussain while conducting the proceedings of Workshop

The workshop was devised in such a manner that subordinate Judges highlighted their problems which they come across in their judicial working particularly at three stages viz, (a) summoning of parties; (b) recording of evidence; and (c) hearing of arguments and writing judgment, and District and Sessions Judges through their working experience suggested remedies for such problems.



Subordinate Judges while putting across the causes of delay in dispensation of justice

Hon’ble Shri Justice Hakim Imtiyaz Hussain while conducting the proceedings of the Workshop motivated the subordinate Judges to freely and frankly put forth the causes of delay which the subordinate

Judges experience while dispensing justice and asked the District and Sessions Judges to suggest remedies. Every participating subordinate Judge and District and Sessions Judge got opportunity to highlight the causes of the delay and to find out remedies therefor. Subordinate Judges pointed out number of causes of delay in dispensation of justice and the causes which impede the flow of justice to the litigant public. District & Sessions Judges suggested the remedies which would go a longway in preparing the subordinate Judges in utilizing the resources at their back to optimal potential.



District & Sessions Judges while suggesting remedies to the causes of delays

Workshop was held in a very lively atmosphere and proved to be completely satisfying. Offices are expected to apply the suggestions in their actual court working which would ultimately result in timely disposal of cases. A need was felt by all the participating officers to hold such like workshop in future also which will provide opportunity to each and every judicial officer to share experience and get



Proceedings of the Workshop

enriched in effectiveness in court working.

Hon’ble Shri Justice Barin Ghosh, Chief Justice, High Court of Jammu and Kashmir was kind enough to spare His Lordship’s valuable time to

address the Judicial Officers on the occasion. His Lordship while giving thought provoking address highlighted the following key points :

1. Discipline is the most important aspect for every Judicial Officer. All other traits are subservient to it. Discipline should be inculcated as a foremost requirement.



Hon'ble Shri Justice Hakim Imityaz Hussain while welcoming Hon'ble the Chief Justice

2. Punctuality in attending to the Court work is another important requirement. Court timing may not be confused with the office timing. If Court time starts at 10 A.M., it is not merely the time to reach at Court; it means that a Judicial Officer is required actually to be in Court at that time. Office work can be adjusted in such a manner that Court time is not eaten away.

3. It is the Judicial Officer alone who knows what are the causes which result in delay in disposal of cases before him and he alone can devise remedies by remaining attentive to the requirements of procedural law.

4. Strict adherence to the procedural law can solve most of the problems of delay. It is usually noticed that delay is caused when procedure is not followed in its letter and spirit.

5. Knowledge of law is must for working of a Judicial officer. A Judicial officer should keep himself abreast with the latest position of law and must update his knowledge of law by continuously keeping pace with the development of law.

6. For commanding respect in the society, it is imperative for the Judicial officers to remain alive to the expectations of the people in general and the litigants in particular.

7. Faith of people in judicial system is eroding fast because of the delays in disposal of the cases pending in the Courts of law. It is needed to dispose of the cases in time. If the cases are not disposed of in time, people start looking to the other remedies including the adoption of illegal means. Therefore for maintaining the social harmony it is desired to have a

mechanism of timely disposal of cases.

8. Judicial officers should be the men of utmost Integrity. Their working should be very transparent and above board.

9. In private life also the behaviour of Judicial officers should be exemplary and worth of imitation.



Hon'ble Shri Justice Barin Ghosh, Chief Justice while addressing the participating Judicial Officers

10. Judicial officers should discharge judicial functions in such a manner that he should not succumb to extra judicial pressures like that of religion, region, relations, community, caste or personal liking and disliking.

11. While in Court, Judicial officer should conduct himself in such a manner that he is in a position to command and control the Court proceedings. In no case a Judicial officer should be swayed away by the position and seniority of an advocate. Only his ability to deal with a particular case and his proficiency in law should weigh before the Court.

12. By delay in disposal of cases, unscrupulous lawyers get benefitted since they have interest in keeping the Brief in hand for longer periods.

13. If the Judicial Officer has the grasp over the facts, evidence, points of dispute/issues and law applicable to the case, then and only then he is in a position to write a good judgment.

14. Writing a lengthy judgment does not necessarily mean that it would be a complete judgment. A brief and precise judgment, if written after fully marshaling the facts, points of dispute/issues and evidence lead by the parties can stand the test of appeal/revision. Lengthy orders/judgments do not inspire interest whereas brief and lucid orders/judgments reflect the grasp of Judicial Officer over the matter.

15. It is required in general to the Judicial Officers to raise the standard of their knowledge of law, discipline, judicial approach and delivery of Justice.

(Case No: Criminal Appeal No. 706 of 2009)
Ravindra Kumar Madhanlal Goenka & another
versus

M/s Rugmini Ram Raghav Spinners P. Ltd.
Date of Decision: 13/4/2009.

Judge(s): Hon'ble Mr. Justice S.B. Sinha and
Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Criminal Procedure Code, 1973 - section 482 - petition under - dismissal by High Court - this appeal arises out of the judgment and order dated 30.08.2006 passed by the Madras High Court in Criminal Original Petition No. 4556 of 2006 whereby the learned Single Judge of the High Court dismissed the petition filed under Section 482 of the Code of Criminal Procedure by the appellants for quashing criminal complaint filed against them by the respondents before the Judicial Magistrate, Coimbatore, Tamil Nadu - this Court has taken the view that when the complaint does not disclose any criminal offence, the proceeding is liable to be quashed under Section 482 CrPC. However, the same is not the situation in the present case - while entertaining a petition under Section 482 CrPC, the materials furnished by the defence cannot be looked into and the defence materials can be entertained only at the time of trial - the present case is not one of those extreme cases where criminal prosecution can be quashed by the court at the very threshold. A defence case is pleaded but such defence is required to be considered at a later stage and not at this stage.

(Case No: Writ Petition (Civil) No. 483 of 2004)
Avinash Mehrotra v. Union of India & others
Date of Decision : 13/4/2009.

Judge(s): Hon'ble Mr. Justice Dalveer Bhandari
and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Constitution of India - articles 21 and 21A - this important Public Interest Litigation relates to a fire swept through the Lord Krishna Middle School in District Kumbakonam in the city of Madras, Tamil Nadu. The fire started in the school's kitchen while cooks were preparing mid-day meal. In order to protect the rights of life and education guaranteed to all school going children under Articles 21 and 21-A, the petitioner has prayed this Court to bring about safer school conditions - it is the fundamental right of each and every child to receive education free from fear of security and safety. The children cannot be compelled to receive education from an unsound and unsafe building - it has become imperative to direct that safety measures as prescribed

by the National Building Code of India, 2005 be implemented by all government and private schools functioning in our country - before granting recognition or affiliation, the concerned State Governments and Union Territories are directed to ensure that the buildings are safe and secured from every angle and they are constructed according to the safety norms incorporated in the National Building Code of India etc. etc. - the Education Secretaries of each State and Union Territories are directed to file an affidavit of compliance of this order within one month after installation of fire extinguishing equipments.

(Case No: Criminal Appeal No. 697 of 2009)
Posuram Deshmukh v. State of Chhattisgarh
Date of Decision : 9/4/2009.

Judge(s): Hon'ble Dr. Justice Arijit Pasayat and
Hon'ble Mr. Justice Asok Kumar Ganguly.

Subject Index: Indian Penal Code, 1860 - section 302 read with section 34 - conviction under - upheld by DB of Chhattisgarh High Court - four persons faced trial for alleged commission of the aforesaid offence. Out of them two were found guilty by Special Judge & Additional Sessions Judge, Durg. Co-accused Puralal and Prahlad were acquitted - the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case - when the background fact are considered in the light of legal position elaborated above, the inevitable conclusion is that in the present case Exception 4 to Section 300 IPC applies - the appropriate conviction would be under Section 304 Part I, IPC. The conviction is altered accordingly. Custodial sentence of 10 years would meet the ends of justice.

(Case No: Civil Appeal No. 2876 of 2001)
Kusum Devi versus Mohan Lal (dead) by Lrs.
Date of Decision : 8/4/2009.

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

Subject Index: Madhya Pradesh Accommodation Control Act, 1961 - section 12(1)(a)(c)(e)(g) and (o) - suit for eviction - decree passed - the High Court, by the impugned judgment, following the judgment in the case of Smt.

Parmeshwari Devi vs. Thakur Nathu Singh, 1998 (1) MPJR 462, a decision of the same High Court while allowing the appeal and setting aside the decrees of eviction granted by both the courts below under clauses (e) and (g) of Section 12(1) of the Act, held that no decree could be passed if the grounds enumerated under clauses (e) and (g) are taken together in a suit for eviction as both the claims could not be held to be bona fide. Hence, this appeal by special leave - it is held that in a case where eviction has been sought both on the grounds of bona fide requirement by the landlord for occupation of the premises for himself or any member of his family, as required under Section 12(1)(e) of the Act and for carrying out repairs, as enumerated under Section 12(1)(g) of the Act, the court is required to consider both the grounds on merits, as they are mutually exclusive, but not destructive of each other. In case decree for eviction is passed only under clause (e), the landlord would be entitled to move into the premises without or after making any repairs and the provisions of Section 17 of the Act would apply. But if the same is passed under clause (g) alone, the provisions of Section 18 would apply - High Court was not justified in setting aside the said decrees by following the judgment in the case of Smt. Parmeshwari Devi [supra] as law laid down therein runs contrary to the principles laid down by this Court in the case of Ramniklal Pitambardas Mehta

(Case No: Civil Appeal No. 2241 of 2009)
Rani Gupta and others versus M/s. United India Insurance Co. Ltd. and others
Date of Decision : 8/4/2009.

Judge(s): Hon'ble Mr. Justice S.B. Sinha and Hon'ble Mr. Justice Cyriac Joseph.

Subject Index: Motor Vehicles Act, 1988 - section 173 - appeal under - allowed - this appeal is directed against the judgment and order dated 31.5.2007 passed by the High Court of Delhi - the question raised before the High Court was as to whether the deceased having been travelling as a gratuitous passenger in a private car would fall within the meaning of 'third party' and, thus, would be covered by the statutory policy under Section 147 of the Act.

(Case No: Civil Appeal No. 2239 of 2009)
BSNL & others versus Abhishek Shukla & anr.
Date of Decision : 8/4/2009.

Judge(s): Hon'ble Mr. Justice S.B. Sinha and Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Review Application - dismissal - appeal against - the allegations contained in the writ petition that in all other districts the

Selection Committee had prepared 'waitlist' and a large number of appointments had been made therefrom were not specifically been denied - appellant is a 'State' within the meaning of Article 12 of the Constitution of India. It must have its law department. It is, therefore, difficult to conceive that the concerned officers of the department could not place the factual and legal position before the Court - do not find any error in the impugned judgments.

(Case No: Criminal Appeal No. 662 of 2009)
Hira Lal & others v. State of U.P. and others
Date of Decision : 8/4/2009.
Judge(s): Hon'ble Mr. Justice S.B. Sinha and Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Will - alleged execution of the forged will - Criminal Procedure Code, 1973 - section 482 - application under - the dispute between the parties is essentially civil in nature. The Will in question is a registered Will. Whether it is surrounded by suspicious circumstances or not is a matter which may appropriately fall for determination in a testamentary proceeding. Prima facie, a Civil Court has found the said Will to be genuine. A complaint petition filed by the third respondent has been rejected. A revision application filed thereagainst has also been dismissed - whether the transactions are genuine or not would fall for consideration before the Civil Court as indisputably the respondent No.3 has filed a civil suit in the court of Civil Judge, Gautam Budh Nagar wherein allegedly an interim injunction has been granted. What was the share of the respective co-sharers is a question which is purely a civil dispute; a criminal court cannot determine the same - it was not a fit case where cognizance of the offence could have been taken or any summons could have been issued. The impugned judgment, thus, cannot be upheld. It is set aside accordingly.

(Case No: Criminal Appeal No. 664 of 2009)
Satyapal versus State of Haryana
Date of Decision : 8/4/2009.
Judge(s): Hon'ble Mr. Justice S.B. Sinha and Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Indian Penal Code, 1860 - section 376 - appellant was accused under and sentenced for seven yrs. imprisonment - The prosecutrix was a minor. She was aged about 11 years. Appellant was a co-villager - this Court can take judicial notice of the fact that ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon - there was some time gap between the

occurrence and the examination of the witnesses. Some lapse of memory on the part of the child witness, therefore, is possible - the impugned judgment does not warrant any interference by this Court.

NEWS AND VIEWS

Lok Adalat

In the month of December 2008, 512 cases were settled in the Lok Adalats held in different parts of the State of Jammu & Kashmir. Out of these, 79 cases were settled at pre-litigation stage. Compensation to the tune of Rs 29.45 lacs was awarded in Motor Accident Claim cases during the month. These Lok Adalats were organized by different District Legal Services Authorities / Tehsil Legal Services Committees of the State. Beside this, 74 eligible persons were given free legal aid during the month.

No detention without giving enough reasons: SC

The Supreme Court has held that it would be unconstitutional to detain a person under preventive custody without providing him/her with the grounds for the said detention.

A Bench of Justices Dalveer Bhandari and Asok Kumar Ganguly said it was mandatory for the authorities to supply the detainee the material relied upon for the said detention as otherwise it would be violative of the safeguards provided in Article 22(5)(6) of the Constitution.

The said provision mandates that any person who is to be detained under a preventive detention order has to be necessarily supplied with copies of all documents, statements and other material relied upon by the authorities for passing the detention order.

“He has right to be supplied copies of all documents, statements and other material relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of the detention is to enable the detenu at the earliest opportunity to make effective and meaningful representation against his detention,” the Bench said.

The apex court passed the observation while ordering release of one B Mohammed Haris who was detained by the Karnataka Government under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) for allegedly indulging in smuggling of red sanders.

The order of detention was passed by the authorities without providing him with the requisite material and documents.

(HT/19.04.2009)

Conviction valid even without charge being framed: SC

Upholding the life sentence on 10 TDP supporters for the murder of two Congress workers, the Supreme Court has ruled that non-framing of a particular charge does not necessarily entitle the accused to acquittal.

“In unmistakable terms, Section 464 (CrPC) specifies that a finding or sentence of a court shall not be set aside merely on the ground that a charge was not framed or that the charge was defective unless it has occasioned in prejudice.

“Because of a mere defect in language or in the narration or in form of the charge, the conviction would not be rendered bad if the accused has not been adversely affected thereby,” a bench of Justices D K Jain and R M Lodha observed in a judgement while dismissing the appeal of Anna Reddy Sambasiva Reddy.

In this case, some of the convicts took the plea that their conviction cannot be sustained as the sessions court convicted them under Section 302 IPC (murder) besides Section 149 (common object) though no charge was framed against them under the latter section.

It was their contention that since only a few of the accused had participated in the actual killing, the others cannot be held liable merely because they were present with the killers at the scene of offence.

However, the apex court rejected the argument and observed “Code of Criminal Procedure is designed to further the ends of justice and not to frustrate them by introduction of hyper-technicalities.”

(HT/22.04.2009)

High court confirms death sentence to rapist of 3-yr-old

The soul of three-year-old toddler who was brutally raped, beaten up, sodomised, and later murdered will get some solace after the Nagpur bench of Bombay high court on Thursday confirmed the death sentence to a paedophile who wrecked her life and shattered her dreams to satisfy his lust.

A division bench comprising justices Ambadas Joshi and R.C. Chavan also dismissed Rajendra Wasnik’s (28) appeal for pardon from death and observed in stern words that “his conduct exhibited disregard to human values and showed totally brutal, depraved and scheming mind”.

The bench, while allowing the appeal of police station officer in Kholapur in Amravati district for confirmation of death sentence to Wasnik, pointed out that the trial judge had rightly awarded capital

punishment to the convict. R M Patwardhan was the counsel for the convict while additional government pleader Bharti Dangre and Anoop Parihar represented the police.

Police records said Rajendra was the cousin of complainant Mahendra and Kanta Wasnik whose three-year-old kid Vandana was raped and murdered by the 28-year-old pervert.

The incident dates back to March 2, 2007 when Rajendra visited Mahendra's home to see his ailing father on the occasion of Holi. He came back in the evening and requested Kanta to take Vandana with him on the pretext of getting biscuits for her. The girl was playing in front of her home at that time while father Mahendra was on duty.

When they did not return for a long time, Kanta told her husband about the incident. Even after a frantic search, they could not be traced. The family received the shock of their life when Vandana's naked body was found in the field next morning with injury marks all over. Mud was also found in her mouth with contused abrasions.

Kholapur police lodged a complaint and sent the body for post-mortem which revealed that the deceased was raped, sodomised, assaulted and had died due to asphyxia.

The police arrested Rajendra on April 4, 2007 and filed a chargesheet after conducting medical examination.

Additional sessions judge in Amravati found Rajendra guilty of rape, sodomy and murder of Vandana after incriminating articles and photographs were produced by the Kholapur police station officers on September 9 last year.

The court awarded capital punishment to the paedophile for committing murder. He was also sentenced to life imprisonment for rape of a minor. The court also awarded him 10 years' rigorous imprisonment along with a fine of Rs 1,000 for sodomy.

(TOI/27.03.2009)

CASE COMMENTS

Prithu and another v. State of H.P. AIR 2009 SCW 1865

Minor Omissions in the Evidence cannot come in the way of conviction.

The popular formula of legal jurisprudence of sifting the chaff from the grain as settled by Hon'ble Supreme Court of India and various High Courts, cannot be lost sight of while giving an analytical look

to the evidence of prosecution. The minor omissions and discrepancies apparent on the face of evidence cannot go to the root of the case.

The Hon'ble Supreme Court in its judgment reported in 2009 AIR SCW 1865 in case titled "Prithu and another v. State of H.P.", has held at para No.5 that :

"It is to be noted that the accused persons pleaded that the evidence of the eye witnesses cannot be accepted as there were omissions, contradictions and discrepancies in the evidence of the most of the prosecution witnesses. It is fairly settled position in law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be discarded. After exercising the care and caution and sifting the evidence to separate the truth from untruth, exaggerations, embellishments and improvements the court can come to a conclusion as to whether the residual evidence is sufficient to convict the accused".

Hon'ble Supreme Court has referred to its earlier decision rendered in "AIR 1983 SC 753" in which it has been observed that:

"Undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the root of the matter and shake the basic version of the prosecution witnesses. A witness cannot be accepted to possess a photographic memory and to recall the details of an incident *verbatim*. Ordinarily, it so happens that a witness is overtaken by events. A witness could not have anticipated the occurrence which very often has an element of surprise. The mental faculties cannot, therefore, be expected to be attuned to absorb all the details. Thus, minor discrepancies were bound to occur in the statement of the witnesses."

(*Rajesh Kumar Abrol*)
Sub-Judge, Leave Reserve
High Court of J&K
Jammu

Mahesh Yadav v. Rajeshwar Singh & Ors. AIR 2009 SC 1064

Hon'ble Supreme Court in its Judgment reported as "Mahesh Yadav v. Rajeshwar Singh & Others" AIR 2009 SC 1064, has examined the scope of exercising alternative remedies available against an order of *ex parte* decree viz. filing fresh suit, applying for setting aside *ex parte* decree or filing of appeal against such order. It is has been observed as under:

"12. The proviso appended to Order IX Rule

13 of the Code of Civil Procedure postulates that when an ex parte decree has been passed against some of the defendants and it is necessary to set aside the entire decree, the Court is not powerless to do so. If an application for setting aside the ex parte decree was maintainable at the instance of the appellants, we fail to understand as to why a separate suit was required to be filed. When an ex parte decree is passed, the defendant may have more than one remedies. He may file a suit contending that the decree was obtained fraudulently. He may file an application under Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree. He may prefer an appeal from the ex parte judgment and decree. In a given case, he may also file a review application.

13. In *Bhanu Kumar Jain v. Archana Kumar & Anr.* [(2005) 1 SCC 787], this Court held :

"26. When an ex parte decree is passed, the defendant (apart from filing a review petition and a suit for setting aside the ex parte decree on the ground of fraud) has two clear options, one, to file an appeal and another to file an application for setting aside the order in terms of Order 9 Rule 13 of the Code. He can take recourse to both the proceedings simultaneously but in the event the appeal is dismissed as a result whereof the ex parte decree passed by the trial court merges with the order passed by the appellate court, having regard to Explanation appended to Order 9 Rule 13 of the Code a petition under Order 9 Rule 13 would not be maintainable. However, Explanation I appended to the said provision does not suggest that the converse is also true."

It was further, observed that:

"28. It is true that although there may not be a statutory bar to avail two remedies simultaneously and an appeal as also an application for setting aside the ex parte decree can be filed; one after the other; on the ground of public policy the right of appeal conferred upon a suitor under a provision of statute cannot be taken away if the same is not in derogation or contrary to any other statutory provisions".

(Abdul Nasir)
Sub-Judge, Leave Reserve
High Court of J&K
Jammu

C.M. Girish Babu v. C.B.I., Cochin
Case No.: Criminal Appeal No. 377 of 2009
Date of Decision (S.C.) : 24.02.2009

Hon'ble the Supreme Court of India, in a Judgment "C.M. Girish Babu v. C.B.I., Cochin"

Case No.: Criminal Appeal No. 377 of 2009, decided on 24/2/2009, has made some very important observations as regards the burden of proof and the presumption under Prevention of Corruption Act. It has been stressed that initial burden of proof always remains on prosecution and in case where prosecution is able to discharge the initial burden, presumption can be raised against accused. Here also, such presumption can be discharged merely by proving a preponderance of probability in favour of his case by accused. The observations made by Hon'ble Supreme Court are noted as under :

"19. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification.

20. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt. It is well established that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence of proof his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4 under the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts, i.e.; that of establishing on the whole case the guilt of the accused beyond a reasonable doubt."

(Kalpana Revo)
Sub-Judge, Leave Reserve
High Court of J&K
Jammu