# SJA NEWSLETTER

**Monthly Newsletter published by the**
**Jammu & Kashmir State Judicial Academy**

**Volume - I, Issue 8** **August, 2008**




**Contents**




**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@jk.nic.in



Composed, Desg. & Layout by :
Imtiyaz Ahmad (Compositor)


## Topic of the Month

"In a constitutional democracy wedded to and governed by the rule of law, responsibilities of the Judiciary arouse great expectations. Justice Frankfurter remarked : 'It is not a printed finality, but a dynamic process. Its applications to the actualities of Government is not a mechanical exercise, but a high function of statecraft'.

The constitutional adjudications have the urgent task of defining or redefining from time to time the basic constitutional concepts in a changing and disparate world. Judicial policy is directed to the management within the constitutional parameters of the apparent conflicts in society. The exercise of democratic power on the one hand and legal control of Government on the other, pose seemingly irreconcilable positions.

It is said that an unfailing index to the maturity of a democracy is the degree of its respect for the unwritten conventions. The silences of a Constitution are eloquent and they are constitutional device forming part of an advanced constitutional culture.

The measure of success in achieving all this may be regarded as the measure of success of the working of the Constitution and in promoting and sustaining constitutionalism. The role of the judiciary in protecting individual rights and freedoms and promoting constitutional values is not discretionary but obligatory."

*Excerpts from lecture delivered by Hon'ble Mr. Justice M.N. Venkatachaliah, Former Chief Justice of India at New Delhi on "Constitutional underpinnings of a Concordial Society", [2008 AIR Jour (8) 113].*

# SOME RECENT SUPREME COURT JUDGMENTS OF PUBLIC IMPORTANCE (Delivered from 01-03-2008 to 31-05-2008)

**1.** On 11th March, 2008, a two Judges Bench in Divine Retreat Centre vs State of Kerala & Ors. [Criminal Appeal No.472 of 2008] held that the "Public Interest Litigant must disclose his identity so as to enable the court to decide that the informant is not a wayfarer or officious intervener without any interest or concern."

The Bench said that "there is heavy duty cast upon the constitutional courts to protect themselves from the onslaught unleashed by unscrupulous litigants masquerading as Public Interest Litigants".

"The individual judges ought not to entertain communications and letters personally addressed to them and initiate action on the judicial side based on such communication so as to avoid embarrassment; that all communications and petitions invoking the jurisdiction of the court must be addressed to the entire Court, that is to say, the Chief Justice and his companion Judges. The individual letters, if any, addressed to a particular judge are required to be placed before the Chief Justice for consideration as to the proposed action on such petitions. Each Judge cannot decide for himself as to what communication should be entertained for setting the law in motion be it in PIL or in any jurisdiction", said the Bench.

**2.** On 26th March, 2008, a two Judges Bench in Madan Mohan Abbot vs State of Punjab [Criminal Appeal No.555 of 2008] observed that "that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation."

"This is a common sense approach to the matter based on ground realities and bereft of the technicalities of the law", the Bench said.

**3.** On 10th April, 2008, a Constitution Bench in Ashoka Kumar Thakur vs Union of India & Ors. [Writ Petition (Civil) No. 265 of 2006] held that "the Constitution 93rd Amendment Act, 2005 [by which clause (5) was inserted in Article 15 of the Constitution to enable the State to make provision for advancement of SC, ST and Socially and Educationally Backward Classes (SEBC) of citizens in relation to admission to educational institutions] was "valid" and did not "violate the 'basic structure' of the Constitution so far as it related to "the State maintained institutions and aided educational institutions." Per majority, the Bench left open the question as to whether the Constitution (Ninety Third Amendment) Act, 2005 would be constitutionally valid or not as regards the "private unaided" educational institutions, to be decided in an appropriate case. One of the Hon'ble Judges, however, considered the issue and held that the Constitution (Ninety Third Amendment) Act, 2005 was not constitutionally valid so far as the private unaided educational institutions are concerned.

After the Constitution 93rd Amendment Act, 2005, the Central Educational Institutions (Reservation in Admission) Act, 2006 [Act No.5 of 2007] was passed which provided for reservation of 15% seats for Scheduled Castes, 7½% seats for Scheduled Tribes and 27% for Other Backward Classes in Central Educational Institutions. The Bench held that Act 5 of 2007 was "constitutionally valid subject to the definition of 'Other Backward Classes' in Section 2(g) of Act 5 of 2007 being clarified" to the effect that "if the determination of 'Other Backward Classes' by the Central Government is with reference to a caste, it shall exclude the 'creamy layer' among such caste". The "quantum of reservation of 27% of seats to Other Backward Classes in the educational institutions provided in the Act" was "not illegal", said the Bench.

The Bench further held that "Act 5 of 2007 is not invalid for the reason that there is no time limit prescribed for its operation". But majority of the Hon'ble Judges in the Bench were of the view that "review should be made as to the need for continuance of reservation at the end of 5 years."

**4.** On 11th April, 2008, a two Judge Bench in Jitendra Singh vs Bhanu Kumari & Ors [C.A. No. 2786 of 2008] held that "the purpose of Section 24 CPC is merely to confer on the Court a discretionary

power. A Court acting under Section 24 CPC may or may not in its judicial discretion transfer a particular case. Section 24 does not prescribe any ground for ordering the transfer of a case. In certain cases it may be ordered suo motu and it may be done for administrative reasons. But when an application for transfer is made by a party, the court is required to issue notice to the other side and hear the party before directing transfer. To put it differently, the Court must act judicially in ordering a transfer on the application of a party."

**5.** On 16th April, 2008, a two Judge Bench in Satyawati Sharma (Dead) by LRs vs Union of India & Another [C.A. No.1897 of 2003] held that "Section 14(1)(e) of the Delhi Rent Control Act, 1958 is violative of the doctrine of equality embodied in Article 14 of the Constitution insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only."

The Bench held that the "ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) so that the remaining part thereof may read as :-"that the premises are required bona fide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation." While adopting this course, the Bench kept in view the "well recognized rule that if the offending portion of a statute can be severed without doing violence to the remaining part thereof, then such a course is permissible."

As a sequel to the above, the Bench held that the "Explanation appearing below Section 14(1)(e) of the 1958 Act will have to be treated as redundant." Section 14(1)(e) of the 1958 Act was thus partly struck down.

**6.** On 21st April, 2008, a two Judge Bench in Surjit Singh vs Mahanagar Telephone Nigam Ltd [C.A. No. 5354 of 2002] held that "where two relatives are living in the same house a distinction has to be drawn between a telephone line in the name of a person who is economically dependent on another (who may be the husband, father etc.), and the telephone line in the name of a person who has an independent source of income from which he is paying the telephone bills.

In the case of the former, i.e. a person who is economically dependent on another who is paying his telephone bills, the telephone line in the name of such other relative on whom the subscriber is dependent can be disconnected for non-payment of the telephone bills of the nominal subscriber."

**7.** On 6th May, 2008, a two Judge Bench in Sudhir Kumar Rana vs Surinder Singh & Ors [C.A. No.3321 of 2008] held that "if a person drives a vehicle without a licence, he commits an offence", but the "same, by itself, may not lead to a finding of negligence as regards the accident."

**8.** On 12th May, 2008, a two Judge Bench in Mausami Moitra Ganguli vs Jayant Ganguli [C.A. No.3500 of 2008] held that "while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. Indubitably the provisions of law pertaining to the custody of a child contained in either the Guardians and Wards Act, 1890 (Section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13) also hold out the welfare of the child as a predominant consideration. In fact, no statute, on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor."

"Better financial resources of either of the parents or their love for the child may be one of the relevant considerations but cannot be the sole determining factor for the custody of the child", the Bench said.

The Bench emphasized that "a heavy duty is cast on the Court to exercise its judicial discretion judiciously in the background of all the relevant facts and circumstances, bearing in mind the welfare of the child as the paramount consideration."

**9.** On 16th May, 2008, a two Judge Bench in A.P.S.R.T.C. & Anr. vs. K. Hemalatha & Ors. [C.A. Nos.3623-3626 of 2008] held that "when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50."

# ACADEMY NEWS
## Training Programme held in the month of August, 2008

One day orientation course on the topic of "Alternate Dispute Resolution" with specific emphasis on mediation and conciliation was organized and conducted on Ist of August, 2008 at Srinagar by the State Judicial Academy under the overall guidance of Hon'ble Judge Incharge and Hon'ble Patron-in-Chief.

Twenty Judicial Officers of the rank of Sub-Judges and Munsiffs from different districts of Kashmir province participated.

Proceedings During the Orientation Course

Resources person for the Ist Session was Dr. Mohd. Ayub, Associate Professor, Faculty of Law, Kashmir University, Srinagar. He mainly laid stress on the legal awareness of common masses and according to him people are not generally aware of their rights and they are not at all aware of the fact that disputes at the pre-litigation stage can also be resolved

Participants in the Orientation Course

by resorting to ADRs. He also highlighted necessity of incorporating Section 89 in the State Code of Civil Procedure as has been done in the Code of Civil Procedure (Central) because this becomes the basis for resorting to different modes of ADRs. He also emphasised the need for training of Judicial Officers. and Advocates also on mediation so that they get necessary expertise for acting as mediators between disputants either at pre-trial stage or during the trial of cases.

2nd Session was addressed by Mr. Syed Mohd. Iqbal, District & Sessions Judge (Retd.) who in his interaction with participants laid stress on doing substantial justice and in this connection referred to the term "Solemn Justice" and the background of

Proceedings During the Orientation Course

said term. He further told that ADR methods are not only inexpensive and expeditious for dispute resolution but also do not leave behind any rancour in the minds of the disputants. During his discourse, he also gave some relevant references of the efficacy and usefulness of ADR which he has experienced during his active judicial service career.

Participants in the Orientation Course

3rd Session was addressed by Ms. Gous-ul-Nisa Jeelani, Spl. Judge (Anti-corruption) Srinagar. She tried to make out the point that if Judicial Officers work with missionary zeal then and then alone ADR methods can prove efficacious and useful

national consumer court has ordered. And outstation cheques have to be encashed between seven and 14 days, depending upon the distance from the place where the cheque is issued.

You can claim interest from a bank for delayed encashment of your outstation cheques. "If there is any delay in collection of the said (outstation) cheques beyond the period… interest at fixed deposit rate, or at a specified rate as per the respective policy of the banks, is to be paid to the payee of the cheques," the National Consumer Disputes Redressal Commission said in its July 14 order.

Advocate Atul Nanda, on whose petition the landmark judgment came, said banks would have to pay interest to customers for delayed encashment of local cheques as well. It usually takes up to three days to be encashed. In his consumer interest litigation, Nanda had said the delay in crediting the cheques to the customers' account was leading to "undue enrichment" of banks, which were earning crores in interest on the customers' money for the delayed period.

Directing the banks to comply with the order within two weeks, commission chairman Justice M.B. Shah asked them to write in bold letters in every branch's notice board the salient features of their policies on collection period of outstation cheques and interest payable in case of delay. He asked the RBI to monitor the order.

(HT/17.07.2008)

## Ignore minor flaws in victim's evidence in rape case : SC

The Supreme Court has asked trial courts and High Courts to deal with rape cases with the utmost sensitivity and responsibility. The punishment cannot depend upon the social status of the victim or the accused.

Justices Arijit Pasayat and P. Sathasivam said: "Of late, crime against women in general and rape in particular are on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of society towards the violation of human dignity of the victims of sex crimes."

The Bench said: "The socio-economic status, religion, race, caste or creed of the accused or the victim is irrelevant considerations in the sentencing policy. Protection of society and deterring the criminal are the avowed object of law and that is required to be achieved by imposing appropriate sentence." Justice Pasayat, writing the judgment, said: "We must remember that a rapist not only violates the victim's privacy and personal integrity but inevitably causes serious psychological as well as physical harm. Rape is not merely a physical assault — it is often destructive of the whole personality of the victim. A murderer destroys the body of his victim, a rapist degrades the very soul of the helpless female."

The Bench said: "The court, therefore, shoulders a greater responsibility while trying an accused on charges of rape. They must deal with such cases with the utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case."

The Bench said: "If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If, for some reason, the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice."

The prosecutrix's testimony must be appreciated in the background of the entire case. The Bench said: "A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. What is necessary is that the court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her."

(Hindu /18.07.2008)

## Audio recording of court proceedings

The Supreme Court is to introduce audio recording of the proceedings of important cases.

According to Secretary-General V.K. Jain, audio recording of the proceedings and arguments, particularly in matters in which the hearing goes on for several days, will help the judges in cross-checking arguments before delivering the judgment.

To begin with, the system will be introduced in the court of Chief Justice K.G. Balakrishnan. After analysing its success, a decision will be taken to extend the facility to other court halls.

(Hindu/20.08.2008)

## SC tells Tata Finance to pay up for impounding vehicle

The Supreme Court has dismissed a Tata Finance petition challenging a consumer court order, directing the company to pay more than Rs 7.55 lakh

in disputeresolution. She further told the participants that if a dispute is resolved by resorting to any method of ADR, the mediator or conciliator and in particular the Presiding Officer who become instrumental in resolving the dispute through ADRs gets a lot of satisfaction and feels elated. She having an occasion to go to U.K. in connection with the Orientation course on "Gender Law" gave some instances of the working of the courts their especially the use of ADRs by the courts and stated that she was really impressed by the Enthusiasm exhibited by the Presiding Officers, rival disputants and also Advocates while resorting to ADR for dispute resolution.

During interactive session, every participant took active part in the interaction on the topic with Resourse person and also with the Director, State Judicial Academy and all the participants felt extremely satisfied by the Orientation course and wanted that such programme be often organized by the State Judicial Academy so that techniques for speedy disposal of cases are acquired by the Judicial Officers in order to clear the backlog of cases in almost all the courts of the State.

At the conclusion of the orientation course, it was felt by the Director, State Judicial Academy and Resource persons as well as participants that it may be requested to the Hon'ble Judge Incharge, and Patron-in-Chief that the Government may be asked to incorporate Section 89 of Code of Civil Procedure in the State Code of Civil Procedure and also bring about amendment in Order 10 C.P.C by inserting Order 10 A, 10 B and 10 C in the State C.P.C. so that it comes in line with the C.P.C (Central) and enable the Presiding Officers to use ADRs as often as possible. It was also felt that mediation rules may also be framed and Judicial Officers and some Advocates be got trained by some expert in the mediation in order to prove the utility of mediation as an ADR.

## NEWS AND VIEWS

### Lok Adalat

In the month of June 2008, 646 cases were settled in the Lok Adalats held in the different parts of the State of Jammu & Kashmir. Out of these, 49 cases were settled at pre-litigation stage. Compensation to the tune of Rs 55.88 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, 49 eligible persons were given free legal aid during the month.


Hon'ble Mr. Justice K.S. Radhakrishnan, Chief Justice inaugurating Mediation Centre at Leh

### If dacoits rob train, Rlys must pay : SC

Ruling that failure to provide proper security to passengers during journey amounts to deficiency in service, the Supreme Court has ordered the railways to compensate a couple who lost their luggage in a train dacoity in 1999. A Bench of Justices B.N. Aggarwal and G.S. Singhvi dismissed the appeal of the Centre against an order of the National Consumer Disputes Redressal Commission that had awarded Rs 50,000 to Patna resident Alok Kumar.

In October 1999, Kumar and his wife were traveling in the first class compartment of Sanghmitra Express. At Ara, five men entered the compartment and robbed them at gun-point.

The Bench took a dig at the government counsel who said incidents like dacoity were law and order problems, which was the state's responsibility. "What a fantastic explanation?" the judges said, adding: "You are bound to deploy armed personnel in the trains. Attendants are supposed to ensure the doors are locked as soon as the passengers board the train. But your attendants are busy earning money and sleeping in the pantry car."

(HT/14.07.2008)

### Banks told to pay for delay in cheque clearance

Banks have to credit local cheques to your account the same day or at the most the next day, the

as compensation to the respondent for repossessing his vehicle. A Bench headed by Justice R. V. Raveendran upheld the orders of the National Consumer Disputes Redressal Commission and the Maharashtra State Consumer Commission, asking the company to also pay Rs 50,000 as cost and interest at the rate of 15 per cent to the respondent.

Challenging the Commission's order Tata Finance had said that the consumer court's decision reflected a general bias against finance companies.

The National Consumer Disputes Redressal Commission had observed in its order that Tata had "unjustifiably, arbitrarily and malafidely taken away the vehicle" of Francis Soeiro who "lost his life savings." Soeiro had entered into a hire-purchase agreement with Tata Finance in February 1999 for purchasing a Tata 407 Bus Chasis from its manufacturer Telco (now Tata Motors). The company claimed he had defaulted in paying his installments following which it issued notices to him.

It further said that the finance company had taken the possession of the vehicle only after the complainant had used it for two years and even during the period the vehicle was being run on charter for some pharma company in Goa. However, the company had auctioned the vehicle at a low price, it added.

(HT/16.07.2008)

## CASE COMMENTS

### Keya Mukherjee v. Magma Leasing & Anr. AIR 2008 SC 1807

**Procedure for granting exception and answering questionnaire where accused facing trial in a warrant case is unable to appear in person for being examined u/s 342 of J&K Cr.P.C.**

Fairness of a Criminal trial lies in effective association of accused with the trial. In adversarial system of justice accused cannot be a mute spectator throughout the trial. It is an inviolable principle of criminal jurisprudence that the accused is presumed to be innocent. Prosecution is required to rebut such presumption by cogent, reliable and convincing evidence. The mandate of law embodied in Section 342 Cr.P.C. Renders it imperative upon trial court to put all inculpatory material to the accused to enable him to explain it. It is well settled that omission to put circumstances appearing in prosecution evidence against the accused for eliciting his explanation warrants such incriminatory evidence to be eschewed from consideration. After closing of prosecution evidence, a direct dialogue between the Judge and the accused is contemplated by the Code of Criminal Procedure, which necessitates physical apperance of accused. However, in a few cases inability on the part of the accused to appear in person on account of variety of reasons renders it difficult to examine the accused qua incriminating evidence brought on record by prosecution. It also results in protraction of trial and embarrassment to the co-accused. The recent pronouncement of Hon'ble Apex Court in Keya Mukherjee v/s Magma Leasing Ltd. & another reported in AIR 2008 SC 1807 lays down the procedure to be followed in such exigencies. Broad features of the judgment are as under :-

On interpretation of Section 342 and 342-A of the old Cr.P.C the Hon'ble Apex Court had held in Bibhuti Bhusan Das Gupta and Another v/s State of West Bengal, AIR 1969 SC 381 that the pleader representing the accused cannot be examined in place of accused at the close of prosecution evidence. To mitigate the hardship faced by accused in putting in personal appearance for his examination Parliament followed the 41st report of the Law Commission and incorporated appropriate provision in Section 313 of Central Cr.P.C of 1973. Under this provision, the trial court has been vested with power to exempt the accused from personal appearance at the stage of his examination. However, such discretion can be exercised only in summons cases. Judicial view taken in Usha K. Pillai, 1999(3) SCC 208 is that the examination of accused can be dispensed with only in summons cases and the court cannot dispense with the examination of accused in warrant cases even where the accused has been exempted from personal attendance.

In the instant case, the Hon'ble Apex Court, after noticing the development of law on the subject, held that the provision engrafted in Section 313 of Central Cr.P.C of 1973 is mainly intended to benefit the accused. As a corollary to it the court also derives benefit in reaching the final conclusion. The provision incorporates the fundamental principle of Natural Justice enshrined in the maxim *Audi Alteram Partem*. As a general rule, the requirement of law is that the accused must be examined in person. However, if the court is satisfied that the accused is genuinely facing undue hardship in remaining present in person, a humanistic approach must be adopted to alleviate the difficulty. The Hon'ble Apex Court noticed various provisions of Cr.P.C. Which enable the accused facing trial in Warrant cases/Sessions cases to put in any written statement which is generally prepared by the Defence Counsel. The written statement filed by the accused is made part of the record. Such statements are treated as emanating directly from the accused. Therefore, answers given by the Counsel representing

the accused to explain the incriminating circumstances appearing in prosecution evidence against the accused can be treated as statements emanating from the accused who may be unable to attend in person before trial court. In appropriate cases the court can come to the rescue of an accused who is unable to appear in person due to heavy expenditure involved, physical incapacity or some other hardship. Substantial compliance with the requirement of Section 313 Central Cr.P.C. 1973 can be ensured by allowing the accused to answer the questions through his counsel provided he files an application supported by an affidavit sworn by the accused himself stating the reasons of non-appearance, an assurance that no prejudice would be caused to him by his exemption and also undertaking that he would not raise any grievance on that score. Upon recording satisfaction of the genuineness of the motion the court shall supply the questionnaire to the Advocate of accused and fix the time for filing the reply with an affidavit duly authenticated to the effect that such answers were given by the accused himself. The accused shall be free to indicate that he does not wish to reply a particular question. In the event of failure on the part of the accused to return the questionnaire duly answered within the time allotted or extended by the court, the accused shall forfeit his right to seek personal exemption during his examination.

Such course is to be adopted only in exceptional exigency.

*( Bansi Lal Bhat )*
*Spl. Judge, Anti-corruption*
*Jammu*

## National Insurance Co. v. Geeta Bhat & Ors. AIR 2008 SC 1837

Whether the Insurer is liable to re-imburse owner, if the driving license is found to be fake. The Apex Court has held that liability of insurer to reimburse the insured, as an owner of the vehicle not only depends upon the terms and conditions laid down in the contract of insurance but also the provisions of the Motor Vehicle Act, 1988. The owner of vehicle is statutorily obligated to obtain an insurance for the vehicle to cover the third party risk. A distinction has to be borne in mind in regard to a claim made by the insured in respect of damage of his vehicle or filed by the owner or any passenger of the vehicle as contradistinguished from a claim made by a third party.

An owner of the vehicle is bound to make reasonable enquiry as to whether the person who is authorized to drive the vehicle holds a licence or not. Such a licence not only must be an effective one but should also be a valid one. It should be issued for driving a category of vehicle as specified in the Motor Vehicle Act and/or Rules framed thereunder.

Indisputably, in a case where the terms of the contract of insurance are found to have been violated by the insured, the insurer may not be held to be liable for reimbursing the insured. So far as a driving licence of a professional driver is concerned, the owner of the vehicle, despite taking reasonable care, might have not been able to find out as to whether the licence was a fake one or not. He is not expected to verify the genuineness thereof from the Transport Offices.

*( Gh. Mohi-ud-Din Dar )*
*Director*
*State Judicial Academy*

## UCO Bank & Anr. v. Rajinder Lal Capoor AIR 2008 SC 1831

The Supreme Court in this judgment has held that a legal fiction must be given full effect but it is equally well settled that the scope and ambit of legal fiction should be confined to the object and purport for which the same has been created. While holding the same, the Supreme Court placed reliance upon another judgment of the Supreme Court reported in 2008 AIR SCW 208 in which it has been held :

> "...With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity, which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/author. So done, the rule of purposive construction have to be resorted to which would require the construction of the Act, in such a manner as to see that the object of the Act fulfilled, which in turn would lead the beneficiary under the statutory scheme to fulfil its constitutional obligations...."

It has further been held that the Court while interpreting a statue, must bear in mind that the legislature was supposed to know law and the legislation enacted is a reasonable one.

*( M. K. Sharma )*
*Judicial Mobile Magistrate (Elect.)*
*Jammu*

Edited, Printed and published by Gh. Mohi-ud-Din Dar, Director, Jammu & Kashmir State Judicial Academy
on behalf of the Jammu and Kashmir State Judicial Academy, High Court Complex, Jammu / Srinagar