SJA e-NEWSLETTER

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Contents

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From the Editor's Desk

In order to give full effect to the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, Hon'ble Division bench of the High Court of Jammu and Kashmir, in Case No. PIL 17/2018, in orders dated 13-5-2019 and 29-5-2019, speaking through Hon'ble the Chief Justice directed the Social Welfare Department and the Commissioner of disabilities to organise training programmes "Access to All Sensitization Program" and "Internal Audit Training". Two such programmes were organised by the Department for creating awareness regarding the rights of Persons with disabilities and to create barrier free atmosphere. Officers of the High Court Registry and some judicial officers were deputed by Hon'ble the Chief Justice. This author got an opportunity to participate in these programmes, which has created a lot of positive impact prompting to write these few lines for the benefit of all.

As per Government of India Census Report - 2011, the Persons with disabilities constituted about 2.21% of the total population. Going by these conservative estimates the population of persons with disabilities was about 2.68 crores. Percentagewise it may look to be insignificant number but going by the figure it appears to be a sizeable number. In our State the percentage is 2.88%, which is more than the National average.

Under the Constitutional scheme of things every citizen of the country is to get all the rights guaranteed by the Constitution, especially those provided under Part-IV. The Persons with disabilities are also entitled to the right to equality, which in the real sense would include a level playing field for them as well. Their disabilities cannot and should not act as any hindrance for them in full enjoyment of their constitutional rights. Barrier free environment is imperative to be created to enable the Persons with disabilities to enjoy their freedoms enshrined under Article 19 of the Constitution. From the individual point of view, every person with a disability has fundamental right to life and liberty i.e. a dignified life and to

see all his faculties to flourish and to give full meaning to the life. Taking it from another perspective, for a country to flourish it needs each and every individual to contribute in whatever way it is possible. It is not in the interest of any country to ignore a large number of citizens who can contribute towards its development. Many of the Persons with disabilities are gifted by nature with special abilities, which if given full play can contribute greatly towards the progress of the nation.

Our public places and buildings are mostly inaccessible for the persons with disabilities. This is not conducive for harmonious coexistence of citizens and it puts the Persons with disabilities at a disadvantageous position. It also creates an extra burden on the persons with disabilities to utilize more resources and to make additional efforts for gaining access to the public places. While creating physical infrastructures, this has never been thought that a sizeable number of citizens would not be able to gain barrier free access to all of these places. Time is now to recognize our failures and to make every endeavour to rectify the past mistakes.

The society has by and large failed to understand its social responsibility and the sense of fraternity as mandated by the Constitution, which has prompted the legislature to come up with a noble legislation. It recognises the rights of the Persons with disabilities which are inalienable, for they are born as human beings. The mandate of legislation is to create a barrier free atmosphere and thereby to facilitate ease of access for the Persons with disabilities to all the public places. Now it is not just a social responsibility but a statutory duty of the public functionaries to acknowledge the rights of the Persons with disabilities and to create a congenial atmosphere for them to prosper. This follows adoption of 3A's framework i.e. Attitudes, Accessibility and affordability.

Legal Jottings

CRIMINAL

"A Constitution cannot be regarded as a mere legal document to be read as a will or an agreement nor is Constitution like a plaint or written statement filed in a suit between two litigants."

H.R. khana, J. ***in Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225, para 1437***

Criminal Appeal No. 956 of 2019
Prakash Jain & Ors v. The State of Karnataka
Decided on: July 3, 2019

Hon'ble Supreme Court held that it is a well settled principle of law that the appellate court has the power to enhance the sentence suo-motu, however, such power should be exercised sparingly and in exceptional circumstances, and furthermore this power should not be exercised without issuing notice to the accused. The said notice cannot be an illusory notice. Any notice for enhancement must indicate as to why the Court wants to enhance the sentence, and it must give reasonable time to the accused to answer the notice.

SLP (Crl.) No. 3858 of 2019
Pavan Diliprao Dike v. Vishal Narendrabhai Parmar
Decided on: July 12, 2019

Hon'ble Supreme Court held that presumption under Section 139 Negotiable Instruments Act is necessary to be taken into account, and that that the trial court

cannot place heavy burden on the complainant to prove the debt.

Criminal Appeal No. 1090 of 2019
Manjit Singh v. The State of Punjab and another
Decided on: July 22, 2019

Hon'ble Supreme Court held that Section 307 I.P.C. is a non-compoundable offence, and no permission can be granted to record the compromise between the parties.

Hon'ble Supreme Court referred the case of Ishwar Singh v. State of Madhya Pradesh, (2008) 15 SCC 667, wherein it was held that in a non-compoundable offence, the compromise entered into between the parties is indeed a relevant circumstance which the Court may keep in mind for considering the quantum of sentence. Accordingly, it is reiterated that non-compoundable case cannot be permitted to be compounded.

Criminal Appeal No. 1475 of 2009
Girish Singh v. The State of Uttarakhand
Decided on: July 23, 2019

Hon'ble Supreme Court held that the foremost aspect to be established by the prosecution, for the offence of dowry death, is that there is reliable evidence to show that the woman was subjected to cruelty or harassment by her husband or his relatives, which must be for or in connection with any demand for dowry, soon before her death, and that, before the presumption is raised, it must be established that the woman was subjected by such person to cruelty or harassment. It is not just any cruelty that becomes the subject matter of the provision but it is the cruelty or harassment for or in connection with, demand for dowry.

Criminal Appeal No. 1102 of 2019
Sri A.M.C.S. Swamy, ADE/DPE/Hyd (Central) v. Mehdi Agah Karbalai & Anr.
Decided on: July 23, 2019

Hon'ble Supreme Court held that it cannot be said that taking cognizance of offence by Special Court is in violation of Section 193 of the Code of Criminal Procedure, 1973, when there is express provision in the Special Act empowering the Special Court to take cognizance of an offence without the accused being committed to it.

It is held that the Special Court is empowered to take cognizance without there being an order of committal as contemplated under Section 193 of the Code of Criminal Procedure, 1973, in view of the specific provision under Section 151 of the Electricity Act, 2003.

Criminal Appeal No. 1013 of 2019
P Ramesh v. State Represented by Inspector of Police
Decided on: July 9, 2019

Hon'ble Supreme Court held that the trial judge is required to determine whether the child is in a fit and competent state of mind to depose, and is able to understand the purpose for being present on the occasion. Prior to the recording of evidence of a child witness, the trial Court must undertake the exercise of posing relevant questions to determine the capacity of child witness to provide rational answers. This exercise would allow the court to determine whether the child has the intellectual and cognitive skills to recollect and narrate the incidents of the crime.

If the court is satisfied that the child witness below the age of twelve years is a competent witness, such a witness can be examined without oath or affirmation (refer section 4 of the Oaths Act 1969).

Hon'ble Court relied upon the case law Ratansinh Dalsukhbhai Nayak v State of Gujarat (2004) 1 SCC 64.

Criminal Appeal No. 1105 of 2019
Shiv Prakash Mishra v. State of Uttar Pradesh and another
Decided on: July 23, 2019

Hon'ble Court held that the standard of proof employed for summoning a person as an accused person under Section 319 Cr.P.C. is higher than the standard of proof employed for framing a charge against the accused person. The power under Section 319 Cr.P.C. should be exercised sparingly.

Hon'ble Court relied on the law laid in Hardeep Singh v. State of Punjab and others (2014) 3 SCC 92 (Constitution Bench), wherein it was held that power under section 319 Cr.P.C should be exercised only where, from the evidence led before the court, strong and cogent evidence occurs against a person, and not in a casual and cavalier manner. Though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction.

Criminal Appeal No. 1143 of 2019
Vijay Pandey v. State of Uttar Pradesh
Decided on: July 30, 2019

Hon'ble Supreme Court held that the fact of an earlier conviction may be relevant for the purpose of sentence, but cannot be a ground for conviction per se.

The failure of the prosecution in the present case to relate the seized sample with that seized from the appellant makes the case no different from failure to produce the seized sample itself. In the circumstances, the mere production of a laboratory report that the sample tested was narcotics cannot be the conclusive proof by itself. The sample seized and that tested have to be co-related.

Criminal Appeal No. 1150 of 2019
Mauji Ram v. State of Uttar Pradesh & Anr.
Decided on: July 29, 2019

Hon'ble Supreme Court held that the Hon'ble Court has time and again emphasized the need for assigning the reasons while granting bail (Ajay Kumar Sharma vs. State of U.P. & Ors., (2005) 7 SCC 507, Lokesh Singh vs. State of U.P. & Anr., (2008) 16 SCC 753 & Dataram Singh vs. State of U.P. & Anr., (2018) 3 SCC 22). Though it may not be necessary to give categorical finding while granting or rejecting the bail for want of full evidence adduced by the prosecution as also by the defence at that stage, yet it must appear from a perusal of the order that the Court has applied its mind to the relevant facts in the light of the material filed by the prosecution at the time of consideration of bail application.

Criminal Appeal No. 1161 of 2019
Suryakant Baburao @ Ramrao Phad v. State of Maharashtra and others
Decided on: July 30, 2019

Hon'ble Supreme Court reiterated that the question of awarding sentence is a matter of discretion for the courts, and has to be exercised on consideration of facts and circumstances of the case. Though the court has discretion in awarding the sentence, it should be commensurate with the gravity of the offence. The court has to record brief reasons to explain the choice of sentence.

The courts must not only keep in view the right of the accused, but must also keep in view the interest of the victim and society at large. The courts have been consistent in

approach that a reasonable proportion has to be maintained between the gravity of the offence and the punishment. While it is true that the sentence imposed upon the accused should not be harsh, inadequacy of sentence may lead to sufferance of the victim and the community at large.

Criminal Appeal Nos. 1162-1163 of 2019
Bharatbhai Bhimabhai Bharwad v. State of Gujarat and others
Decided on: July 30, 2019

Hon'ble Supreme Court held that it is well settled that the considerations for cancellation of bail and challenging the order of grant of bail on the ground of arbitrary exercise of discretion are different. While considering the application for cancellation of bail, the Court ordinarily looks for some supervening circumstances like; tampering of evidence either during investigation or during trial, threatening of witness, the accused is likely to abscond and the trial of the case getting delayed on that count etc. Whereas, in an order challenging the grant of bail on the ground that it has been granted illegally, the consideration is whether there was improper or arbitrary exercise of discretion in grant of bail.

SLP (Crl.) No(s). 6005/2019
Shome Nikhil Danani v. Tanya Banon Danani
Decided on 22-07-2019

Hon'ble Supreme Court held that the High Court of Delhi was justified in coming to the conclusion that the mere passing of an order under Section 125 of the Code of Criminal Procedure 1973 did not preclude the respondent from seeking appropriate reliefs under the Protection of Women from Domestic Violence Act 2005.

CRA No.03/2018
Abdul Rashid & Anr. v. State of J&K and Ors.
Decided on: July 8, 2019
(High Court of Jammu & Kashmir)

Relying upon the case law State of Haryana v. Hasmat 2004 SCC (Crl.) 1757 and Kishori Lal v. Rupa and Others, (2004) 7 SCC 638, held that - grant of bail and suspension of sentence in the heinous offences like murder stand on different footing. In terms of section 426 CrPC (corresponding to section 389 of CrPC applicable to rest of India) suspension of sentence can be granted only on the availability of special reasons or where substantial period of sentence has been undergone. Where the appeal will be decided expeditiously, there need not be suspension of sentence and grant of bail to the accused. In this case the Hon'ble Court denied suspension of sentence and grant of bail as no special reasons are made out and appeal can be decided expeditiously.

CRAA No. 54/2007
State v. Nirmal Singh and Ors.
Decided on: July 11, 2019
(High Court of Jammu & Kashmir)

Accused in this case tried by the trial court in charge under sections 8/20, 22 and 29 of NDPS Act for possession of contraband namely brown sugar and acquitted on the ground of no cogent evidence to establish search and seizure and the prosecution failing to establish the guilt of the accused beyond reasonable doubt. Appeal against the judgment of the acquittal. Held that - the prosecution has failed to establish that the seized contraband was deposited in the Malkhana immediately after its seizure and till the time it was produced for forensic analyses by FSL it remained with Malkhana. Mere oral testimony in this regard, without producing the Malkhana register and examining the Malkhana incharge is not sufficient. Also held - that the oral

testimonies of the witnesses without producing the seized material before the court would not be sufficient to prove the possession of contraband by the accused. Appeal dismissed.

CRMC No.537/2016
Pawan Kumar Kohli v. State of J&K and Anr.
Decided on: July 01, 2019
(High Court of Jammu & Kashmir)

FIR registered against the petitioners on the basis of order passed by the Custodian General in which he directed the cancellation of mutation entry made on the basis of an alleged non-existent order of the custodian, thereby falsification of the official record. Investigation initiated for commission of offences by the petitioners, punishable in terms of section 5 (1) (d) read with section 5 (2) of Prevention of Corruption Act and sections 420, 468 and 471 of RPC. Order passed by the Custodian General challenged. The revisional Court set aside the order under challenge and directing rehearing of the matter. The FIR and consequent investigation quashed as the order which was the basis for lodgment of FIR is not in existence.

CRR No. 11/2019
Mst. Zahoora Bano v. Fayaz Ahamd Khan & Others
Decided on: July 12, 2019
(High Court of Jammu & Kashmir)

FIR lodged for commission of offences under Sections 147, 148, 552, 307 & 427 RPC. Victim admitted in the hospital died during the course of investigation. Investigation concluded and final report submitted before the Magistrate, indicting accused for commission of offences under Sections 307, 147, 148, 427 & 452 RPC. On receiving the case after committal the Session Court framed charges for offences under Sections 304(1), 147, 148, 427, 452 RPC. Revision against the order framing charge. Contended that Court has faulted in framing charge for offence under Section 304 RPC instead of 302 RPC. Held that - the Trial Court while framing charge ought to have disclosed reasons for not framing charge under Section 302 RPC, when in the circumstances it was one of the probabilities. Without citing reasons the Court framed charge in offence under Section 304(1) RPC, which is bad in law.

CRMC 230/2018
Advocate Javid Samad v. State of J&K & Ors.
Decided on: July 01, 2019
(High Court of Jammu & Kashmir)

FIR registered on the direction of Executive Magistrate (Tehsildar) concerned, for commission of offence under Section 447 RPC and investigation commenced. Challenged mainly on the ground that the Executive Magistrate cannot direct investigation in terms of Section 156(3) CrPC. Held that - Executive Magistrate cannot exercise power under Section 156(3) CrPC, however, he can give information to the police in any matter which is brought for his consideration, upon which FIR can be registered by the police if cognizable offence is disclosed. In the facts and circumstances of this case and since the IO is yet to formulate his opinion as to commission or otherwise of the offence, no interference required.

CIVIL

"The trinity of the goals of the Constitution, viz socialism, secularism and democracy cannot be realized unless all sections of the society participate in the State power equally, irrespective of the caste, community, race, religion and sex and all discriminations in the sharing of the State power made on those grounds are eliminated by positive measure."

P.B. Sawant, J. ***in Indra Sawhney v. Union of India, 1992 Supp(3) SCC, 217, para 416***

Civil Appeal No. 4478 of 2007
Sopanrao and another v. Syed Mehmood & Ors.
Decided on: July 03, 2019

Hon'ble Supreme Court rejected the contention of the appellants that limitation for the suit was three years as the suit was one for declaration when the main prayers made in the suit indicated that was a suit not only for declaration, but the plaintiffs had also prayed for possession of the suit land.

Hon'ble Court observed that the limitation for filling a suit for possession on the basis of title is 12 years and, therefore, the present suit was within limitation. Merely because one of the reliefs sought is of declaration, that will not mean that the outer limitation of 12 years is lost.

The judgment in the case of Hanumanthapa v. H.B. Shivakumar was held to have no applicability since that case was only a suit for declaration, and a suit for both declaration and possession. In a suit filed for possession based on title, the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit on the basis of title cannot succeed unless he is held to have some title over the land. Since, the main relief was of possession, the suit would be governed by Article 65 of the Limitation Act, 1963 which deals with a suit for possession of immovable property or any interest there in based on title and the limitation is 12 years from the date when possession of the land becomes adverse to the plaintiff.

Civil Appeal No(s).5901-5902 of 2009
Ganesan (D) Through LRS v. Kalanjiam & Ors.
Decided on: July 11, 2019

Hon'ble Supreme Court held that section 63 (c) of the Succession Act requires an acknowledgement of execution by the testator followed by the attestation of the Will in his presence. The provision gives certain alternatives and it is sufficient if conformity to one of the alternatives is proved. The acknowledgement may assume the form of express words or conduct or both, provided they unequivocally prove an acknowledgement on part of the testator. Where a testator asks a person to attest his Will, it is a reasonable inference that he was admitting that the Will had been executed by him. There is no express prescription in the statute that the testator must necessarily sign the will in presence of the attesting witnesses only or that the two attesting witnesses must put their signatures on the will simultaneously at the same time in presence of each other and the testator.

Civil Appeal No. 5383 of 2019
National Highways Authority of India v. Gayatri Jhansi Roadways Limited
Decided on: July 10, 2019

Hon'ble Supreme Court held that the arbitrator's fees may be a component of costs to be paid but it is a far cry thereafter to state that section 31(8) and 31A would directly govern contracts in which a fee structure has already been laid down.

Civil Appeal No.5534 of 2019
Sir Sobha Singh And Sons Pvt. Ltd. v. Shashi Mohan Kapur(Deceased) Thr. L.R.
Decided on: July 15, 2019

Hon'ble Supreme Court held that it was not right to hold that in the absence of a formal decree not being drawn or/and filed, the appellant (decree holder) had no right to file the Execution petition on the strength of the consent order.

Though Rule 6A (2) of Order 20 of the Code deals with the filing of the appeal without enclosing the copy of the decree along with the judgment, and further provides the consequence of not drawing up the decree yet the principle underlined in Rule 6A(2) can be made applicable also to filing of the execution application under Order 21 Rule 2 of the Code.

Order 21 Rule 11(3) of the Code makes it clear that the Court "may" require the decree holder to produce a certified copy of the decree. This clearly indicates that it is not necessary to file a copy of the decree along with execution application unless the Court directs the decree holder to file a certified copy of the decree.

As and when the decree holder files an application for execution of any decree, he is required to ensure compliance of three things. First, the written application filed under Order 21 Rules 10 and 11 (2) of the Code must be duly signed and verified by the applicant or any person, who is acquainted with the facts of the case, to the satisfaction of the Court; Second, the application must contain the details, which are specified in clauses (a) to (j) of Rule 11 (2) of the Code, which include mentioning of the date of the judgment and the decree; and Third, filing of the certified copy of the decree, if the Court requires the decree holder to file it under Order 21 Rule 11(3) of the Code.

Civil Appeal No. 2420 of 2018
R Lakshmikantham v. Devaraji
Decided on: July 10, 2019

Hon'ble supreme Court held that the observation that time was of essence in the agreement involved in this case, was incorrect. Clause 3 of the agreement involved had to be read along with clauses 5 and 8, which clearly showed that, in the nature of reciprocal promises, the promise made by the seller in clause 5 had to be performed first, viz., that the title documents were to be obtained from the mortgagee after the mortgage was cleared. It is only then the balance consideration for the sale, had to be paid.

It is noted that clause 3 provided that the balance sale consideration shall be paid by the party of the second part to the party of the first part within three months from that day, and that the party of the first part agreed to execute sale deed on the day on which the balance sale consideration was paid. And the clauses 4 and 5 respectively provided that the party of the second part agreed to pay part of the sale consideration of Rs.60,000/- to the party of the first part on or before 10th day of October. And the party of the first part had handed over the original title documents to the mortgagee and the party of the second part shall settle the loan, receive the documents from the mortgagee and keep the same in his custody.

Civil Appeal No 5360 of 2019
Surinder Pal Soni v. Sohan Lal (D) Thru LR & Ors
Decided on: July 23, 2019

In the present case, the fact situation was that a decree for possession by way of specific performance of the agreement to

sell was passed in favour of the plaintiff, on making balance sale consideration amount to the L.Rs. of defendant No.1. And the L.Rs of the defendant No.1 were directed to execute the sale deed in respect of the remaining suit land within a period of two months. Both the appellant and the respondent filed appeals against the judgment of the Trial Court, and a notice was issued in the appeal and on the application for stay filed by the respondent. The appellant filed proceedings on 15 June 2012 seeking the execution of the decree passed in his favour, pending the first appeal. The respondent filed objections to the execution petition. Both sets of appeals were dismissed. The executing court rejected the objections of the respondents to the execution of the decree, and allowed the appellant's execution petition. The respondent then filed a civil revision before the High Court which resulted in the judgment dated 1st June 2018 by which the order of the executing court was set aside. The Hon'ble High Court held that there was a failure on the part of the appellant to deposit the balance of the sale consideration within a period of two months from the date of the decree and as a consequence the decree had been rendered in-executable by virtue of the provisions of Section 21 of the Specific Relief Act 1963.

Hon'ble Supreme Court held that the submission that since the decree was not stayed pending the disposal of appeal, there was no impediment in its execution, and, upon the failure of the appellant to deposit the balance in the execution proceedings, the decree had become in-executable, and that the application of doctrine of merger stands obviated, in such a situation, cannot be accepted.

Civil appeal No. 5632 of 2019
Shamsher Singh and another v. Lt. Col. Nahar Singh (D) THR. LRS. & others
Decided on July 29, 2019

Hon'ble Supreme Court held that earlier (before the amendment of Rules 101 and others order XXI CPC) a person who was a bona fide claimant and who satisfied that he was in possession of the property on his own account or on account of some other person then the judgment-debtor, could have been put in possession of the property on an application under Rules 100 and 101, whereas now after the amendment, for putting back into possession, an applicant has not only to prove that he is in bona fide possession rather he has to prove his right, title or interest in the property. What was earlier to be adjudicated in a suit under unamended Rule 103 is now to be adjudicated in Rule 101 itself, and by simply proving that he was in possession prior to the date he was dispossessed by decree-holder, he is not entitled to be put back in possession.

Hon'ble Court reproduced inter alia the following from the judgment in the case of Shreenath and Another Vs. Rajesh and Others, (1998) 4 SCC 543:

"3. In interpreting any procedural law, where more than one interpretation is possible, the one which curtails the procedure without eluding justice is to be adopted. The procedural law is always subservient to and is in aid of justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed."

Hon'ble Court also held that in the proceeding under Order XXI Rules 99, 100 and 101, right, title or interest has to be determined and without establishing right, title or interest, the respondent No.1 cannot claim that he should be put back into possession. Without the determination of

right, title or interest, the application could not have been allowed.

MA No. 203/2017 and MA No. 204/2017
National Insurance Co. Ltd. v. Naresh Kumar Sawhney & ors.
Decided on: July 12, 2019
(High Court of Jammu & Kashmir)

The petitioners before the Motor Accident Claims Tribunal having suffered the motor accident claim compensation. The tribunal awarded compensation including the compensation for loss of future earnings. The disability certificates disclosing the permanent disablement of 28% and 32 % respectively of their respective lower limbs, translating into 13% and 16% respectively permanent disablement of their bodies. The tribunal awarding compensation for loss of future income based on the permanent disability suffered in the bodies of the petitioners. Appeal against the award of the tribunal by the insurance company. Held that there is no evidence on record to suggest that the permanent disability suffered by the petitioners has been anyway affected their earning capacity and thereby likely to affect their future income. The petitioners were government employees and their future prospects in their career have not been affected in any manner. They have continued with their employment and have even been promoted. The petitioners have not produced any evidence as to what they are likely to do after their retirement and that the disability suffered by them shall in any manner affect their earning capacity. Compensation granted by the tribunal on account of future loss of income is therefore set aside. Hon'ble Court referred to Raj Kumar v. Ajay Kumar & Ors, 2011 ACJ 1.

MA No. 7/2019
United India Insurance Company Ltd. V. Mst. Haneefa & Others
Decided on: July 09, 2019
(High Court of Jammu & Kashmir)

Claim petition allowed by Motor Accident Claims Tribunal rejecting the contention of Insurance Company that the claimants have failed to establish that documents pertaining to the vehicle and the driving license were valid. Award challenged. Insurance Company projecting that when the Insured was asked to submit the original documents to the Insurance Company, he had not submitted the documents. Therefore, inference should be drawn that the insured was not possessed of the valid documents, thereby the Insurance Company is under no obligation to indemnify the insured in respect of compensation awarded by the tribunal. Held that. Non submission of documents by the owner and driver has not to be inferred that they were not in possession of the requisite documents which make them eligible to drive the vehicle at a public place. It is for the insurance company to prove its defense that there is willful breach of insurance policy by the insured.

MA No. 124/2017
M/s New High Land Hotel v. United India Insurance Company Ltd. & another
Decided on: July 4, 2019
(High Court of Jammu & Kashmir)

Insurance Company failing to indemnify the insured in respect of fire risk covered under the insurance policy pertaining to a hotel. Insurance Company appointing surveyor, who assessed the loss and gave his report one year after the fire incident. Insurance Company not settling the insurance claim. The insured filed consumer complaint before State Consumer Commission. State Commission awarded

compensation assessing the compensation below the rate accessed by the surveyor, basing on the contention of the Insurance Company that surveyor has not properly calculated 50% depreciation and awarded interest at the rate of 6% from the date of filing of complaint. Appeal against. Held that - award of compensation is not proper as the State Commission had no justification not to accept the report of the surveyor. The Insurance Company had not cited any valid reason to deviate from the report of the surveyor. Award of interest is also improper. The Insurance Company was at fault in not settling the Insurance claim expeditiously. Interest @7.5% awarded from the date of submission of survey report to the Insurance Company.

MA No. 503/2014
Oriental Insurance Co. ltd v. Shakeela Begum and ors
Decided on: July 17, 2019
(High Court of Jammu & Kashmir)

Hon'ble High Court of J&K held that the plea of the insurer that it was absolved of the liability to indemnify the owner to pay the compensation to the claimants on the ground that the driver of the offending vehicle was not in possession of a valid driving licence, having endorsement authorizing him to ply the Public Service Vehicle, has no substance and, therefore, cannot be accepted.

Hon'ble Court also referred the law laid in this regard in Mukund Dewangan Vs. Oriental Insurance Company Limited; 2017 AIR (SC) 3668

Activities of the Academy

Two Day Training Programme on 'Cyber-Law including Cyber-Crimes, Cyber-Forensics, Cyber-Security' organisied by J&K State Judicial Academy in collaboration with Information Technology Department J&K.

Day –1

On 27th & 28th July, 2019 J&K State Judicial Academy organised a two-day Training Programme for Judicial Officers, Investigators, Prosecutors, Law Officers and Officers from Anti Corruption Bureau on 'Cyber Law including Cyber-Crimes, Cyber Forensics And Cyber Security' at J&K State Judicial Academy, Mominabad Srinagar.

The Training was jointly organized by J&K e-Governance Agency (J&KeGA) and J&K Information Technology Department in collaboration with J&K State Judicial Academy.

The Training Programme intends to build capabilities of judicial and other stakeholders in justice dispensation regarding the Cyber Laws, Cyber-Security, Cyber-Forensics, thereby generating adequate trust and confidence in IT systems. It will also create an assured framework for the design of security policies and for promotion and enabling actions for compliance with global security standards.

Speaking on the inaugural function, Advisor to Governor, K. Skandan said, Cyberspace is a complex environment consisting of interactions between people, software and services, supported by worldwide distribution of information and communication Technology devices and networks. He said that cyberspace is expected to be more complex in the foreseeable future, with many fold increase in networks and devices connected to it.

The Advisor said that owing to the numerous benefits brought by technological advancements, the cyberspace today is a common tool used by citizens, businesses, critical information infrastructures, and

governments in a manner that makes it difficult to draw clear boundaries among these different groups.

While dealing with the cyber space, Advisor Skandan said that there is a need to understand the Cyber Laws and the security aspect of Cyber Space. He said that this workshop will help the participants to understand different aspects of Cyber Law.

The inaugural function was attended by Jude High Court of J&K, Justice Tashi Rabstan; Commissioner Secretary, Information Technology Department, Rigzin Samphel; Advocate General, J&K, DC Raina; Director J&K State Judicial Academy, Rajeev Gupta; Manager, J&K e-Governance Agency (J&KeGA), Mohsin Wani and Vice President, National Institute for Smart Government, Srinath Chakravarthy.

Speaking at inaugural session, Justice Tashi Rabstan highlighted the need to build synergy between all the stakeholders in justice delivery system, so as to take the challenges head on. He said that dissemination of knowledge of cyber law and cyber security regime is essential to create a safe cyber environment. He further added that a constant research is needed by the law enforcing agencies to keep ahead of the unscrupulous elements on cyber law.

National-level security expert and Founder of ROOT64 Technologies, Amit Dubey was the resource person for the technical sessions conducted on the first day. Four technical sessions were held, which included introduction to computer hardware and other electronic devices and their terminologies, introduction to latest cyber-crimes and investigation methods, introduction to crimes related to social media like Facebook and Whatsapp, Crime associated with online banking and cashless transactions like credit and debit cards, e-banking app, e-wallet etc, case study and security guidelines. The resource person gave practical demonstrations to give insight into aspects of the technology.

Day 2

On the second day four technical seasons were conducted by resource persons Amit Dubey and Bivas Chatterji, the renowned experts on Cyber law. In these sessions the practical and legal aspects of cyber law regime from the perspective of prosecutors and judges, were discussed. Both the speakers discussed the live case study to highlight various facets and issues arising while collecting and producing evidence in the courts of law, relating to cyber crimes as well as non cyber crime cases. Through practical demonstrations the resource persons showed that in seemingly very difficult cases also cyber forensics has lead to unraveling the truth and ultimately learning to conviction of culprits. Judgments delivered by superior courts of the country and development of law in foreign jurisdictions was also deliberated upon.

One session was devoted to the issues concerning the invisible cyber space known as Dark-net as also the kind of activities done on it. It was told that whole world including the technologically developed countries are grappling with the threat created by the Dark-net on the peace, security and law and order of these countries. Mention was also made to the concerted efforts being made by many organizations to come up with policy framework and developing technological tools to deal with the challenge posed by the Dark-net.

In the valedictory session Dr. Padmja, DGM NISG, Hyderabad, Irfan Sufi, Project Manager J&K e-Governance Agency and Rajeev Gupta, Director J&K State Judicial Academy responded to the comments and suggestions made by various participants from Judiciary, Investigation and prosecution wings of the State and other law officers. Programme concluded with distribution of participation certificates by NISG and vote of thanks proposed by Rajeev Gupta, Director, J&K State Judicial Academy.

The Academy shall be conducting series of programmes in the months of August and September 2019.

JUDICIAL OFFICERS' COLUMN

Basic concept of issue estoppel in the criminal law

The principle of issue-estoppel is entirely a creature of judicial decisions, and has not been embodied in the Code of Criminal Procedure. The rule of issue-estoppel in a criminal trial is that where an issue of fact has been decided by a competent Court on a former occasion and a finding is reached in favour of an accused, such a finding constitutes an estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as barring the reception of evidence to disturb the finding of fact in a subsequent or different trial of the accused.

The rule of issue-estoppel relates only to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent Court at a previous trial. The rule as to issue-estoppel applies where same issue was distinctly raised and inevitably decided in earlier proceedings between the same parties.

The essentials of the rule of issue-estoppel are:

(i) The parties in the two proceedings must be the same;

(ii) The issue that was decided earlier must be identical with that which is sought to be re-agitated.

The issue-estoppel applies only when both the earlier and the present proceedings are criminal prosecutions.

Where an issue has been decided by a competent Court on a former occasion, such a finding constitutes an estoppel or res judicata against the parties to that proceeding. It will operate as a bar to reception of evidence to disturb that finding in a subsequent trial or proceedings, the principle is known as rule of estoppel.

Where an issue of fact has been decided by a competent Court on a former occasion in favour of the accused, such finding operates as estoppel or res judicata against the prosecution.

Contributed by -
Mr. Mohammad Ashraf Bhat,
Sub-Judge Bijbehara

GLIMPSES FROM "ACCESS TO ALL SENSITIZATION PROGRAM"