SJA NEWSLETTER

Monthly Newsletter published by the
Jammu & Kashmir State Judicial Academy

Volume - I, Issue 12 **December, 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)

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Topic of the Month

"In our democratic polity under the Constitution based on the concept of "rule of law" which We have adopted and given to ourselves and which serves as an aorta in the anatomy of our democratic system, THE LAW IS SUPREME. Everyone, whether individually or collectively, is unquestionably under the supremacy of law. Whoever he may be, however high he is, he is under the law. No matter how powerful he is and how rich he may be. Any country or society professing the rule of law as its basic feature or characteristic does not distinguish between high or low, weak or mighty."

"The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. That is why it is imperative and invariable that courts' orders are to be followed and complied with."

"T. N. Godavarman Thirumulpad v. *Ashok Khot & Anr." (2006)5 SCC 1.*

SOME RECENT SUPREME COURT JUDGMENTS OF PUBLIC IMPORTANCE (Delivered from 01-07-2008 to 31-09-2008)

1. On 8th July, 2008, a two Judges Bench in Haryana Financial Corporation vs. Kailash Chandra Ahuja [C.A. No. 4222 of 2008], held that "though supply of report of Inquiry Officer is part and parcel of natural justice and must be furnished to the delinquent- employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show 'prejudice'. Unless he is able to show that non-supply of report of the Inquiry Officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent-employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down."

2. On 10th July, 2008, a two Judges Bench in Faqir Chand Gulati vs. Uppal Agencies Pvt. Ltd. & Anr. [C.A. No. 3302 of 2005] examined the question as to whether a land owner, who enters into an agreement with a builder, for construction of an Apartment Building and for sharing of the constructed area, is a 'consumer' entitled to maintain a complaint against the builder as a service-provider under the Consumer Protection Act, 1986. The Bench held that "if there is a breach by the landowner of his obligations, the builder will have to approach a civil court as the landowner is not providing any service to the builder but merely undertakes certain obligations towards the builder, breach of which would furnish a cause of action for specific performance and/or damages. On the other hand, where the builder commits breach of his obligations, the owner has two options. He has the right to enforce specific performance and/or claim damages by approaching the civil court. Or he can approach the Forum under Consumer Protection Act, for relief as consumer, against the builder as a service- provider. Section 3 of the Act makes it clear that the remedy available under the Act is in addition to the normal remedy or other remedy that may be available to the complainant."

"The District Forum, the State Commission and the National Commission committed a serious error in wrongly assuming that agreements of this nature being in the nature of joint venture are outside the scope of consumer disputes", the Bench said.

3. On 10th July, 2008, a two Judges Bench in Satish Sitole vs. Smt. Ganga [C.A. No. 7567 of 2004] examined the question as to whether a marriage which is otherwise dead emotionally and practically should be continued for name sake. Having considered the materials before it and the fact that out of 16 years of marriage the parties had been living separately for 14 years, the Bench held "that any further attempt at reconciliation will be futile and it would be in the interest of both the parties to sever the matrimonial ties since the marriage has broken down irretrievably." In the circumstances of the case, the Bench held that "since the marriage between the parties is dead for all practical purposes and there is no chance of it being retrieved, the continuance of such marriage would itself amount to cruelty", and, accordingly, in exercise of its powers under Article 142 of the Constitution, the Bench directed that the marriage of the parties shall stand dissolved, subject to the appellant-husband paying to the respondent-wife a sum of Rupees Two lakhs by way of permanent alimony.

4. On 22nd July, 2008, a three Judges Bench in Swamy Shraddananda @ Murali Manohar Mishra vs. State of Karnataka [Crl. A. No. 454 of 2006] stressed on the need to "lay down a good and sound legal basis for putting the punishment of imprisonment for life, awarded as substitute for death penalty, beyond any remission and to be carried out as directed by the Court so that it may be followed, in appropriate cases as a uniform policy not only by this Court but also by the High Courts, being the superior Courts in their respective States."

"The unsound way in which remission is actually allowed in cases of life imprisonment make out a very strong case to make a special category for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond the application of remission", the Bench said.

The Bench held that "if the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the

court, i.e., the vast hiatus between 14 years' imprisonment and death."

In the facts and circumstances of the case, the Bench "substituted the death sentence given to the appellant by the trial court and confirmed by the High court by imprisonment for life and directed that he shall not be released from prison till the rest of his life."

5. On 21st August, 2008, a two Judges Bench in Agricultural Produce Market Committee, Narela, Delhi vs. Commissioner of Income Tax & Anr. [C.A. No. 5180 of 2008], while deciding the question as to whether Agricultural Market Committee is a 'local authority' under Explanation to Section 10(20) of the Income Tax Act, 1961 held that the Agricultural Market Committees are not entitled to exemption under Section 10(20) of the Income Tax Act after insertion of the said Explanation vide Finance Act, 2002 with effect from 1.4.2003.

6. On 1st September, 2008, a three Judges Bench in State of Maharashtra vs. Bharat Shanti Lal Shah & Ors. [Crl. A. Nos. 1376-79 of 2008], examined the constitutional validity of the Maharashtra Control of Organised Crime Act, 1999. The Bench held that the Act "contains sufficient safeguards" and the contention of the respondents that provisions of Section 13 to 16 of the Act are violative of Article 21 of the Constitution could not be accepted. The decision of the High Court striking down the words "or under any other Act" from sub-Section (5) of Section 21 of the Act was however upheld.

7. On 5th September, 2008, a two Judges Bench in Sooraram Pratap Reddy & Ors. vs. District Collector, Ranga Reddy District & Ors. [C.A. No. 5509 of 2008], held that in the facts and circumstances of the case, the action of the State in initiating acquisition proceedings for establishing and developing infrastructure project could not be held contrary to law or objectionable.

In the present case, the State of Andhra Pradesh had taken a policy decision for development

of the City of Hyderabad and for the said purpose, it decided to establish an Integrated Project to make Hyderabad a major Business-cum-Leisure Tourism Infrastructure Centre for the State. The project was both structurally as well as financially integrated and was to be implemented through Andhra Pradesh Infrastructure and Investment Corporation (APIIC), an instrumentality of State.

The Bench held that "development of infrastructure is legal and legitimate 'public purpose' for exercising power of eminent domain. Simply because a Company has been chosen for fulfillment of such public purpose does not mean that the larger public interest has been sacrificed, ignored or disregarded. It will also not make exercise of power bad, *mala fide* or for collateral purpose vitiating the proceedings."

"In case of integrated and indivisible project, the project has to be taken as a whole and must be judged whether it is in the larger public interest. It cannot be split into different components and to consider whether each and every component will serve public good. A holistic approach has to be adopted in such matters. If the project taken as a whole is an attempt in the direction of bringing foreign exchange, generating employment opportunities and securing economic benefits to the State and the public at large, it will serve public purpose", the Bench said.

The Bench held that "it is primarily for the State to decide whether there exists public purpose or not. Undoubtedly, the decision of the State is not beyond judicial scrutiny. In appropriate cases, where such power is exercised *mala fide* or for collateral purposes or the purported action is de hors the Act, irrational or otherwise unreasonable or the so-called purpose is 'no public purpose' at all and fraud on statute is apparent, a writ-court can undoubtedly interfere. But except in such cases, the declaration of the Government is not subject to judicial review. In other words, a writ court, while exercising powers under Articles 32, 226 or 136 of the Constitution, cannot substitute its own judgment for the judgment of the Government as to what constitutes 'public purpose".

NEWS AND VIEWS

Lok Adalat

In the month of October 2008, 499 cases were settled in the Lok Adalats held in the different parts of the State of Jammu & Kashmir. Out of these, 62 cases were settled at pre-litigation stage. Compensation to the tune of Rs 3.16 crores 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, 48 eligible persons were given free legal aid during the month.

Don't ignore traffic notices, failing to pay fine for traffic violations can now land you in jail.

The Delhi Traffic Police arrested 10 persons on Thursday for not responding to court summons

sent to them after they repeatedly failed to pay fine or appear in court. All of them are accused of jumping red lights. After obtaining bailable warrants from Special Metropolitan Magistrate Mohammed Naki from the Underhill Court, the Delhi Traffic Police sent their men to the homes of 22 offenders, of which 10 were arrested.

"Laws and provisions to arrest existed all through, but there was no proper follow up done resulting in pending notices. It involved a lot of liasoning with magistrates to issue bailable warrants so that the violators who don't bother to pay fines, do not get away easily," said Additional Commissioner of Police Muktesh Chander. "This is just a beginning. Today we have taken strict action for warrants issued by one court. In the coming days same can be done for all traffic courts."

Every year, the traffic police's notice branch sends more than 10 lakh challans but most remain unpaid. More than 13 lakh such notices were sent in 2007, of which only 17 per cent were paid. Sensing the need to correct the scenario, the traffic police decided to go in for a step-by-step yet a strict approach. Notice branch challans for jumping red light were chosen and equipped with digital photos from red light (jump/speed) cameras at 15 intersections, the traffic police could send proof of violations to the offenders along with the notices.

(HT /05.12.2008)

Court can order CBI probe in sensitive cases : Centre

The Centre submitted before the Supreme Court that there was no restraint on the judiciary to order a CBI probe into sensitive cases having national and international ramification.

"There is no restriction on the powers of the courts (high courts and apex court) under Articles 226 and 32 of the Constitution for ordering CBI probe in a case," Solicitor General G E Vahanvati submitted, stressing that such power has always been with the courts to protect the fundamental rights of citizens.

The five-member Bench headed by Chief Justice of India K G Balakrishnan was hearing arguments on a batch of petitions questioning the inherent power of the courts and Centre to order CBI probes without the consent of states. "The court can intervene if in any way it is convinced that there is a violation of fundamental rights guaranteed under Article 14, 19 etc," Vahanvati told the Bench terming the arguments of the West Bengal Government as "baseless".

West Bengal had contended that the power to order a CBI probe was solely vested with the respective State Governments and even the Centre has no power to order a probe by the central agency unless the state concerned gave its nod.

(IE./11.12.2008)

Case boomerangs on dowry givers

This may act as a reminder that "giving" dowry is also an offence. In perhaps the first of its kind case, a Noida court has ordered the registration of a criminal case against a woman, her parents and brother for allegedly giving dowry. The Noida Chief Judicial Magistrate ordered the registration of an FIR against Sarita (name changed) and her family members after her husband Hari (name changed) filed a complaint alleging that they were trying to extort money by filing a dowry demand case against him. Hari is an engineer.

Hari, who spent a week in jail after the allegation, said the police did not verify the financial background of his in-laws who claimed they had given Rs 12 lakh and a Maruti Alto as dowry to him. Hari also contended that, in any case, dowry-givers are considered accomplices under the Dowry Prohibition Act. Hari used the Right to Information (RTI) Act to challenge his wife's claim and the police's refusal to register a case on his complaint. The RTI reply showed that the police registered the case against Hari on the verbal complaint of Sarita and that the charges against him were never verified, his counsel Pradeep Nawari said.

The Delhi High Court had recently said women or their parents who go ahead with marriage despite dowry demands from the bridegroom's side would have to be seen as "accomplices to the crime" and "will face prosecution" under the Dowry Prohibition Act.

(HT /04.12.2008)

Acquittal by trial court carries a lot of weight : SC

In the long and tortuous three-tier litigation system in India, what is the value of a trial court order acquitting an accused when the state has the option of appealing against it before the high court and then in the Supreme Court?

Quite a lot, answered the Supreme Court through a recent judgment. The clean chit given by the trial court provides a "double presumption" of innocence in favour of the accused, said a three-judge Bench headed by Justice Arijit Pasayat.

"First, the presumption of innocence is available to him (the accused) under the fundamental

principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court," said Justice Pasayat, writing the judgment for the Bench.

But, this was not to bar the appellate courts - the High Court or the Supreme Court - from re-appreciating the evidence and, if necessary, quashing the acquittal if evidence was found sufficient for the purpose, the Bench said. "An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded," it said. After such re-appreciation, if there were two possible views — one favouring the acquittal as had already been recorded by the trial court and the other pointing towards his guilt — then the appellate court should go with the trial court's finding.

"If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of the acquittal recorded by the trial court," the Bench said.

(TOI/11.12.2008)

HC thwarts cops' attempt to mislead court with tampered report

Several Ludhiana Police officers are in the dock for attempting to mislead the Punjab and Haryana High Court by tampering with the inquiry report of a criminal case. The officers, including the Ludhiana Senior Superintendent of Police, allegedly prepared a backdated report and submitted it in the High Court in connection with a contempt petition filed against the SSP.

The petition had demanded that directions be issued to the Ludhiana Police to take action on a criminal complaint filed in 2007. The petitioners had alleged that a few men had fired gunshots at them and fled. "We identified the accused but no action was taken by the police," stated the petition. Aggrieved, they moved the High Court demanding contempt proceedings against the police officers. On issuance of notices, the SSP produced a xerox copy of an undated inquiry report. Suspecting foul play, the High Court summoned the records. The original report was found to have two separate dates on it, written in different ink.

Raising his eyebrows, Justice Permod Kohli observed: "It appears that these two dates — September 2 under seal of SSP Ludhiana and August 31 under the stamp — have been inserted later. This is a very serious matter as the police seem to have tried to mislead this court. I direct the registrar to forward the documents to the Government Forensic Science Laboratory, Sector 36, Chandigarh, for examination."

(I.E./13.12.2008)

LEGAL JOTTING

(Case No: Criminal Appeal No. 356 of 1999 With S.L.P. [Crl.] Nos. 3788-3790 of 1998)

State of A.P. Appellant versus Rayaneedi Sitharamaiah and others Respondents

Date of Decision : 19/12/2008.

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

Subject Index: IPC Section 302, 148 — Karamchedu rioting case — four of the 84 accused persons of Police case convicted by the sessions Court under section 302 — the same four convicted under IPC. Section 148 — fifty accused in the same case convicted under section 148 IPC — remaining 29 persons of the police case and other accused persons of complaint case acquitted — three appeals were filed before High Court against judgment of trial Court — one by the fifty persons above, another by five accused who were convicted under sec. 302 and 148 and third appeal by State of Andhra Pradesh — High Court allowed both the appeals filed by the accused, acquitted them of charges — dismissed the appeal filed on behalf of State of Andhra Pradesh — three appeals before Supreme Court by State of Andhra Pradesh — order of acquittal by High Court in relation to 16 accused persons in a criminal appeal is upheld — as for 29 accused in another complaint and the two main accused in yet another criminal complaint, Prosecution has succeeded in proving the charges under sec. 148 of I.P.C. and High Court was not justified in acquitting them — appeal against 29 respondents is allowed, High Court order acquitting them is set aside and order of conviction under sec. 148 recorded by trial Court is restored — appeal against respondent no. 5 is allowed — not necessary to pass any further order in the criminal special leave petition — disposed of.

(Case No: Criminal Appeal No. 2087 of 2008)

Brij Nandan Jaiswal Appellant/Petitioner versus Munna @ Munna Jaiswal and another Respondents

Date of Decision : 19/12/2008.

Judge(s): Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice V.S. Sirpurkar.

Subject Index: IPC 302, 504 and 506 — accused allegedly beat up complainant's son, who died due to hemorrhage and resultant shock — accused taken in custody — bail application rejected by Sessions Judge — appealed — High Court concluded that the accused was entitled to be released on bail — respondent released — aggrieved, complainant filed special leave petition — Held : it is not as if once a bail is granted by any Court, the only way is to get it cancelled on account of its misuse — bail order can be tested on merits also — no reasons given by the High Court Judge while granting bail — Held : in serious cases like murder, some reasons justifying the grant of bail are necessary — High Court order set aside and High Court directed to decided the bail application again — accused shall immediately surrender — if he does not surrender , a non-bailable warrant be issued — appeal allowed to this limited extent.

CASE COMMENTS

Satya Narain Yadav v. Gajanand & Anr.
AIR 2008 SC 3284

Right of Private Defence - Ambit and Scope - An "offence" is defined as an act of omission or commission made publishable under the penal law of the land. Individual as well as group crime falls within its fold. Penal Code is the general criminal law of the country and unless the act of omission complained of is contrary to the provisions of Penal Code, no liability to punishment will be incurred . Apart from a proviso to a specific offence, the Penal Code carves out some general exceptions which can be invoked as a defence in a criminal trial. An act of omission or commission made punishable under the Penal Code will not be an offence if it is covered by any of the exception in chapter IV of the Penal Code. It is not open to a court trying a criminal charge to engraft on the provisions of the Penal Code any exceptions to criminal liability based on public Policy or on Common Law. The latest pronouncement of the Hon'ble Apex Court in 'Satya Narian Yadav Versus Gajanand another' reported in AIR 2008 SC 3284 deals with the ambit and scope of right of private defence embodied in Chapter IV of the Penal Code as an exception to criminal liability.

Held that Section 96 of Penal Code engrafts right of private defence which is essentially a defensive right available only when the circumstances justify it . The expression " Right of Private Defence" has not been defined in the section which lays down that nothing is an offence which is done in the exercise of right of private defence. Plea of private defence raised in a criminal trial has to be determined on the facts and circumstances of the case and no test in the abstract can be laid down to decide this question of fact. It is open to the Court to consider such plea even if the same has not been explicitly raised by the accused. The court must be satisfied from circumstances proved at the trial that the right of private defence has been legitimately exercised. Burden of proof of plea of right of private defence rests upon the accused who is required to discharge the burden:-

a. By adducing proof in the form of positive evidence; or

b. By eliciting necessary facts with regard to exercise of such right during cross-examination of prosecution witnesses.

The Court shall presume absence of circumstances justifying exercise of right of private defence unless the same is available from material on record. The court will have to assess the value and effect of prosecution evidence where exercise of such right emerge from cross examination of prosecution witnesses. The accused has to satisfy the court that the force was used to repel the attack or to prevent further reasonable apprehension of assault. The version emanating from accused has to be reasonable and probable. However, the standard of proof for discharging plea of right of private defence is not as onerous as proof of guilt resting upon prosecution. Preponderance of probabilities in favour of plea raised by accused and not proof beyond reasonable doubt is the requirement to discharge the burden of proof. Thus, the standard of proof required to prove a plea of right of private defence is more akin to the standard of proof laid down for civil cases.

Right of private defence may be exercised in relation to body or property of the person exercising the right or of any other person. Section 97 deals with right of private defence while section 99 prescribes its limits. Section 96 and 98 incorporate right of private defence against certain offences. However, such right embodied in section 96 to 98 and 100 to 106 is controlled by section 99. So far as exercise of right of private defence in relation to body is concerned, under Section 100 the right of a person extends to causing of death if there is reasonable apprehension that death or grievous hurt would be the consequences of the assault. The accused has to demonstrate that the circumstances gave rise to reasonable apprehension that either death or grievous hurt would have been the consequence of assault. The relevant factors to determine whether the accused was justified in exercising his right of private defence and whether the accused was justified in exercising his right of private defence and whether the force used to repel the assault is commensurate with the level of force used by the

assailant would be the nature of injuries sustained by the accused, the degree of threat to his safety, nature of injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities. Where the assault is imminent, the accused would be within his right to repel the force in self defence. The right commences as soon as the assault becomes imminent. The Hon'ble Apex Court cautioned that hyper technical approach must be avoided in considering what happens on the spur of the moment on the spot and due weightage must be given to the circumstances obtaining on spot keeping normal human reaction and conduct in view. The plea of right of private defence must be negatived where it is sought to be availed as a pretext for retaliation, vindictiveness or retribution. The right to defend does not arm the victim to launch an offensive particularly when the assault no more subsists.

(Bansi Lal Bhat)
Special Judge, Anti-corruption,
Jammu

State of Himachal Pradesh v. Asha Ram
AIR 2006 SC 381

Sexual violence against women is rising day by day. When such a crime is tried in a Court of law, the guilty, by taking benefit of the loopholes in the investigation, minor contradictions, and non corroboration of the victim's statement, go scot-free. Rising to the occasion, the Hon'ble Apex Court has expressed its concern about this trend. The trial courts have been directed to shun the technical attitude, and to be realistic. To send the signal down loud and clear to such elements, the Apex Court insisted upon adopting a responsible and realistic approach to such cases so that the perpetrators of sexual violence are made answerable to society. The Hon'ble Apex Court has time and again laid down that though corroboration of the testimony of the prosecutrix is guidance of prudence under given circumstances but certainly not a requirement of law. The conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration.

In 'Madan Gopal kakad v. Nawal Dubey', AIR 1992 SC 1480, it has been held by the Hon'ble Apex Court that a conviction can be safely recorded in a case where there is lack of corroboration to the statement of the prosecutrix provided the evidence of the victim does not suffer from any basic infirmity.

In 'State of Punjab v. Gurmeet Singh', 1996(2) SCC 384, the Hon'ble Apex Court has held :-

"Rape is not merely a physical assault-it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Court, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with 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...."

Now the Hon'ble Apex Court has laid down in AIR 2006 SC 381 that the Courts shall not be swayed by minor contradictions in the statement of the prosecutrix and look for corroboration to her statement. Instead the court should see no difficulty in acting on the testimony of a victim of sexual assault to convict an accused. The condition precedent is that the testimony of the prosecutrix shall be of such nature which inspires confidence and is found to be reliable. It has been held by the Apex Court that, " the evidence of the prosecutrix is more reliable than that of an injured witness. Even the minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case."

(Kaneez Fatima)
Presiding Officer
Motor Accident Claims Tribunal,
Srinagar

State of A. P. v. Gangula Satya Murthy
AIR 1997 SC 1588

Hon'ble Apex Court has given a landmark judgment on violence against women and children. The judgment has recognized the inherent dignity of a woman coupled with equal an inalienable rights of all members of human family which indeed is a foundation of freedom, justice and peace. The Supreme Court has cautioned that courts are expected to show great degree of responsibility and sensitivity while dealing the cases of rape. In 1991 in 'State of Maharashtra v. Madhukar N. Mirdikar', the Hon'ble Apex Court has observed "the unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect herself if there is an attempt to

violate her person against her wish. She is equally entitled to protection of law. Therefore, merely because she is of easy virtue her evidence cannot be thrown out."

In another judgment also in 'Bodhi Satwa v. M.Y. Sbhdra Chakraverty', 1996 SCC(1) 490, Hon'ble Supreme Court observed that rape is a crime not only against the person of a woman, is a crime against the entire society. It destroys the entire psychology of woman and pushes her into deep emotional crisis. Rape, therefore, is a most hated crime. It is a crime against humanity and is violative of victims most cherished right namely, right to life which includes right to live with human dignity as enshrined in Article 21 of our Constitution . Hon'ble Supreme Court further asserts that Courts must not weigh the evidence in a casual manner and must also be firm not to get swayed by the minor contradictions or insignificant discrepancies. Therefore, a duty is cast upon the courts to appreciate the evidence in the totality of the circumstances of the case rather to put the conclusion at the mercy of technicalities.

The present judgment also reiterates the dignity and honour of woman in Indian society and makes it clear that courts approach should not be of casting stigma on the character of prosecutrix such observation lack sobriety expected of a court, such stigma have adverse effect which encourages the criminals and victims hesitate to come forward or to render their assistance in bringing home the guilt to the criminals, that is the reason the Apex court has further observed that trial courts to use self restraint while recording such feeling which has large repercussions so far as the future of the victim of sex crime is concerned and even wide implications on the society on the whole.

(Mohammad Nazir Fida)
Principal District & Sessions Judge
Ganderbal

State of Maharashtra v. Priya Sharan Maharaj
1997(4) SCC 393

In the instant case a 69 year old spiritual leader impressed upon three young girls that he was incarnation of Lord Krishan, so they should accept him as such and in this way had sex with them.

Sessions Judge charged him for rape. The High Court on the grounds of late reporting of crime and unreliability of prosecution version of victim's story and other related facts after sifting of evidence held that no case for conviction could be possible and as such discharged the accused. Supreme Court setting the order of Hon'ble High Court held that under Section 227, 228 Cr. P.C, the court is required to sift the evidence for limited purpose to see as to whether there is sufficient ground to proceed against the accused and not whether the conviction is possible at the end, also observing that court should not give vent to fanciful considerations and apply the same standard of proof which is required at the time of framing charge to be applied at the end of the trial.

"The judgment in my opinion is relief to million of such woman who are exploited by the hypocrisy of so called Sadhus and self proclaiming spiritual leaders in religious institutions. Woman because of their social taboos and gender biased approach in the society fear to come to public to report crime because of the shame and harm to their reputation and fail to move the police in time to seek justice. The judgment on the one hand tries to evoke the conscience of a Judge to respond to the cry and call for justice and on the other hand to do away with preconceived prejudice which may arise on fanciful considerations. The judgment makes a judge to realize the sensitivity in dealing with offences against woman, children and weaker sections of the society where mindset of the judge is more important than the knowledge of bundles of books of law.

The cardinal Principle of Criminal Jurisprudence of presumption of innocence of accused and role of a judge in distinguishing between broader probabilities and inherent improbabilities at the stage of charge / discharge is not diluted though judge needs to act with responsibility in holding that no prima facie case for charge is made out while discharging the accused.

The import of section 268 and 269 Cr. P.C corresponding to Section 226, 228 of Central Cr. P.C is not the same as that of the conclusion of trial. The benefit of doubt to the accused helps him in acquittal at the end, but the same makes him to face the music of trial while framing the charge.

Besides the authority helps in dealing with effect of absence of injury marks on the person of the prosecutrix in given circumstances of the case, it also helps the courts to distinguish the circumstances in which "acts of submission" may or may not be taken as "consent".

The last page of judgment also pertains to the law that there should be no jumbling and joinder of occurrences and charges meaning thereby that there should be separate charge for each distinct offence and separate trial for each separate charge."

(Ramesh Kumar Wattal)
1st Addl. District & Sessions Judge,
Srinagar

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