SJA NEWSLETTER

Monthly Newsletter published by the
Jammu & Kashmir State Judicial Academy

Volume - 2, Issue 12 **December, 2009**

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@nic.in

Compiled, Composed & Layout by :
Pankaj Kumar Gupta
Deputy Registrar

Topic of the Month

"Despite its frustrations and difficulties, judicial work is, according to Lord Hailsham, 'a privilege, a pleasure and a duty. You are a Judge. In the performance of your judicial functions and exercise of judicial discretion you are not answerable to anyone except to your own conscience. The Constitution gives you that protection. But at the same time you are a public servant subject to certain rules of discipline. There will be testing times in your career. Your conscience would prompt you to do something for the public good but the limitations attaching with your office may prevent you from giving full vent to your feelings and you will feel suffocated. There will be good moments in your career when you will be filled with a sense of tremendous satisfaction that the might of your pen has proved stronger and sharper than the edge of any sword. In all such moments, learn to maintain your calm and cool, the peace and tranquillity of mind and emotions.

Let me tell you a small prayer which I call the prayer of a Judge. Though, you are sitting on the seat of judgment, you cannot change the world. Even God has not been able to fully redeem His own creation - the Universe, from all its evils. You have to serve the society and dispense justice by putting in the best of your ability, knowledge and wisdom. Always feel happy with what you have done and having exerted yourself to your best, have a sense of satisfaction. You have a great potential and the society has high expectations from you. Between what you think yourself capable of doing and what you can actually do, strike a balance, Begin your every day with this prayer :

"Oh God, give me courage,
To change the things I can change;
Grant me serenity,
To accept the things I cannot change;
And the wisdom,
To know the difference."

[Excerpts from key note address by Justice R.C.Lahoti, Judge, Supreme Court of India (as the Lordship then was) on the occasion of conclusion of Ist Foundation Training Programme at Delhi Judicial Academy.]

ACADEMY NEWS

1. One day Refresher course was conducted by the State Judicial Academy at Jammu on 13th of December, 2009 for Chief Judicial Magistrates and Judicial Magistrates of Group B, of Jammu province on the topics "Import of Sections 164 and 164-A Cr.P.C" and Procedure and Importance of Statement under Section 342 Cr.P.C".

Ist topic was dealt by Shri Janak Raj Kotwal, Spl. Judge, Anti-corruption, Jammu and 2nd topic was dealt by Shri Bansi Lal Bhat, Principal District and Sessions Judge, Jammu as Resource Persons.

Refresher course in Session

Shri Kotwal started the discussion on the topic from the historical perspective of Section 164-A CrPC and told the participants that J&K State is the first State to introduce the provision as was recommended by Justice Malimath Committee constituted for review of Criminal Laws. It was told that Section 164-A CrPC is different from the already existing provisions u/s 161 and 164 CrPC in the sense that it makes the involvement of Magistrate in the process of investigation being conducted by Investigating Officers. In a way, it is a step closer to inquisitorial system of investigation as is prevalent in Germany. While recording statement u/s 164-A CrPC, Magistrates are required to satisfy themselves about the voluntary character of the statement being given by the witness, which was the case for recording confessional statement of accused in terms of Section 164 CrPC. Another important feature of this provision is that statement of the witnesses is recorded on oath which makes it difficult for the witness to resile from the statement at the stage of trial. A provision has been added in the form of Section 195-A CrPC which makes giving or fabricating statement, an offence. It was further told by the learned Resource person that only the material witnesses are to be produced before Magistrate, by an investigating officer not below the rank of Sub-Inspector and such statement can be recorded where the punishment provided is death sentence, imprisonment for life and imprisonment for a period of 7 years or more. This provision will go a long way in ensuring that the witnesses who participate in investigation as material witnesses do not lie or give false evidence during trial. This will also help the courts in arriving at just conclusion in criminal trials. However, it was pointed out by the Resource person that there are some inherent anomalies in the provision which may be clarified at later stage through the judicial interpretation.

Refresher course in Session

Shri Bansi Lal Bhat while addressing the participants told that the provision u/s 342 CrPC is of utmost importance and cannot be taken as routine formality of trial. This is the stage when the accused gets opportunity to explain the incriminating material appearing against him in the statements of witnesses and the documentary evidence. Unless these incriminating statements and materials are not put to accused and its explanation is sought, court cannot proceed to use such evidence against the accused. Failure on the part of court to confront the accused with such incriminating material entails in vitiating the trial. Shri Bhat further told the participants that recording of statement u/s 342 CrPC cannot be exempted even if there is a slightest of incriminating material against the accused. Recording of such statement cannot be ignored for the simple reason that overall quality of evidence produced by the prosecution, ultimately would not result in conviction of accused. It was clarified by the Resource person that as per the mandate of judgment titled Keya Mukherji v. Magma Leasing Ltd. & Anr. Reported as AIR 2000 SC 1807, statement u/s 342 CrPC can be recorded in the form of written statement, if the accused is not in a position to appear personally for getting the statement recorded. Court can on the application of accused supported by personal affidavit, send a questionnaire through the lawyer

representing the accused. Accused is required to reply the questionnaire and furnish the written statement through counsel in the court. In this way, the intent of Section 342 CrPC is served. It was emphasized by the Resource person that the accused has a right of silence meaning that he can refuse to answer any query put by the court but such right is not an absolute right.

In the end, participants interacted with the Resource Persons and raised important issues which were discussed and satisfactorily resolved through the interaction. Participants were satisfied with treatment of the subjects by the Resource persons.

Orientation course in Session

2. State Judicial Academy organized Orientation course on "Plea Bargain" and "Role of a Judge while recording Evidence in criminal cases" on 20th and 27th of December, 2009 for the Chief Judicial Magistrates and Judicial Magistrates of Jammu Province in two Groups. Both the groups were addressed by Shri D.K. Kapoor and Shri Harbans Lal, Retd. District and Sessions Judges.

Orientation course in Session

Shri Kapoor while dealing with topic "Plea Bargain" gave the perspective of introduction of chapter relating to "Plea Bargain" in the Code of Criminal Procedure. It was told by the Resource persons that the concept of "Plea Bargain" has been borrowed from the American and European systems of Criminal Jurisprudence. It has been introduced in the Indian Criminal Justice System with some modifications. This provision gives a choice to the accused to bargain with the court regarding the punishment, after the accused is voluntarily prepared to admit his guilt. Such bargain is permissible within the statutory limits as prescribed u/s 265-A to 265-K.

Orientation course in Session

It is required by the accused to move an application supported by an affidavit stating his intention to be proceeded under the provisions of Plea Bargain. Court after satisfying about the voluntary character of the application, issues notices to the stake holders in the trial and after they appear in court, they get an opportunity to arrive at mutually satisfactory

Orientation course in Session

Disposition of the case. After such mutually satisfactory disposition is arrived at, the court takes the signature of such stake holders on the memorandum of such mutually satisfactory disposition of case. In the next stage, the accused is heard on the nature of punishment to be given to the accused. Usually the punishment is half of the minimum sentence prescribed or 1/4th of the sentence, if minimum sentence is not prescribed. It was further told by the Resource person that the court

can give benefit of Section 562 of CrPC or the provisions of the Probation of Offenders Act, if the court deems it proper as per facts and circumstances of each case. It was emphasized by the Resource person that the provision can have more utility if the accused is in a position to understand that any punishment rendered under these provisions involves no legal disability afterwards. If the litigants are made aware of these provisions and are encouraged to go for plea bargain, it can help in substantial reduction of the criminal cases pending in the courts of law.

On the topic "Role of a Judge while recording Evidence in Criminal cases", Shri Harbans Lal told the participants that the recording of evidence in criminal cases is of utmost importance for rendering justice. It is on the basis of evidence that fates of prosecution and the accused in a criminal trial are decided in a particular case. A judge has a greater role than merely taking down what the witness tells on being asked by the prosecution or the defence. Resource person told the participants that a judge is not expected to sit as a mute spectator while recording evidence. A judge cannot afford to delegate his important function of recording evidence. It was further told to the participants that under the provision of law, a judge is not helpless if any of the party or their counsel try to shirk away from recording of evidence or try to delay the proceedings by not recording the statement of witnesses present in the court. Further more a judge can always put all such questions to the witness which he deems proper and material for the particular case. It was also stressed by the Resource person that a judge should be in the total control of proceedings when the evidence is being recorded as it helps in arriving at just conclusion of the case.

Participants took very active part in the deliberations and interacted with the Resource Persons, who cleared doubts in the minds of some officers about the topic which were deliberated upon in the Orientation course. Participating Officers also resolved to encourage the parties to go for "Plea Bargain" in appropriate cases, which come up for hearing.

LEGAL JOTTINGS

(Case No: Criminal Appeal No. 261 of 2007)

The State rep. by CBI, Hyderabad v. G. Prem Raj

Date of Decision : 19-11-2009.

Judge(s): Hon'ble Mr. Justice V.S. Sirpurkar and Hon'ble Mr. Justice Deepak Verma.

Subject Index: Prevention of Corruption Act Section 13(1)(d) read with 13(2), Sections 7 and 20 Criminal misconduct by the public servant taking illegal gratification other than legal remuneration - trial Court found the respondent guilty for demanding bribe to prepare the detailed programme of contract work - convicted for the offence charged High Court acquitted the respondent/accused from the charges - appeal - Accused was Senior Engineer (Civil) and was incharge of the contract work the movement of the accused out of his office and going to Taj Mahal Hotel after office hours at 6'O clock raises accusing finger towards the intentions of the respondent-accused if no demand was made, there was no reason for the accused to accept the money offered by the complainant money received from the scooter bag of the accused evidence of the complainant fully corroborated by the evidence of P.W.2 - set aside the impugned judgement of the High Court - appeal allowed restored the judgement of the trial Court.

(Case No: Civil Appeal No. 5888 of 2006)

Uday Shankar Upadhyay & Ors. v. Naveen Maheshwari

Date of Decision : 18-11-2009.

Judge(s): Hon'ble Mr. Justice Markandey Katju and Hon'ble Mr. Justice R.M. Lodha.

Subject Index: Eviction suit filed by landlord against the tenant on the ground that the disputed shop required for starting the business of his 2 sons - trial Court found that the need of the landlord was bona fide and decreed the suit Appellate Court held the hall above the suit shop as suitable alternative accommodation for doing business - appeal - the fact that bonafide want to start their own business separately not been disturbed in appeal held that once it is not disputed that the landlord is in bona fide need of the premises, it is not for the courts to say that "he" should shift to the first floor or any higher floor but for the landlord himself to decide orders of the High Court and first appellate Court set aside appeal allowed restored the orders of the trial Court.

(Case No: Criminal Appeal No. 1059 of 2005)

Ram Bharosey v. State of U.P.

Date of Decision : 17-11-2009.

Judge(s): Hon'ble Mr. Justice B. Sudershan Reddy and Hon'ble Mr. Justice J.M. Panchal.

Subject Index: Indian Penal Code, 1860 Section 302 punishment of murder Division Bench confirmed the conviction/sentence orders of the Trial Court passed against the appellant under Section 302 for firing shot from tamancha at the deceased resulting his death - imposed sentence of life imprisonment to the appellant - appeal - appellant not pointed out as to which evidence was not

analyzed, assessed or discussed by the High Court - direct evidence tendered by the prosecution held that neither P.W. 1 nor P.W. 3 could be branded as interested witnesses merely because they were closely related to the deceased - identity of the appellant not disputed, thus, appellant not entitled to any benefit on the ground that he was not identified by the witnesses - proved beyond reasonable doubt that deceased died a homicidal death - appeal dismissed.

(Case No: Criminal Appeal No. 230 of 2003)

Sau Panchashila Dada Meshram v. State of Maharashtra

Date of Decision : 17-11-2009.

Judge(s): Hon'ble Mr. Justice B. Sudershan Reddy and Hon'ble Mr. Justice J.M. Panchal.

Subject Index: Indian Penal Code, 1860 Section 304 Part-II read with 34 culpable homicide not amounting to murder read with common intention - High Court, through its judgement, altered the conviction orders of Trial Court from Section 302 read with 34 to Section 304 Part II read with Section 34 against appellant and her husband for confining their child in bathroom for 14 days and caused her death by not providing food and water - imposed sentence of R.I. for 6 years - appeal - homicidal death of deceased child undisputed deceased died due to starvation proved by the testimony of Medical Officer - child found dead in the bathroom established by the reliable and trustworthy testimony of PW-6 - appellant and her husband had definite knowledge that their act of confining deceased, in a bathroom would result into her starvation which was likely to cause her death - held no interference - conviction of the appellant under Section 304, Part II read with Section 34 maintained and on the facts and circumstances of the case, sentence reduced to the period already undergone.

(Case No: Civil Appeal Nos. 7554-7555 of 2009)

Manohar Singh v. D. S. Sharma & Anr.

Date of Decision : 13-11-2009.

Judge(s): Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice G.S. Singhvi.

Subject Index: Civil Procedure Code, 1908 Section 35B costs for causing delay - trial Court dismissed the suit of appellant/plaintiff for failure to pay the costs - High Court upheld the order of the trial Court - appeal - if the costs levied were not paid by the party on whom it is levied, such defaulting party is prohibited from any further participation in the suit, but the other party will be permitted to place his evidence and address arguments, and the court will then decide the matter in accordance with law - held that a suit cannot be dismissed for non-payment of costs. Non-payment of costs results in forfeiture of the right to further prosecute the suit or defence set aside the orders of trial Court and of the High Court appeal allowed - directed the Trial Court to restore the suit and dispose of the suit in accordance with law.

(Criminal M.P. No.13384 of 2009 in Cr. Appeal No. 164 of 2004)

Atul Manubhai Parekh v. CBI

Date of Decision : 24-11-2009.

Judge(s): Hon'ble Mr. Justice Altamas Kabir, and Hon'ble Mr. Justice Cyriac Joseph

The short point involved in this application is whether a person, who has been convicted in several cases and has suffered detention or imprisonment in connection therewith, would be entitled to the benefit of set-off in a separate case for the period of detention or imprisonment undergone by him in the other cases. Held - The wording of Section 428 is, in our view, clear and unambiguous. The heading of the Section itself indicates that the period of detention undergone by the accused is to be set off against the sentence of imprisonment. The Section makes it clear that the period of sentence on conviction is to be reduced by the extent of detention already undergone by the convict during investigation, enquiry or trial of the same case. It is quite clear that the period to be set off relates only to pre conviction detention and not to imprisonment on conviction.

(Cr. Appeal No. 2269-2270 of 2009 arising out of SLP(Crl.) Nos. 8375-8376/2008)

D.K. Ganesh Babu v. State of Tamil Nadu & Ors.

Date of Decision 30-11-2009.

Judge(s): Hon'ble Mr. Justice Aftab Alam and Hon'ble Justice Dr. Mukundakam.

Trial Court framed charges u/s 498-A, 306 and 304 B/34 of the IPC and Sections 3 & 4 of the Dowry Prohibition Act. High Court quashed the charges, holding no sufficient material - Order of High Court challenged. Held - Madhu Devi died within 7 years of her marriage. She died by committing suicide. Death certainly did not occur under normal circumstances. We have been taken through the suicide note, the FIR and the contents of the charge-sheet. All the three documents undeniably contain allegations of demand of dowry and deceased being subjected to harassment in connection with those demands. Whether or not the prosecution would be eventually able to substantiate its allegations against the three respondents by leading cogent and reliable evidence before the trial Court, is yet to be seen. But prima

facie there are allegations comprising all the ingredients of the offences for which the trial court framed charges against the respondents and there are materials which taken on their face value would lead to the inference of the respondents' guilt.

NEWS AND VIEWS

No allowance, if wife walks out : SC

A wife is not entitled to maintenance if she walks out of her matrimonial home willingly, the Supreme Court has said.

Dismissing a woman's petition seeking Rs 4,000 as monthly maintenance from her former husband, a bench headed by Justice V.S. Sirpurkar on Monday said, "You left the matrimonial home on your own and now you want maintenance. Is this the law of the country? What is the justification for your staying separately?"

The court upheld a Punjab and Haryana High Court order denying maintenance to the petitioner since she had not gone back to her husband. The woman had left her matrimonial home and minor children in Jind, Haryana, in 1998, accusing her husband of demanding dowry.

She then moved a local court seeking divorce on the ground of cruelty. Her husband filed a petition for the restitution of his conjugal rights. In 2003, the court dismissed her plea for a legal separation. Despite a judicial order, she did not return to her husband.

A year later, the woman approached the court again, asking for divorce — on the ground that she was living separately — and maintenance. Though her divorce plea was granted, her appeal for maintenance was turned down.

(HT / 18.11.2009)

National consultation on legal education

In order to introduce reforms in the legal education system, the law ministry will organise a national consultation in the month of January. The consultation will result in unveiling a vision document and a national policy on legal education. Issues pertaining to legal education are already being charted out. National Law University (NLU), Delhi, organised a discussion with representatives of law schools and university departments, which was chaired by Veerappa Moily, law minister.

Moily, while announcing the decision to hold a national consultation, said, "There are more than 900 law faculties and departments in our country along with national law schools to offer legal education. We have made a lot of progress with respect to creation of law schools. However, university departments are still ailing from issues that need to be critically addressed." Calling national law schools 'islands of excellence' he said that it was important to take these schools to the masses. "We must encourage more people to apply to national law schools. The number of applications is not adequate and hence we have discussed strategies to bring about improvement," he informed. "To address all issues we will hold a national consultation process and invite stakeholders in legal education. It would result in a national policy on legal education," added Moily.

The decision to reform legal education assumes greater significance in context of the recent 'vision statement' by the Centre on judicial reforms. The statement draws out a package of judicial reforms to reduce cases pending from 15 to 3 years and make the justice delivery system efficient, transparent and more accessible to the poor. "A quality legal education system is mandatory to meet these aims," said Ranbir Singh, vice chancellor, NLU.

The session highlighted five key issues: attracting and retaining faculty, infrastructure, funding, curricula and students' admission. "We are constituting five task forces to study these issues and the observations will be submitted in January to help formulate a draft of vision document," the minister informed. In order to have better teachers, Moily proposed freedom to practice law and better monetary incentives for law teachers. He also suggested inviting teachers from other countries. The idea of having 'floating faculty' was also mooted. "Any good law school overseas has atleast 150 faculty members, but not all are permanent, around 50% of the faculty teaches at various institutions. We cannot have experts in all the subjects in all the institutions. But we can have few experts for all the institutions," Singh observed.

Ajit Prakash Shah, Chief Justice, Delhi High Court, pointed out that the inability of many legal institutions to recruit full-time quality teachers along with poor infrastructure were at the root of the problems. He laid emphasis on ethical values and alternative dispute resolution skills and integration of social sciences in the curricula.

Elaborating on student admission, the minister said, "There is a need to raise the minimum requirement for admission to law courses." Many vice-chancellors also emphasised the need to make LLM a one-year programme. "We are losing bright students to foreign countries that offer one-year LLM courses. Hence, we propose that duration of the LLM course be reconsidered," Singh said. However, S.N. Singh of law faculty, Delhi University, said, "The LLM in India has certain topics that cannot be covered

within a short duration. We need a lot of consultation before taking any such move."

(TOI/14.12.2009)

CASE COMMENTS

Shakuntala Devi & Ors.
versus
Ghamru Mahto & Anr.
AIR 2009 SC 2075

In this case, concerned with proceeding under section 145 Cr.P.C., Magistrate came to a finding that the appellants were entitled to possession of the disputed plot. Application for implementation of the same Order was preferred beyond three years, which was allowed by the Magistrate. Against which Order revision was filed by the other side before the Additional Sessions Judge, who confirmed the Order of the Magistrate for implementation of the restoration Order in favour of the appellants. The matter was taken to Hon'ble High Court of Patna through the medium of Criminal revision. The Hon'ble High Court set aside the order of the Additional Sessions Judge on the ground that the Magistrate should not have allowed the implementation of the restoration order as the application was preferred beyond the period of six months as prescribed under section 6 of the Specific Relief Act. This order of the Hon'ble High Court of Patna was assailed before the Hon'ble Supreme Court of India. The Hon'ble Sureme Court held that the Specific Relief Act has no application to proceeding under Section 145 Cr.P.C. The Hon'ble Supreme Court further held that as far as making an application for implementation of the Order passed under Section 145(4) of the Cr.P.C is concerned, since no period of limitation is prescribed, the same application ought to have been filed within the period of three years from the date of the order as per the Article 137 of the Limitation Act.

(Kamlesh Pandita)
Sub-Judge, Katra

Bimla Devi & Ors.
versus
Himachal Road Transport Corpn. & Ors.
AIR 2009 SC 2819

In the cases of Motor accident claims filed under Section 166 of Motor Vehicles Act, proof of negligence on the part of driver of the offending vehicle, is necessary. Burden of proof is on the claimant to prove such negligence by the driver of vehicle resulting in the accident. However the burden of proof required in the claim petitions is not that as required in the criminal case arising out of the same accident. The burden of proof, as in civil cases, can be discharged by preponderance of probabilities. No strict proof of the facts regarding the negligence is required. Principle of res ipsa loqiter can be applied only where the claimant has been able to discharge the preliminary burden of proof lying on him.

Hon'ble Supreme Court in the case under discussion has reiterated the principle of law that the burden of proof required in accident claim cases is that of preponderance of probabilities only. It has been held as under:

"While dealing with a claim petition in terms of Section 166 of the Motors Vehicles Act, 1988, a Tribunal stricto sensu is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of the motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of claimants predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post mortem report vis-a-vis the averments made in the claim petition."

(Khalil Ahmed Chowdhary)
Chief Judicial Magistrate, Rajouri

Smruti Pahariya v. Sanjay Pahariya
AIR 2009 SC 2840

Hindu Marriage Act provides for dissolution of marriage by filing petition on mutual consent under Section 13-B which corresponds to Section 15 of J&K Hindu Marriage Act. Existence of mutual consent is a precondition for filing such a petition. Not only at the time of filing of petition itself but at the time of adjourned hearing under the provisions of the Act, 'mutual consent', should be expressed by both the spouses. If any of them resiles from such consent or does not appear in the Court at the time of hearing of the petition, the Court cannot presume expression of consent by such spouse.

Hon'ble Supreme Court in the above referred Judgment, has ruled that if husband is absent on the date of hearing, the Court cannot pass decree for dissolution of marriage by mutual consent, by presuming the existence of consent on the part of non appearing party. It is mandatory under the statute that both the parties should express their desire and willingness to dissolve their marriage by mutual consent, not only at the time of presentation of petition but also at the time of adjourned hearing as per the

provisions of the same statute.

It has been observed by the Hon'ble Supreme Court as under:

"50. In our view it is only the mutual consent of the parties which gives the Court the jurisdiction to pass a decree for divorce under Section 13B. So in cases under Section 13-B, mutual consent of the parties is a jurisdictional fact. The Court while passing its decree under Section 13-B would be slow and circumspect before it can infer the existence of such jurisdictional fact. The Court has to be satisfied about the existence of mutual consent between the parties on some tangible materials which demonstrably disclose such consent. ……."

(S.K. Bhagat)
Distt. Judge (Matrimonial cases)
Jammu

State of Punjab v. Manjit Singh & Ors.
AIR 2009 SC 2888

In some of the offences like 'Murder', the choice before the Court, as regards punishment is 'Life imprisonment' or 'Death sentence'. On proof of charges in such cases, granting punishment of 'Life imprisonment' is rule but imposing 'Death sentence' is an exception. Only in the 'rarest of rare' cases 'Death sentence' can be imposed. In various judicial pronouncements, the Hon'ble Supreme Court has laid down the principles to distinguish the cases to be 'rarest of rare'.

Hon'ble Supreme Court in the above noted case, has examined the earlier judgments rendered on the subject to give an idea as to what circumstances and cases can be said to be 'rarest of rare'. It is useful to quote the observations of the Hon'ble Court.

"Whether the case is one of the rarest of rare cases is a question which has to be determined on the facts of each case. It need to be reiterated that the choice of the death sentence has to be made only in the rarest of rare cases and where the culpability of the accused has assumed depravity or where the accused is found to be an ardent criminal and menace to the society; where the crime is committed in an organized manner and is gruesome, cold-blooded, heinous and atrocious; where innocent and unarmed persons are attacked and murdered without any provocation."

(Sunit Gupta)
Excise Magistrate, Jammu

Chaman Lal & Ors. v. State of Punjab & Anr.
AIR 2009 SC 2972

The Hon'ble Apex Court of the Country has discussed threadbare, the ingredients of the offence of "Criminal Conspiracy". It has been observed by the Hon'ble Court that the offence of Criminal Conspiracy involves the intention to accomplish an object, a plan (including means) to accomplish that object and an agreement between two or more persons whereby they commit themselves to the accomplishment of the desired object. An overt act in furtherance of such conspiracy is not the essence of the offence unless the statute so required. It means that if there is meeting of minds to commit some offence, there need not be any overt act in furtherance thereof. The intention of the persons itself is not sufficient to constitute an offence. If there is some agreement to carry out that intention, it will itself complete the offence of Criminal Conspiracy. It has been further observed that offence of Criminal Conspiracy can be proved by direct evidence or circumstantial evidence or by both. There cannot always be direct evidence to prove the conspiracy, however, the proof of circumstances of existence of an agreement in respect thereof shall be enough. It is profitable to quote the observations of the Hon'ble Court:

"7. ……

The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act. The essence of criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence."

(Gh. Mohi-ud-Din Dar)
Director
J&K State Judicial Academy

J&K State Judicial Academy
wishes
HAPPY NEW YEAR - 2010
to its esteemed Subscribers and Readers.

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