



# SJA NEWSLETTER

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**Chief Patron**

Hon'ble Mr. Justice  
M. M. Kumar  
Chief Justice

**Judge-In-Charge**

Hon'ble Mr. Justice  
Mansoor Ahmad Mir

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**TOPIC OF THE MONTH**

**Domestic Violence and the Role of Criminal Justice :  
Some Reflections**

Domestic violence is physical abuse, sexual abuse, psychological abuse and abuse to property and pets. Exposure to this form of violence has considerable potential to be perceived as life-threatening, by those victimized and can leave them with a sense of vulnerability, helplessness and in extreme cases, horror. Domestic Violence, is what Judith Lewis Herman calls, a "tyranny of private life". It involves abuse of power. It is directed against the people the abuser cares about. In the same way, it involves isolation of a relationship based on affection and friendship. It involves dominance. In the past decade there has been a growing recognition of the prevalence of domestic violence in the Indian society. Studies have proved that some individuals are at a greater risk for victimization than others. Domestic violence has adverse effects on individuals, families and society in general. Domestic violence is on the increase in India and in this theoretical paper an attempt is made to analyse the role of the criminal justice system in protecting victims of domestic violence.

**Role of the Judiciary :**

A 1996 survey conducted with 109 judges to assess their attitudes towards domestic violence. The survey had pointed out that 48 per cent of them believed there were certain occasions when it was OK for a man to slap his wife, 74 per cent felt that the preservation of the family was more important even if women faced violence, 68 per cent believed that provocative clothes were an invitation to

sexual assault and 34 per cent thought dowry had inherent cultural values (Shivakumar, 1999). Hence, gender sensitization is the need of the hour to change the mindset of the judges to provide proper justice to the victim of domestic violence.

What can a judge do to help victims of domestic violence ?

- The Judge must listen carefully and determine who is the victim.

- The judge should remember that the initial step toward stopping the abuse is being able to identify it as such. Denial, rationalization and minimization are coping methods by the abused person and those closest to the victim. The court must take whatever steps are necessary to insure that the victim finds safety. The judge should take advantage of all the resources available to provide comfort and safety for the victim. The judge must recognize that the victim may be overwhelmed by the proceedings and unable to follow through with corrective steps the court might order.

- The atmosphere in the court must be free of intimidation. It is easy to forget that the victim may have been exposed to years of intimidation. A judge can use his or her authority to the fullest extent of the law and enforce every relevant law in the case. They can also create a court room ambience that promotes “zero tolerance” of domestic violence. For example, a judge can instruct the court staff not to permit the litigants and related family members or friends to interact in an obtrusive manner during court session. These loud family visits may be manipulative, coercive and inappropriate. A defendant will sometimes behave in a jovial manner or make vulgar comments about the victim during court session. Allowing this to happen sends a message of defiance to both the court and victim,

and makes it appear that the defendant is immune to the court’s authority.

- They can prevent the secondary victimization of these battered women in the court, Gender sensitization of judges should be a big step in helping them understanding the realities of being a traumatized woman.

*[Abstracted from an Article written by Mr. Beulah Shekhar, Lecturer in Criminology & Criminal Justice Science, Manonmaniam Sundaranar University, Abishekapatti, Tirunelveli, Tamil Nadu Published in NJA’s studymaterial on “Adjudication Management : Adjudication of Atrocities against women”]*

## NEWS AND VIEWS

### **Hon’ble the Chief Justice inaugurated Fast Track Courts for trial of Rape cases**

Hon’ble Mr. Justice M.M. Kumar, Chief Justice of the High Court of Jammu and Kashmir has implemented the suggestion given by Hon’ble the Chief Justice of India for setting up Fast Track Courts to try the offences of rape and related cases involving offences against women. Continuing with his vigorous drive to gear up and strengthen the judicial system, Hon’ble the Chief Justice has inaugurated the Court of 3rd Additional District Judge (TADA), Jammu, as a Fast Track Courts for the aforesaid offences, for Jammu District.

Hon’ble the Chief Justice was accompanied by Hon’ble Mr. Justice Mansoor Ahmad Mir and Hon’ble Mr. Justice Hasnain Massodi.

The occasion was also graced by prominent Lawyers, Government dignitaries and Law Officers of the State.

The High Court keeping in view the urgency of expeditious trial of rape cases, the fact that justice delayed is justice denied and that deterrence pales into

insignificance due to such delay, took this remarkable initiative to earmark following five existing Courts in the State of Jammu and Kashmir for trial of rape cases :

Court of 3rd Additional District Judge (TADA), Jammu, Court of 2nd Additional District and Sessions Judge, Srinagar, Court of 1st Additional District & Sessions Judge, Baramulla, Court of Additional District & Sessions Judge, Anantnag and Court of Additional District and Sessions Judge, Pulwama.



Hon'ble the Chief Justice inaugurating Fast Track Court for trial of rape cases in Jammu

This decision was taken by the High Court considering the huge pendency of rape cases in these Districts.

Hon'ble the Chief Justice in tune with the policy to use tools of modern technology for faster administration of Justice inaugurated remaining four courts earmarked as Fast Track courts in Kashmir Division by video conferencing. His Lordship, during interaction with the Judges of the aforesaid courts impressed upon them their obligation to deliver timely justice.

It is pertinent to mention that High has sought the creation of eight courts of the rank of District & Sessions Judge as Fast Track Courts in the Districts where there is huge pendency of rape cases.

Since, it would take time for new Fast Track Courts to be actually created, it was resolved to earmark five existing Courts as Fast Track Courts to exclusively try rape cases to provide succor to the victims, as it could not brook any delay in the policy of High Court to deliver timely justice.

High Court has also sought the creation of ten Fast Track Courts of the rank of Civil Judge (Senior Division)/Sub-Judge (JMJC) in the State of Jammu and Kashmir to try the cases pertaining to offence against women at Magistrate Level.

## ACADEMY NEWS

### Oath taking ceremony and distribution of Advocates license at Jammu

Jammu and Kashmir State Judicial Academy (SJA) organized an oath taking ceremony and distribution of Advocates' license in the Jammu campus of Academy for the new entrants to the legal profession on 8th of January, 2013 under the guidance and instructions of Hon'ble the Chief Justice (Chief Patron) and Hon'ble Shri Justice Mansoor Ahmad Mir, Judge Incharge, State Judicial Academy.

The function was presided over by Hon'ble Shri Justice Mansoor Ahmad Mir, Judge Incharge, SJA. Before delivery of enrolment certificates (Advocate license) to the Advocates of Jammu Province, they were administered oath by Shri Abdul Wahid, Director, SJA.



Oath taking ceremony of new entrants to the legal profession at Jammu



In his address, Hon'ble Shri Justice Mansoor Ahmed Mir congratulated newly enrolled advocates and welcomed them to the fraternity of legal profession. His Lordship enlightened them on the professional ethics and conduct, court craft and art of Advocacy etc.



Hon'ble Mr. Justice Mansoor Ahmad Mir delivering enrolment certificate to an Advocate

In his address, His Lordship explained in detail the professional ethical values which every advocate should imbibe. To maintain ethics, one has to conduct oneself as dictated by one's morals or conscience. 'Conscience', it is said, 'is nothing but other people inside you'. His Lordship emphasized upon the newly enrolled advocates to work hard and to improve knowledge of law, to keep themselves update on the law and in particular the development thereof both legislatively and judicially so as to become excellent and successful lawyer. His Lordship exhorted them to learn the art of advocacy. His Lordship also reminded the advocates of their duties duty towards their client, duty towards Court, duty towards the opposing counsel and duty towards the justice delivery system to which they are part of. He urged them that in the discharge of these several duties, they must at all times, keep forefront, the paramount duty in seeking justice to their client's cause and be prepared to discharge that duty without any fear or favour and to the best of their ability.

In his concluding remarks, Director, SJA, Shri Abdul Wahid thanked Hon'ble Shri Justice Mansoor Ahmad Mir for enlightening the newly enrolled Advocates on the professional ethics, conduct, truthfulness, honesty, updating the knowledge of law and art of advocacy, duties and responsibilities as an advocate. He hoped that His Lordships advice, words of wisdom and suggestions will go a long way in making them a good professional lawyer.

### **Training programme for Ministerial staff of Subordinate courts of District H.Q. Jammu and Training programme for Stenographers and Steno-Typists of Districts Srinagar, Budgam and Ganderbal**

A training programme for Ministerial staff of Subordinate courts of District H.Q. Jammu was organized on 15th of December, 2012 by the Academy at Jammu. Officials from the rank of Junior Assistant to Section Officer posted in different courts Jammu H.Q. participated in the programme.

Shri Anoop Sharma, Munsiff alongwith Shri Jagdish Raj, Faculty Member were the resource persons. The topic for the training programme was Ethics and Bhaviour, Accountability, Discipline, Office Management, Issuance of Process and Maintenance of files.

In his address, Shri Abdul Wahid, Director, State Judicial Academy informed the participants that the purpose of such training programme is to update their knowledge, sharpen their skills and sensitize them on their role in the institution. He stated that the ministerial staff of the courts is required to have different kind of mind set than those working in other departments of the Government as they have to assist in the divine duty of administering the justice.

They are required to exhibit a great sense of responsibility as the important court record is in their hands. It is their duty to take proper care of all the record in their possession and to ensure that the same remains safe and preserved. He exhorted the participants to maintain high standards of integrity and ethical values and show humane approach to the litigant public.



Staff of Subordinate courts of District H.Q. Jammu attending the Refresher course

Dwelling upon the topic, Shri Anoop Sharma emphasized that the public in general and the litigants in particular have great hope and expectation from the judicial institution and the ministerial staff working in the subordinate courts being an important limb of the institution are also expected to maintain high standard of ethics and behaviour. For their deeds, they are accountable towards public at large and also towards the system. This requires the officials working in the different courts to observe a great deal of discipline in their official as well as personal life so as to uphold the confidence of common man in the administration of justice. A single gaffe on their part whether deliberate or not can malign the reputation of whole of the Institution. Mr. Sharma further said that in order to coup-up with the heavy work load which the ministerial staff of different courts is facing, they should try to learn the management skills. He gave many management tips to the

participants which if acted upon will surely yield the better results. On the issuance of process, the resource person told that the ministerial staff is required to minutely follow the dictum of procedural law to ensure that summons are issued in light of the latest amendments carried in the relevant provisions of the Code of Civil Procedure. He highlighted various procedural requirements which sometimes are not adhered to by the ministerial staff while issuing the process and asked them to strictly follow the same. The participants were also reminded about their duties with regard to maintenance and preservation of files, they being custodian of the court record.

The participants had a lively interaction with the Director and the Resource person by putting various kind of queries and getting the same satisfactorily resolved. Participants appreciated the Academy's move and requested to organize such programme in near future also.

Simultaneously, a refresher course of Senior Scale Stenographers, Junior Stenographers and Steno-typists working in the various courts in the Districts of Srinagar, Budgam and Ganderbal was held at the High Court Complex, Srinagar. Shri Abdul Hamid Khan, Ex-Joint Registrar, High Court of J&K, was the Resource Person.

The main theme of the programme was emphasis on format of judgments, correct methodology of referring to and mentioning citations and the use of appropriate punctuation marks and grammatical notations in judgments with emphasis laid on use of disambiguating commas, semi-colons and parenthesis.

A short interactive session of the participants was also held towards the end of the programme in which the PAs-

cum-Senior Scale Stenographers shared their experiences with their junior members of the service as to the methodologies adopted by them to increase speed in shorthand writing.

## LEGAL JOTTINGS

### Legal briefs from High Court of J&K

[Case No. LPA 73 of 2007

**Mst. Zaineb Begum v. Abdul Aziz Mir**

**Date of decision: 14-09-2012**

**Coram: Hon'ble Mr. Justice M. M. Kumar, Chief Justice and Hon'ble Mr. Justice Hasnain Massodi, Judge]**

**(Per M. M. Kumar, CJ)**

**Subject Index: Section 52 of Transfer of property Act - Doctrine of *lis pendens* -**

The principle of *lis pendens* would continue to apply even to execution proceedings. Prohibition of alienation and transfer or dealing with property constituting subject matter of suit by a party to the litigation would continue to apply till such time the decree or order are satisfied or discharged or otherwise become unexecutable.

**Art. 226/227 of the Constitution of India - Exercise thereof -**

If an order of a Civil Court or the judgment and decree passed by any such Court occasions grave injustice then alone jurisdiction under Article 226/227 of the Constitution must be exercised. There are no strait jacket formulas or strict rules of universal application which may be exhaustively laid down. The power is there but it has to be exercised solely by the dictates of judicial conscience of the judge. Therefore, it would depend on the facts and circumstances of each case

where *certiorari* jurisdiction could be justifiably exercised.

Facts of the case, appellant alienated one kanals of land in favour of her son (Respondent No. 4) by way of a family settlement - Respondent No. 4 sold the land to Respondent No. 5 upon which the appellant filed a suit claiming prior right of purchase - During the pendency of the suit, Respondent No. 5 further executed a sale deed in favour of Respondents No. 6, 7 and 8 - Suit of the appellant decreed - Appellant then initiated the proceedings for execution of judgment and decree - however, Respondent No. 1 filed a writ petition for quashing the judgment and decree claiming that he has acquired right on the basis of an oral gift made by respondent No. 6,7 and 8. The learned Single Judge set aside the judgment and decree - Appellant challenged the order of the learned Single Judge in LPA - Appeal allowed.

The Hon'ble Court held :-

“It is trite to observe that the principles of *lis pendens* have been codified and embodied in Section 52 of the 1920 Act, which are based on sound public policy. The principles of *lis pendens* restrain a party to the litigation from transferring or alienating or dealing with the property or a part thereof in any manner, which is subject matter of dispute, during the pendency of a suit so as to adversely affect the rights of the opposite party. It is equally well known that anybody dealing with such property in a pending suit is deemed to have notice and the pendency of a suit is considered to be a notice to all whether party to the suit or not. If any transaction has taken place during pendency of the suit then it would abide the final result of the judgment and decree, which may be passed by the Court. The basic principle



incorporated by Section 52 of the 1920 Act is to give protection to the authority of the Court.

When the principle concerning *lis pendens* and that of *bonafide* purchase are applied to the facts of the present case, it is evident that the judgment and decree dated 24.06.1997 passed by the civil Court would be applicable to oral gift claimed to have been made to writ petitioner-respondent no.1 by respondent nos. 6 to 8. Once the rights of the parties including right of any subsequent beneficiary of a transaction are to be governed by the judgment and decree of civil court dated 24.06.1997, then no obstruction could be placed by the subsequent transaction including oral gift. Accordingly, it is held that the principles of *lis pendens* would apply in respect of transfers/alienation which have been effected after filing of the civil suit by the appellant, Mst. Zainab Begum.

The Hon'ble Court further held :-

- a) The certiorari jurisdiction of a Writ Court extends to decision making process and not to be exercised against the decision of subordinate Courts simplicitor.
- b) The Writ Court cannot exercise certiorari jurisdiction by reaching a conclusion different than the one reached by the trial Court or the appellate Court on re-appreciating evidence merely because another view is possible. It cannot assume the jurisdiction of an appellate Court. Therefore, findings of facts recorded by the Courts/Tribunal should not ordinarily be upset.
- c) A patent error can be corrected by exercise of certiorari jurisdiction. However, such an error does not need to be surfaced by a long drawn process of reasoning. In other words the error should be manifest and apparent on the face of

the proceedings like when it is based on clear misreading or in utter disregard of the provisions of law.

d) If there is no error of jurisdiction ordinarily the Writ Court would refrain from upsetting any such order passed by the Tribunal/Courts.

e) If the Writ Court finds that the writ petition has been filed with an ulterior motive or *mala fide* intention then it would refuse to exercise its certiorari jurisdiction.”

Case law followed : *Ghantesher Ghosh v. Madan Mohan Ghosh*, (1996) 11 SCC 446, *Lakshmanan v. Kamal*, AIR 1959 Kerala 67, *Jaya Ram Mudaliar v. Ayyaswami*, (1972) 2 SCC 200, *Rajendar Singh v. Santa Singh*, AIR 1973 SC 2537, *Md. Shafiqullah Khan v. Md. Samiullah Khan*, AIR 1929 Allahabad 943, *Gendmal Amolakchand Marwari v. Laxman Tanba Krushnapakshi*, AIR 1945 Nagpur 86, *Balwinderjit Kaur v. Financial Commissioner*, AIR 1987 Pb & Hry 189, *Ranjeet Singh v. Ravi Prakash* (2004) 3 SCC 682, *Mahendra Saree Emporium v. G. V. Srinivasa Murthy*, (2002) 5 SCC 416 and *Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675, *Mercantile Industrial Development Co. (P) Ltd v. Wahid Chauhan*, (2003) 10 SCC 282, *State of A.P v. P.V. Hanumantha Rao*, (2003) 10 SCC 121, *Syndicate Bank v. New Look Rubbers (P) Limited and others*, (2008) 5 SCC 274, *Renu Drego v. Lal Chand Soni and ors*, (1998) 3 SCC 341.

**Case: Cr. Rev. No. 06 of 2002**

**Abdul Gani Rather v. Fayaz Ahmad Khan & Ors.**

**Date of Decision: 04-02-2012**

**Bench: Hon'ble Mr. Justice Hasnain Massodi, Judge**

**Subject Index: Code of Criminal Procedure - Sections 145(1)(4) & 435**

Preliminary order drawn and notices issued. Written statements, affidavits and other documents filed considered by the Magistrate. Magistrate satisfied that respondent no. 1 was in actual possession of the disputed land on the date the preliminary order was framed and within two months immediately there before. Petition dismissed. Revision U/S 435 by the complainant. Dismissed.

**Held:** “The only and only agenda of the Magistrate Under Section 145 is to look into the 'actual possession' of the 'subject of the dispute' on the date preliminary order was drawn or within two months before such order, without looking into the question of title or the rights of the parties as regards the subject matter.... The High Court while exercising revisional jurisdiction cannot assume the role of an Appellate Court, which is wider in scope. ... In the present case learned Magistrate has neither improperly accepted nor rejected any evidence neither is there any defect in procedure followed or any illegality in conducting of the proceedings.”

Apex Court judgment in *Bindeshwari Prasad Singh Alias B. P. Singh v. State of Bihar*, AIR 2002 SC 2907 relied upon.

**Case: Bail Application No. 42 of 2011**  
**Mohammad Sultan Mir v. State of J&K**  
**Date of Decision: 27-04-2012**  
**Bench: Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge**

**Subject Index: Criminal Procedure Code, Ss. 164, 337(3) -**  
Petitioner a co-accused in murder case - Turned approver - Three of the accused already admitted to bail - Non-bailable warrants issued against Fourth

accused stayed by Apex Court - Apex Court directing interim order dated 11-10-2007 will not come in way of consideration of bail applications of the other accused - Pendency of the petition by one of the accused in the Apex Court - Trial yet to commence and not to commence for the time being - Accused-petitioner ailing suffering from Type-II Diabetes Mellitus, Hypertension, CAP (L Midzone Haziness) Medical opinion - suffering from life consuming disease - Admitted in Cardiology Ward of SKIMS. Advised for plantation of Pacemaker;

Approver whether entitled for consideration of bail before or during trial. **Held:** Yes. Further Held : “Instant case presents peculiar facts, i.e., occurrence is of 1997, detention of accused, except accused Major Parera in custody in connection with the case for a prolonged period, commencement of the trial in near future not insight, it is only in view of the same circumstance, other accused, including Abdul Rashid Sofi have been enlarged on bail. In case of Abdul Rashid Sofi, grant of interim bail is controlled by a condition, i.e., he has to be at large until trial commences, as is clear from the order passed on his petition dated 28.7.2009. When the other accused are enjoying liberty from the year 2009 and the petitioner (Approver) is still in custody on the notion that he has to be in custody until trial terminates, the position of his ailment coupled with the requirement of plantation of pacemaker, has an attractive valid appeal to seek concession of bail.”

Apex Court judgment in *Suresh Chandra Bahri v. State of Bihar*, AIR 1994 SC 2420; and judgments of this Court reported as 1988 KLJ 724 and of Punjab and Haryana High Court reported as AIR 1958 Punjab 72, relied upon.