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Contents

Random Thoughts	1
From Editor's Desk	2
Legal Jottings.....	4
Activities of the Academy	14
Recent Legislative Amendments.	19
Judicial Officers' Column.....	24

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Random Thoughts

“In securing and promoting the resolution of disputes in a legal forum in accordance with established legal procedure, the administration of justice ensures a peaceful and orderly progress by a people through constitutional methods towards the realization of their aspirations. And if it is to rule their minds and hearts, the administration of justice must enjoy their confidence. Public confidence in the administration of justice is imperative to its effectiveness, because ultimately the ready acceptance of a judicial verdict alone gives relevance to the judicial system. While the administration of justice draws its legal sanction from the Constitution, its credibility rests in the faith of the people. Indispensable to that faith is the independence of the judiciary. An independent and impartial judiciary supplies the reason for the judicial institution; it also gives character and content to the constitutional milieu.”

-R.S. Pathak, J.
in *S.P. Gupta v. Union of India*,
1981 Supp SCC 87, para 874



From Editor's Desk

Recently few important legislations have been enacted viz, **the Jammu and Kashmir Criminal Law (Amendment) Act, 2018** (Governor's Act No. XXXV of 2018), replacing the Jammu and Kashmir Criminal Law (Amendment) Ordinance, 2018 (Ordinance No. III of 2018), **the Jammu and Kashmir Criminal Laws (Sexual Offences) (Amendment) Act, 2018** (Governor's Act No. XLVII of 2018, dated: 13.12.2018), **the Code of Criminal Procedure (Amendment) Act, 2018** (Governor's Act No. XLVIII of 2018, dated 13-12-2018) and **the Jammu and Kashmir Civil Procedure (Amendment) Act, 2018** (Governor Act No. XLI of 2018), on 7th December 2018 and 13th December 2018, respectively. The first enactment is in the context of unabated incidents of sexual violence post Nirbhaya episode, which had shaken the collective conscience of the nation. Based on the 84th Report of Law Commission of India, followed by Justice Verma Committee recommendations, many amendments were made in the central Penal Code. The Amendments so made were intended to make provisions for stringent punishment in the matters of sexual violence against the females. Similar amendments were carried out in the State Penal Code as well. The Legislature has been making constant efforts to curb the episodes of sexual violence by making provisions for severe punishment and also by making changes in the procedural law as regards trial of sexual offences. The recent amendment in the criminal law makes further stringent and viable punishment

provisions, especially where the victims are of tender age. These provisions of law coupled with social awakening and transformation of the mindsets shall bring about the desired change. The society in general also is required to accept the challenge posed by the menace of sexual violence, and to make constant efforts for curbing these tendencies.

Offence of Sextortion (Sec. 354-E) has been added in Ranbir Penal Code which pertains to soliciting sexual favour by misuse of official position. In offence of Rape, consent obtained by misuse of official position has been made inconsequential.

Remand process has been brought to modern lines, doing away with constant need of getting the accused before Magistrate every time. Now, first remand shall be given on physical appearance of the accused and subsequent remand can be obtained by tele-presence.

Amendments carried out in the Code of Civil Procedure is intended to bring about expeditious and timely disposal of civil cases in the courts of law. The major amendments carried out in the Code of Civil Procedure in the year 2009 have further been refined through the recent Amendment Act. Provision regarding imposing costs has now been streamlined, covering almost all the incidents where imposition of costs is necessary. This provision is intended to be applied with greater certainty and curb undesired adjournments.

Provisions as to filing of the written

statement have now been further amended, so as to place an outer limit on filing written statement and to do away with the provision as to extension of time beyond the outer limit. Now in the amended provision, after the expiry of 120 days the defendant shall forfeit the right to file the written statement. Provisions regarding presentation of documents, their subsequent introduction for the purpose of leading evidence and proof of such documents have further been refined. Emphasis is now on the parties requiring the evidence to be produced only in respect of those documents which have specifically been denied by the opposite party. Proof of documents by serving interrogatories is encouraged. The provision as to admission and denial of the documents has also been streamlined, intended to minimise leading of formal evidence to prove the documents by the parties.

Amendment in the Code of Civil Procedure for the first time has introduced to the concept of Case Management Hearing, requiring the civil courts to hold first such hearing within four weeks from the date of completion of admission or denial of the documents by the parties to the suit. This case management technique has been introduced with the purpose of greater involvement of the stakeholders in the litigation, in the matter of expedition in completion of various stages of trial of the suit. The parties are now required to iron out various procedural aspects so as to leave least scope for delayed trial on account of procedural wrangling. The parties shall be required to state with reasonable certainty as to the time in which

they shall complete their part of procedural responsibilities or acts. The courts shall be required to ensure that arguments are concluded within six months from the date of first Case Management Hearing. The courts have been empowered to hold Case Management Hearings any time during the trial and to issue appropriate directions to ensure adherence by the parties to the schedule fixed for trial of the case. The courts have been given extensive powers so as to effectively control the proceedings for expeditious disposal of the case. It is expected that these powers shall be exercised by the courts in the interest of justice and to bring about an attitudinal change in the litigants and lawyers representing them at trial.

Provisions relating to production of evidence by the parties have also been streamlined to greater extent. Leading evidence on affidavits is extensively put in place. The manner, in which such affidavits have to be filed, has been clarified. The courts have been given powers to regulate the process of leading evidence by the parties. The courts shall have the power to issue appropriate directions in this regard, including the power to redact or reject evidence for the reasons to be recorded in writing.

Hopefully, the amended provisions of law shall be applied by the courts of law keeping in perspective the purpose and the context of the amendment of law.

[Gist of amendments is given separately in this issue of e-Newsletter.]

LEGAL JOTTINGS

Criminal

**V. Ravi Kumar v. State and others
Criminal Appeal No. 111 of 2011**

Date of Decision : 14-12-2011

If dismissal of complaint was not on merit, but on default of complainant, moving Magistrate again with a second complaint on same facts is maintainable.

Hon'ble Supreme Court held that there is no provision in the Criminal Procedure Code or any other statute which debar a complainant from making a second complaint, on the same allegations, when the first complaint did not lead to conviction, acquittal or discharge.

Hon'ble Court reiterated the law laid in *Jatinder Singh & Ors. v. Ranjit Kour* (2001) 2 SCC 570 titled that the second complaint on the same facts, is not permissible only when the first complaint stands dismissed on merits, after an inquiry.

Deepu @ Deepak v. State of Madhya Pradesh

Criminal Appeal No. 1277 of 2010

Date of Decision : 14-12-2018

The Supreme Court recently upheld a trial court order under Section 319 of the Code of Criminal Procedure, summoning some accused who were discharged by it earlier, ignoring the supplementary charge sheet against them, and held as under:-

"Since, at an earlier point of time the supplementary chargesheet was ignored by the Trial Court while discharging the appellant, there is no bar to proceed against him under Section 319 Cr.P.C. based on the supplementary charge-sheet, that too when sufficient material is brought on record against him during the course of trial."

**State of Uttar Pradesh v. Wasif Haider
Criminal Appeal No. 1702-1706 of 2014**

Date of Decision : 10-12-2018

The Supreme Court, affirming an acquittal in a murder case, has observed

that benefit of doubt arising out of inefficient Investigation must be bestowed upon the accused. It is held that the accused cannot be expected to relinquish his innocence at the hands of an inefficacious prosecution, which is ridden with investigative deficiencies.

**Naman Singh @ Naman Pratap Singh & Anr. v. State of Uttar Pradesh & others
Criminal Appeal No. 1620 of 2018
(arising out of SLP (Crl) No. 3383 of 2018)**

Date of Decision : 13-12-2018

Hon'ble Supreme Court held that the Executive Magistrate has no power to direct the registration of FIR, and that the Executive Magistrate does not exercise powers under section 156 (3) Criminal Procedure Code.

The course as may be adopted in the circumstances is that the Magistrate may lodge the FIR himself if a complaint regarding an issue over which he has administrative jurisdiction, is lodged before him, and he has conducted an administrative inquiry.

**Nipun Saxena v. Union of India
W.P.(Crl.) No. 1/2013 (PIL-W)**

Date of Decision : 11-12-2018

Hon'ble Supreme Court laid down directions and threw light on two very important and pertinent issues:

Identity of adult victims of rape and children who are victims of sexual abuse should be protected so that they are not subjected to unnecessary ridicule, social ostracisation and harassment;

Issues relating to non-disclosure of the name and identity of a victim falling within the purview of the POCSO.

The present judgment has been in a detailed manner written down in two parts dealing with the above-stated issues separately.

"Victim of a sexual offence, especially a victim of rape, is treated worse than the perpetrator of the crime."

Hon'ble Court while stating that a victim of rape is treated like a "pariah" and

ostracised from society, stated that many times cases of rape do not even get reported because of the false notions of so-called 'honour' which the family of the victim wants to uphold.

"Victims' first brush with justice is an unpleasant one where she is made to feel that she is at fault; she is the cause of the crime."

Court made it clear that they do not want to curtail the right of the defence to cross-examine the prosecutrix, but the same should be done with a certain level of decency and respect at large. Efforts have been made to sensitise the courts. But the experience has shown that despite earliest admonitions, the first as far back in 1996, *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384, the Courts even today reveal the identity of the victim. Further, the Court referred to Section 228A IPC (Disclosure of identity of the victim of certain offences etc.), Section 327 CrPC, 1973 (Courts should be open and normally public should have access to the Courts), stated that vide the Amendment Act of 1983, cases of rape, gang rape etc. were excluded from the category of cases to be tried in open Court. Sub-Section (1) of Section 228A states that any person who makes known the name and identity of a person who is an alleged victim of an offence falling under Sections 376, 376A, 376AB, 376B, 376C, 376DA, 376DB or 376E commits a criminal offence. Sub-Section (2) of Section 228A is making known the identity of the victim by printing or publication under certain circumstances described therein. Bench observed that the phrase "matter which may make known the identity of the person" does not solely mean that only the name of the victim should not be disclosed but it also means that the identity of the victim should not be discernible from any matter published in the media. The clarity also led to the bench stating that no person can print or publish the name of the victim or disclose any facts which can lead to the victim being identified, and which should make her identity known to the public at large.

Next pointer on which the Court threw light was on the investigation taken by police officers, they should also as far as possible either use a pseudonym to describe the victim unless it is absolutely necessary to write down her identity. FIR relating the offence of rape against women or offences against children falling within the purview of POCSO shall not be put in the public domain. Memos or Correspondence exchanged or issued with the name of the victim in it should not be disclosed to media and not be furnished to any person under RTI Act, 2015.

Another vexatious issue is in regard to the "next kin of the victim" giving an authority to the chairman or secretary of recognized welfare institutions to declare the name of the victim - For the stated issue, Court was of the opinion that, it is not necessary to disclose the identity of the victim to arouse public opinion and sentiment, and that if a campaign has to be started to protect the rights of the victim, it can be done so without disclosing her identity. Therefore, the Court stated that even under the authorization of the next of the kin, without permission of the competent authority, the identity should not be disclosed.

Sub-Section (3) of Section 228A IPC, lays down that nobody can print or publish any matter in relation to any proceedings within the purview of Section 228A IPC and Section 327 (2) CrPC.

If the accused is acquitted, and the victim of the offence wants to file an appeal under Section 372 CrPC, the victim can pray to the Court that she may be permitted to file a petition for the same under a pseudonymous name.

Issue 2- Issues which relate to non-disclosure of the name and identity of a victim falling within the purview of the POCSO. It has been observed that :-

"India is a signatory to the United Nations Convention on the Rights of Child, 1989 and Parliament thought it fit to enact POCSO in the year 2012, which specifically deals with sexual offences against all

children.”

Section 24(5) and Section 33(7) makes it amply clear that the name and identity of the child is not to be disclosed at any time during the course of investigation or trial and the identity of the child is protected from the public or media.

Section 37 states that trial is to be conducted in camera which would mean that the media cannot be present; the purpose of POCSO is to ensure that the identity of the child is not disclosed unless the Special Court in writing permits such disclosure, and disclosure can only be made if it is in the interest of the child. For instance, the identity of the child cannot be established even by the investigating team, then the permission of photograph to be published can be given by the Special Court of Investigative Team.

The bench further detailed out that media has to be not only circumspect but a duty has been cast upon the media to ensure that it does nothing and gives no information which could directly or indirectly lead to the identity of the child being disclosed.

“Media should be cautious not to sensationalise the same.” Sensationalising such cases may garner Television Rating Points (TRPs), but does no credit to the credibility of the media.

A child belonging to a small village, the disclosure of the name of the village may contravene the provisions of Section 23(2) POCSO because it will just require a person to go to the village and find out who the child is—Media is not only bound not to disclose the identity of the child but by law is mandated not to disclose any material which can lead to the disclosure of the identity of the child and such violation would amount to an offence under Section 23(4). Another point raised by the amicus curiae was that the publication should only mean a living child to which the Supreme Court was in total disagreement, as in the case of dead victims, the factor which was to be kept in mind was the dignity of the dead which they cannot be denied.

The Bench requested the Chairpersons

and Members of all the Juvenile Justice Committee of all the High Courts to go through the judgment of the Calcutta High Court stated above and issue directions keeping in view the needs of each High Court/State. The Court also detailed out the establishments of “One Stop Centres”, by taking inspiration from “BHAROSA” in Hyderabad which can be used as a model for other one-stop centres in the country.

**State of Punjab v. Rakesh Kumar
Criminal Appeal No. 1512 of 2018
Date of Decision : 03-12-2018**

Hon’ble Supreme Court allowed set of appeals filed against the common judgment of the Punjab and Haryana High Court whereby it had allowed application for suspension of sentence preferred by accused persons and directed them to be released on bail.

The accused were apprehended with “manufactured drugs” and convicted by the trial court under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Aggrieved by the conviction and sentence, the accused approached the High Court. During the pendency of appeals, the High Court passed the judgment stated above observing that “manufactured drugs”, be it containing narcotic drugs or psychotropic substances, must be tried under Drugs and Cosmetics Act, 1940. Aggrieved thereby, the State preferred present appeals. On perusal of the matter, the Supreme Court was of the opinion that the judgment of the High Court was untenable. Analysing the objectives of the two Acts, it was observed, “while Drugs and Cosmetics Act deals with drugs which are intended to be used for therapeutic or medicinal usage, the NDPS Act intends to curb and penalize the usage of drugs which are used for intoxication or for getting a stimulant effect.” In the instant case, accused were found in bulk possession of manufactured drugs without valid authorisation. It was noted that Section 80 of NDPS Act provides that provisions of the Act are in addition to and not in derogation

of Drugs and Cosmetics Act. Reference in this connection was also made to Union of India v. Sanjeev V. Deshpande, (2014) 13 SCC 1. Further, it is prerogative of the State to prosecute the offender in accordance with law. In such view of the matter, the judgment of the High Court was set aside and the authorities concerned were directed to take the accused in custody.

Ramji v. State of Punjab
Criminal Appeal No. 1478-1479 of 2011
Date of Decision : 27-11-2018

Hon'ble Supreme Court dismissed appeal arising out of Punjab and Haryana High Court judgment, while altering the conviction and sentence awarded under Sections 304 Part II IPC to that of under Section 302 IPC.

The factual matrix of the case is as follows: Darshan Lal i.e. Complainant and his mother were witnesses to the scenario where the deceased i.e. Som Raj, complainant's brother was seen to be followed by their neighbours fully armed with weapons and further dragging Som Raj by alleging him to have thrown stones into their house. Ramji (A5) who appeared to be in SPO uniform gave repeated kick blows to Som Raj and pressed his neck till he became unconscious.

Later, the complainant took the deceased to the hospital wherein PW 9 i.e. Inspector Ram Prakash recorded the complainant's statement and registered an FIR. All the accused were challaned for the offence under Section 302/34 IPC.

The present appeal was filed on the trial judge forming an opinion that all the accused were guilty of offence under Section 304 read with Section 149 IPC. Aggrieved further, the parties approached the High Court, wherein the Court dismissed the appeals of the accused, allowed the State appeal and disposed of the criminal revision petition filed by the complainant by setting aside the trial court's judgment on modifying the conviction from the offence under Section 304 Part II to offence under Section 302

IPC. Further, it was submitted that prosecution witnesses had contradictions in their statements and High Court without application of mind ignored the factum of the role played by the appellant and wrongly convicted him with other accused.

The Supreme Court on careful consideration of the facts of the case in its decision observed that circumstances concluding the guilt of the appellant are clearly established and High Court did not commit any error of law in convicting and sentencing the accused for an offence under Section 302 IPC.

Rajendra Pralhadrao Wasnik v. State of Maharashtra
Review Petitions (Criminal) Nos. 306-307 of 2013

Date of Decided on 12-12-2018

In an important ruling, the Supreme Court has observed that if DNA profiling has not been done in a rape case or it is held back from the trial court, an adverse consequence would follow for the prosecution.

"We are not going to the extent of suggesting that if there is no DNA profiling, the prosecution case cannot be proved but we are certainly of the view that where DNA profiling has not been done or it is held back from the Trial Court, an adverse consequence would follow for the prosecution."

According to the petitioner, the case was based on circumstantial evidence. The Court held, "ordinarily, it would not be advisable to award capital punishment in a case of circumstantial evidence. But there is no hard and fast rule."

Harking back to Bachan Singh v. State of Punjab, (1980) 2 SCC 684, the Court held that "Bachan Singh requires us to consider the probability of reform and rehabilitation and not its possibility or its impossibility... it is the obligation on the prosecution to prove to the court, through evidence, that the possibility is that the convict cannot be reformed or rehabilitated."

The Court laid stress on the usefulness of the advanced scientific technology and advised the prosecution to take advantage of it in such cases as the present one and stated, "where DNA profiling has not been done or it is held back from the Trial Court, an adverse consequence would follow for the prosecution."

After considering various earlier decisions, the Court held that mere pendency of one or more criminal cases against a convict cannot be a factor for consideration while awarding sentence.

In the instant case, the Court was of the opinion that the prosecution was remiss in not producing the available DNA evidence which lead to an adverse presumption against the prosecution. The trial court was in error in taking into consideration, for the purposes of sentencing, the pendency of two similar cases against the petitioner. Looking at the crimes committed by the appellant and the material on record including his overall personality and subsequent events, the Court commuted the sentence of death awarded by the petitioner while directing that he should not be released from custody for the rest of his normal life.

Krishan Singh v. Jyoti Jamwal

Date of Decision :18-12-2018

Hon'ble High Court dismissed a petition filed to challenge the order of Sessions Judge who modified the order of the Chief Judicial Magistrate reducing the interim maintenance payable to the respondents from Rs 4000 per month to Rs 2700 per month.

The main contention forwarded by the counsel for the petitioner was that the petitioner had only a salary of Rs 7500 per month, so he was unable to pay the interim maintenance which was on higher side. Also, the respondent was already getting maintenance under Section 30 of the Hindu Marriage Act.

The Court while dismissing the petition held that the purpose of granting interim maintenance was to save claimant from vagrancy and destitution. Further, the

argument that the petitioner was already getting maintenance under Section 30 of the Hindu Marriage Act, was not tenable as the petitioner had statutory right to get maintenance. Also, petitioner had not annexed any evidence in this regard.

Farooq Ahmad Bhat v. State of J&K

Decided on 01-12-2018

Hon'ble High Court allowed a petition filed against the order of respondent authorities, whereby petitioner was taken into preventive custody and lodged in Central Jail, Kotebhalwal, Jammu.

The main issue that arose before the Court was whether an order of preventive detention can be passed while the accused is already in police custody.

The Court observed that as per the judgment of Sama Aruna v. State of Telangana, (2018) 12 SCC 150, it is a settled proposition of law that a person cannot be taken into preventive detention while he is already in police custody. In that case, the Supreme Court had held that an order of preventive detention cannot be passed against an accused while considering a stale incident which took place a long time ago. The Court further observed that it was incumbent on the part of the person, who did the exercise of handing over the documents and conveying the contents thereof to the detenu, to file an affidavit in order to attach a semblance of fairness to his actions.

The Court held that the respondents in the instant matter had placed the petitioner under preventive detention while he was already in police custody; this action on the part of respondents is unjustified. Further, the respondents did not even supply the material to the petitioner, which formed the basis of the order of preventive detention. Resultantly, the petition was allowed and the order of preventive detention was quashed.

Sanjay Kumar v. State of J&K

CRA No. 33/2017

Date of Decision : 26-10-2018

Hon'ble High Court has ruled that the under trial prisoners who have completed

half of maximum sentence prescribed for offence for which they were arrested, may not be detained in jail.

As per Section 497-D of CrPC, where a person has during the period of investigation, inquiry or trial under this Code or an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under the law), undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence, he shall be released by the Court on his personal bond with or without sureties.

The Hon'ble Court also relied on the case 'Bhim Singh v. Union of India and others', (2016) 1 SCC (Cri) 663, wherein the Hon'ble Supreme Court has held that under trial prisoners who have completed half of maximum sentence prescribed for offence for which they were arrested, shall not be detained in jail.

Sunil Kumar v. State of J&K
CRMC No. 512 of 2017
Decided on 14-12-2018

Hon'ble High Court quashed an FIR for rape, holding the same to be guided by ulterior motive of settling personal grudges.

Petitioner, who was proposed to be married to respondent 2 refused for marriage when he came to know of her love affair and physical relationship with someone else. Respondent's parents insisted for marriage, and threatened to implicate him for their daughter's rape. FIR was registered against the petitioner under Sections 376 of the Ranbir Penal Code, 1932 alleging that he subjected respondent 2 to sexual assault on the false promise of marriage.

It was observed that under Section 375 (4) RPC inducement is a necessary ingredient in obtaining consent by fraud. There should be some material on record prima facie showing that the girl was induced by accused to such an extent that she was ready to have sexual intercourse with him. Promise to marry cannot be said to be an inducement in all cases. Where

there is mere breach of promise of marriage and before breach there is a sexual relationship, that relation is a consensual relationship, and not rape as defined in Section 376 RPC.

The Court remarked that "now-a-days there are cases where boy and girl having love affair, indulging into sexual relationship and ultimately ending into a breakup. Undoubtedly that amounts to consensual sexual relationship as they were in love with each other.....When a woman is major and educated, she is supposed to be fully aware of the consequences of having sexual intercourse with a man before marriage."

Relying on the judgment in Vineet Kumar v. State of Uttar Pradesh, (2017) 13 SCC 369 it was held that allegations made in the FIR, even if taken at face value and accepted in their entirety, did not prima facie constitute any offence against the petitioner.

Ram Murti Avisnash v. State of J&K & Ors
CRMC 22/2018
Date of Decision : 14-12-2018

The instant petition was filed u/sec 561 – A CrPC seeking Quashment of order passed by Ld. Special Mobile Magistrate Jammu wherein Crime branch Jammu has been directed to investigate the matter of alleged forgery with regard to an agreement to sell and quashment of PV No. 119/2015 initiated by crime branch jammu on the basis of order of Magistrate and quashment of judgment and order whereby the revision petition filed by petitioner has been dismissed.

The main contentions of the petitioner were -

a) that matter is of civil nature so criminal proceeding is not maintainable, and

b) that matter has been forwarded to crime branch which has no jurisdiction in the matter.

Held- The Hon'ble court held that there is specific allegation against the petition that he made endorsement over the back side of the agreement to sell and forged the signature of the complainant even PV has

proved this aspect of matter.

The Hon'ble court further observed that it generally happens that in case of forgery of documents, there happens to be a Civil liability also. Criminal liability cannot be quashed on the ground that dispute is of civil nature.

With regard to second contention the court held that admittedly offences mentioned in the complaint does not fall under SRO 202 dated 3-06-1999 in terms of which case was forwarded to the crime branch, the Hon'ble court observed that magistrate has ample power to ask police station within his jurisdiction to conduct investigation and Section 156 (2) clearly envisages that proceeding of police officer shall not be called in question on the ground that there is lack of jurisdiction, though there is bar to registration of FIR in the matter, however only PV has been conducted and that too as per the direction of Ld. Magistrate, purpose of PV is to enquire about the truthfulness of allegation leveled in complaint and further to verify as to whether a case of cognizable case is made out.

The petition was accordingly disposed of with direction to CBI to act upon SRO 202 before lodging FIR and discretion was granted to crime branch Jammu to send PV to the concerned police station for lodging FIR.

**Gopal Singh Vs State of J&K & others
CRMC No 112/2014.**

Date of Decision : 14-12-2018

Matter involved:- These two have been filed for quashing of counter FIRs lodged against each other.

While dealing with the petition, Hon'ble High Court observed that challan in FIR No. 61/2010 u/s 307, 452. 147 & 148 RPC by police station, Katra was pending before PDJ Reasi, charges already framed need that all the pleas taken in the petition are pertaining to facts, which the court cannot consider u/s 561-A. Petitioner has failed to show some expressed legal bar created in any Act, which debars court to deal the matter.

While dealing CRMC No 235/2011 the court held that law with regard to quashing of FIR / Complaint/ Challan is now well settled. These can be quashed in order to prevent abuse of process of law or to otherwise serve the ends of justice. The court while exercising powers u/561-A CrPC does not function as court of trial appeal or revision. In fact jurisdiction has to be exercised sparingly, carefully and with great caution. The powers cannot be used to stifle the legitimate prosecution. All the pleas taken in petition are pertaining to facts, these may be relevant to discharge the accused, but not for quashing of FIR. Since all these pleas are pertaining to appreciation of facts.

Law Discussed: C.H. Bhajan Lal v. State of Haryana reported in AIR 1992 SC 604.

Whereby it has been held that FIR can be registered if *prima facie* case made out. Once FIR registered it becomes the obligation on investigation agency to investigate that matter to its logical end and petitioners cannot seek quashment of FIR.

**Shabir Ahmad Khan v. State of J&K
B.A No. 151/2018**

Date of Decision : 19-12-2018

The instant petition has been filed u/s 498 CrPC before the Hon'ble High Court for grant of bail; earlier bail application having been rejected by Trial court in the case involving offence u/s 376 RPC.

Hon'ble High Court rejected the bail application on the ground that Bar u/s 497-C CrPC would be applicable. Since the accused has been charged in the trial court; which suggests that reasonable grounds exist for believing that accusation against such person is Prima-facie true. Further, it would not be imperative to record any opinion at this stage on veracity of accusation.

**Manmohan Krishan v. Pawan Jaral
CRR No. 25/2018**

Date of Decision : 21-12-2018

The Hon'ble High Court held that under section 139 of the Negotiable Instruments Act there is legal presumption that the

cheque was issued for discharging an antecedent liability and the presumption can be rebutted only by the person who drew the cheque. This presumption under section 139 can be rebutted by the accused only by adducing evidence.

Reliance was placed on the judgment passed by a three Judge bench of the Apex Court, Rangappa v. Sri Mohan, (2010) 11 SCC 441, whereby it has been held that "section 139 of Negotiable Instrument Act is stated to be an example of a reverse onus clause which is in true with the Legislative intent of imposing the liability of Negotiable Instrument. The offence under section 13 of the NI Act is at best a regulatory offence and largely falls in the arena of civil wrong and therefore the test of proportionality ought to guide the interpretation of the reverse onus clause"

Arshad Iqbal v. Nusrat Naz

CRMC No. 127/2018

Date of Decision : 14-12-2018

Petition under section 561 – A CrPC seeking quashment of second application u/s 12 (a) of J&K Protection of Women from Domestic Violence Act, 2010 on same grounds.

Hon'ble High Court held that:-

The strict law of pleading is not applicable as such second complaint on same facts and cannot be dismissed on the ground that already first petition was pending at the time of filing second petition especially when there in specific plea that under bona fide belief earlier petition was not pursued on account of settlement. It is held that petition under section 12 of J&K Domestic Violence Act cannot be treated as complaint in clear terms, as petition in this Act means request for providing relief as Domestic Violence is a social legislation meant for effective protection of rights of women.

Civil

Surjeet Singh v. Sadhu Singh

Civil Appeal No. 11764-11765 of 2018

Date of Decision : 03-12-2018

Hon'ble Supreme Court while upholding a judgment passed by Himachal Pradesh High Court expressed displeasure at it being unnecessarily lengthy.

The Court was deciding appeals filed against the order of the High Court whereby it had allowed revision petitions filed by respondents. The Hon'ble Court observed, "having rightly formed an opinion to remand the case to the First Appellate Court, there was no need for the High Court to devote 60 pages in writing the impugned order." In Court's view, it was not required. Further, "examination could be confined only to the issue of remand and not beyond it. At the same time, there was no need to cite several decisions and that too in detail. Brevity being a virtue, it must be observed as far as possible while expressing an opinion."

Sunkara Lakshminarasamma (D) by LRs v. Sagi Subba Raju & Ors. etc.

Civil Appeal Nos. 4380-4382 of 2016

Date of Decision : 28-12-2018

Civil Procedure Code - Order 22 Rule 4 – lays down that where within the time limited by law, no application is made to implead the legal representatives of a deceased defendant, the suit shall abate as against a deceased defendant. This rule does not provide that by the omission to implead the legal representative of a defendant, the suit will abate as a whole. If the interests of the co-defendants are separate, as in the case of co-owners, the suit will abate only as regards the particular interest of the deceased party. If the case is of such a nature that the absence of the legal representatives of the deceased respondent prevents the court from hearing the appeal as against the other respondents, then the appeal abates in toto. Otherwise, the abatement takes place only in respect of the interest of the respondent who has died. The test often adopted in such cases is whether in the event of the appeal being allowed as against the remaining respondents there would or would not be two contradictory decrees in the same suit with respect to the same

subject matter. The court cannot be called upon to make two inconsistent decrees about the same property, and in order to avoid conflicting decrees the court has no alternative but to dismiss the appeal as a whole. If on the other hand, the success of the appeal would not lead to conflicting decrees, then there is no valid reason why the court should not hear the appeal and adjudicate upon the dispute between the parties. *Shahazada Bi v. Halimabi*, (2004) 7 SCC 354, referred.

Hukum Chandra (D) through LRS v. Nemi Chand Jain

Civil Appeal No. 3827 Of 2014

Date of Decision : 14-12-2018

The Hon'ble Supreme Court, while dealing with the question of *bona fide* requirement for personal use, laid the law that it would be inappropriate to expect the son of landlord to sit idle, and without any work till the eviction petition on the basis of *bona fide* requirement, is decided. The court also held that the normal rule is that in any litigation, the rights and obligations of parties are adjudicated upon as they obtained at the commencement of litigation, however the court is not precluded from considering a subsequent change having material bearing on the rights of parties to relief, or on the aspects of moulding appropriate relief.

Prakash Chand Daga v. Saveta Sharma and Others

Civil Appeal No. 11369 of 2018

Date of Decision : 14-12-2018

Hon'ble Supreme Court held that the owner of a vehicle who transfers it to another person, is liable to pay compensation in case of an accident unless sale is reflected in Regional Transport Authority (RTA) records.

Since the liability in this case was fastened on the driver and first Respondent, the aforesaid decision was challenged by them in the High Court, and the High Court had held that the Appellant continued to be the owner in terms of definition as incorporated in Section 2 (30)

of the Act as no transfer of ownership was effected in accordance with Section 50 of the Motor Vehicles Act, 1988 ('the Act'), despite the sale of vehicle.

The Hon'ble Supreme Court held that the law is thus well settled and can be summarised that, "Even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person Merely because the vehicle was transferred does not mean that such registered owner stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person."

Union of India v. Nareshkumar Badrikumar Jagad

Review petition (C) No. 40966 of 2013

Date of Decision : 28-11-2018

Hon'ble Supreme Court has held that it had no hesitation in enunciating that even a third party to the proceedings, if he considers himself an aggrieved person, may take recourse to the remedy of review petition, while observing that section 114 postulates that any person considering himself aggrieved would have locus to file a review petition, as restated by order XLVII CPC also.

Rajasthan Housing Board & another v. Chandi Bai & Ors.

Civil appeal No. 11912 of 2018

Date of Decision : 7-12-2018

The Hon'ble Supreme Court held that a civil suit does not lie to invalidate Land acquisition. The only remedy left to the aggrieved person is to file a writ petition before the High Court.

Hon'ble Court held as under:-

"Upon hearing the learned counsel appearing on both sides, it is apparent that has no jurisdiction to entertain such a suit. This Court has laid in catena of judgements that the civil suit to question notification issued under section 4 and declaration under section 6 of Land Acquisition Act, 1894, is not maintainable. The only remedy

left to the aggrieved party is to file a writ petition before the High Court under Article 226 of the Constitution of India or to approach this Court.”

Hon’ble Court held that the remedy of the respondents, if any, was to clean compensation by seeking reference under section 18 of section 20 of the Land Acquisition Act or to file a civil suit to recover compensation on the basis of title.

Rameshwar Prasad Shrivastava & others v. Dwarkadhis Projects Pvt. Ltd. and others

Civil Appeal No. 5802 of 2018

Date of Decision : 7-12-2018

Hon’ble Supreme Court held that the provisions of Order 1 Rule 8 CPC are to apply when the complaint is filed by a complainant falling in section 2 (1) (b) (iv) Consumer Protection Act.

Hon’ble Court held as under:-

“13. The language used and the text in section 13 (6) is clear that wherever a complaint is filed by a complainant in the category referred to in section 2 (1) (b) (iv), the provisions of Order 1 Rule 8 CPC shall apply with the modification that reference to suit or decree shall be construed as reference to a complaint or order of the District Forum. The expression “with the permission of the District Forum” as appearing in section 12 (1) (c) must be read along with section 13 (6) which provides the context and effect to said expression. In our view Section 12 (1) (c) read with section 13 (6) are not independent but are to be read together and they form part of the same machinery.”

Hon’ble Court also held that the language employed in the relevant provisions is absolutely clear and does not admit of any other interpretation, while referring Babu Manmohan Das Shah & others v. Bishnu Das (1967) 1 SCR 836 at page 839, wherein, it was held that the ordinary rule of construction is that a provision of the statute must be construed in accordance with the language used therein unless there are compelling reasons, such as, where a literal construction would reduce the

provision to absurdity or prevent the manifest intention of the legislature from being carried out.

Salem Municipality v. P. Kumar & Ors.

Civil Appeal Nos. 9-11 of 2014

Date of Decision : 15-11-2018

Hon’be Supreme Court held that it is open to the court to presume the continuity of any fact once shown to have prevailed, under Section 114 Evidence Act, and that such a presumption of continuity can be drawn not only forward but backward also. The Hon’ble Court held as under:

“It is no doubt true that under section 114 of the Evidence Act, there is a presumption of continuance of a state of affairs once shown to have prevailed..... Such presumption of continuity can be drawn not only forward but backward also. Court can presume that such state of affairs might have existed in past also unless discontinuity is proved.”

The Hon’ble Court also observed in the said case that there was no material to set aside the finding of possession recorded by First Appellate Court as that was supported by corresponding revenue entries and statutory presumption of correctness attached to such entries though such a presumption is rebuttable, while also holding that there was no evidence adduced to rebut the statutory presumption of correctness of document of record of rights in the said case.

Abdul Karim Tantray v. Go Airlines (India) (P) Ltd.

Date of Decision : 16-10-2018

Hon’ble Division Bench of High Court of J&K ruled that a joint reading of Article 226 of the Constitution of India and Section 103 of the Constitution of State of Jammu & Kashmir leads to the conclusion that a writ court has a limited scope of interference in orders of a lower forum.

Petitioners had booked tickets for travel to Delhi but were refused to be boarded by the respondent airlines on the ground that one of them was suffering from a serious

disease, and did not have a medical certificate certifying her fitness to travel on the airlines.

A complaint was filed by aggrieved petitioners before the District Consumer Disputes Redressal Forum urging that the concerned patient was not subjected to any medical examination by respondent, and thus their decision was without any reasonable cause. It was also stated that respondent's action had prevented timely medical treatment of the patient in Delhi which caused her death. As such, a compensation of Rs 4.5 lakhs was claimed by the petitioners. District forum awarded Rs 30,000 as compensation on the ground that while respondent's refusal for boarding to the patient was justified, refusal for petitioners was arbitrary. Petitioners challenged payment of meagre compensation amount awarded by the District forum.

The Court relied on dictum in *Heinz India Private Limited v. State of Uttar Pradesh*, (2012) 5 SCC 443, and observed that a court exercising writ jurisdiction does not sit as a court of appeal, but has to see only whether the process of arriving at a decision has been correctly followed or not. Since the order of State Commission was based on the testimony of witnesses and the case set up by petitioners, there was no perversity in its order.

Haji Abdul Hameed Khan v. Bashir A. Bashir

Civil Revision No. 51/2018

Date of Decision : 11-12-2018

A revision petition was filed against the order of trial court whereby application under Order 7 Rule 11 CPC was rejected on the ground that averments of the plaint discloses the cause of action, same was impugned before the Hon'ble High Court.

Hon'ble High Court has held that it is fundamental principal of Civil Jurisprudence that cause of action has to be deduced from facts put forth in the plaint and not from the written statement just because the defendant has projected a different version of factual matrix, the

litigation cannot be thrown entirely. The court cannot adjudicate upon the truthfulness of the averments in absence of trial.

Ikhtlaq Ahmad Wani v. Ghulam Nabi Pandith

Civil First Appeal No. 33/2018

Date of decision: 12-12-2018

The trial court had granted leave to defend to the defendant subject to the condition that the defendant shall deposit an amount of Rs. 28.50 lacs or in alternative pays or deposit cash security of 28.50 lacs. This order was challenged on the ground that unconditional leave should have been granted to the defendant. The other side has resisted the and submitted that order impugned has been slightly passed.

It was held that the order by virtue of which leave in favour of defendant has been granted on a condition of depositing the money or cash security does not amount to judgment. The decree has not followed. So the remedy is not by way of an appeal. No appeal lies on mere finding. Same is quite clear from section 96 to 100 and Order 43 CPC. Accordingly, the appeal was dismissed.

Activities of the Academy

Induction Training Course for Newly appointed Munsiffs (Civil Judges, Junior Division) inaugurated

Jammu & Kashmir State Judicial has commenced the Induction Training Programme for Newly appointed Munsiffs (Civil Judges Junior Division) on December, 14, 2018 at Jammu.

During the training programme commenced on 7th December, 2018 at Academy Complex, Jammu, Trainees planted saplings of trees in the Academy's lawn before formal start of training sessions.

During the Induction Training Programme Hon'ble Ms. Justice Gita Mittal, Chief Justice (Patron-in-Chief J&K State

Judicial Academy) and Hon'ble Mr. Justice Rajesh Bindal, Chairman of Governing Committee of Judicial Academy interacted with Newly appointed Munsiffs (Civil Judges Junior Division).

Hon'ble Ms. Justice Gita Mittal, the Chief Justice, High Court of Jammu and Kashmir welcomed the newly appointed Munsiffs to the Judicial family of the State and deliberated that being a Judge is not merely a job but a service to the Nation, more particularly to the common masses seeking redressal against the deprivation of their rights. Hon'ble Chief Justice also added that one of the good qualities of a Judge is the quickness with which he or she disposes of the cases with fairness and sense of justice. A Judge must have the best of sincerity, fairness, and that he must be dead honest not just to the case but also to himself. Hon'ble the Chief Justice also advised the Officers to take care of ecological concerns of the Nation and to be proactive in ensuring hygiene of the workplace and of surroundings.

Hon'ble Mr. Justice Rajesh Bindal also told the newly appointed Munsiffs that they are Judges for full twenty four hours, and they must have utmost sense of fairness and integrity, and they shall make efforts to live upto the Constitutional goal of Justice to marginalised and deprived sections of the society. Trainee Officers were told that for the Litigating public, the Courts are last hope and resort and a Judicial Officer should instil confidence in them that judiciary is in a better position to redress the grievance according to letter and spirit of law. Hon'ble Mr. Justice Rajesh Bindal advised the Trainee Officers to extend helping hand to the downtrodden so as to bring them in the mainstream and to remove inequalities from the society.

Mr. Rajeev Gupta, Director, J&K State Judicial Academy thanked Hon'ble the Chief Justice and Hon'ble Mr. Justice Rajesh Bindal for their valuable inputs and fruitful interaction with the trainee Judicial Officers, and assured them that Academy shall make all endeavour to get best out of the trainee Judicial Officers by providing

them with skills and knowledge on every sphere of Judicial dispensation. On behalf of Academy, Training Kits were provided which shall help the Trainee Judicial Officers to have insight into substantial and procedural laws, as also on Court and docket management.

Earlier on the start of Training Programme the Trainee Officers planted saplings of the trees in the Academy premises.

Regional Conference on Enhancing Excellence in Judicial Institutions

Chief Justice, High Court of Jammu and Kashmir, Justice Gita Mittal, exhorted Judicial Officers in the Regional Conference held on 1st and 2nd December, 2018 at Jammu to make optimal use of Information Technology saying this can help expediting justice dispensation for maximum benefit of the people.

"As Judicial Officers we have to keep pace with the latest technological developments in IT and make its use in the judicial process", Chief Justice said while addressing 2-days North Region-I, "Regional Conference on Enhancing Excellence of the Judicial Institutions: Challenges and Opportunities" organized by the National Judicial Academy in collaboration with High Court of Jammu and Kashmir and J&K State Judicial Academy.

She expressed confidence that the judiciary is well poised to meet the challenges in delivering justice to the people.

Supreme Court Judge, Justice Navin Sinha was the chief guest on the occasion while Director National Judicial Academy, Justice G. Raghuram presides over the function.

While acknowledging the robust support of the Center and the state government in facilitating Justice dispensation, the Chief Justice urged upon the Judicial Officers to benefit from the technology in enhancing their legal acumen.

In judicial dispensation, the challenges

are many and opportunities too are numerous, she said hoping that the Judiciary will poise itself for the both.

Justice Mittal referred to the well-recognized fact that the judicial functioning cannot be discharged merely with knowledge and intelligence but it has to be supplemented by wisdom, intellect and a high degree of sense of justice.

Making a mention of Commercial Court Act and Family Court Act in the state, the Chief Justice said that efforts would be redoubled to make these effective means of delivering justice to the targeted segments of the society.

Hoping that the ongoing conference will provide a unique platform to the participants in sharing their experiences and expertise, the Chief Justice said that such events help in clearing blurred visions, doubts, improves judicial skills and instill a sense of confidence besides improving the capacity to interpret law so as to deliver expedited adjudication. "I am quite optimistic that the conference would enable us to contribute towards justice dispensation with added vigour", she opined.

"I firmly believe that Institutional bonding is critical to Institutional Development and such conferences are a step forward towards achieving this goal", the Chief Justice maintained.

Appreciating the efforts of Justice Sinha towards making judiciary a vibrant institution of Justice dispensation, the Chief Justice said that his presence here manifests his deep concern towards strengthening the Subordinate Judiciary and we all will definitely be benefitted by his intellect and experience.

Justice G. Raghuram, while addressing the conference, said that since the past 15 years the National Judicial academy is providing training and continuing legal education to judicial officers and ministerial officers of the courts. "We have several pockets of excellence in our Judicial family which needs to be transformed from episodic to institutional and structural to create a Judicial world of excellence", he

maintained.

Justice G. Raghuram informed that the possibilities are being explored to create a separate training institute for training judges and judicial instructors in Law colleges. "Legal education is a huge transformative exercise which we all need to put into effect to bring in added excellence, accountability and responsiveness in our Judicial world", he asserted.

Justice Rajesh Bindal, Chairman Committee for State Judicial Academy, while addressing the conference said that learning is a continuous process and emphasized the need for gaining knowledge by whatever means available. He said that in this process of learning focus should be on quality parameters and not the quantity. "Good and Efficient Judges should not take break from learning and must continue to possess requisite knowledge and skills", he asserted.

Justice Bindal said that it is imperative to focus on judicial education and interactions among all stakeholders of the judicial system for prompt deliverance of justice.

The themes of the conference inter alia include Constitutional Vision of Justice, High Court and District Judiciary: Building Synergies, Revisiting norms for Appellate review : Consequences of frequent and excessive Appellate Interference, Access to Justice: Information and Communication technology and Access to Justice: Court and Case Management.

Later, E-Newsletter of the State Judicial Academy was released by the dignitaries on the occasion.

The Conference was attended by Judges from various states including Himachal Pardesh, Punjab, Telangana, Utrakhand, Andra Pardesh, Bhopal, Allahbad, Dehli, Harayana, Jammu and Kashmir. Besides, others present were Director SJA, Rajesh Gupta, Pricipal District and Sessions Judge, V.C.Koul, Registrar General, Sanjay Dhar along with other Officers, Judicial Officers and other concerned.

Training Programme for staff members of the High Court

One day Training Programme of Staff Member of the High Court of High Court was conducted on December 22, 2018 at Jammu.

Mr. Sanjay Dhar, Registrar General, High Court of Jammu and Kashmir gave useful inputs on office management and maintenance of office files to the staff members of High Court.

Proceedings were conducted by Mr. Rajeev Gupta, Director, J&K State Judicial Academy who welcomed the staff members of the High Court of J&K, and deliberated upon the need of office management and positive attitude not only towards office work but also towards their own lives. Mr. Gupta also added that the J&K State Judicial Academy strives to function as a capable capacity building institution to fulfil demand driven human development needs of High Court & the sub-ordinate courts across the State of Jammu & Kashmir for improved workflow delivery through sustainable, innovative and contemporary means, with the motto of "Efficiency and the Public Good".

Resource Persons Mr. Umesh Sharma, Munsiff (attached to e-Courts) Mr. Jagdish Raj Thakur (Faculty Member, J&K State Judicial Academy, Professor Sameer Gupta (The Business School University of Jammu) deliberated upon various topics viz., Office Management Techniques, Intra Section, Inter Section/ Department Communication, Receipt/ Dispatch and other Office record management, Use of ICT in office business.

Two Days Orientation Programme for Chairpersons and Secretaries of District Legal Services Authorities

J&K State Legal Services Authority in collaboration with J&K State Judicial Academy organizes two Days Orientation Programme from 22nd December, 2018 for Chairpersons and Secretaries of District Legal Services Authorities at J&K State Judicial Academy Jammu.

The Programme was Inaugurated by Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge High Court of J&K, Member governing committee of J&K State Judicial Academy. In his inaugural speech, His Lordship elaborated upon the main object behind this programme i.e. to sensitize the Chairpersons and newly appointed Secretaries of DLSAs about their assignment and how to mitigate the sufferings of the marginalised sections of the society and how to redress their grievances in terms of Legal Services Authorities Act.

The State Legal Services Authority utilized the services of Resource Persons, Ms. Geetanjali Goel Special Secretary Delhi Legal Services Authority, Ms. Tanvi Khurana from District Legal Services Authority, Delhi, besides Mr. Mohd Akram Chowdhary, Member Secretary, SLSA, Mr. Abdul Rashid Malik, Principal District and Sessions Judge, Srinagar and Mr. Rajeev Gupta, Director State Judicial Academy, who highlighted various objectives of the J&K State Legal Services Act. All the Chairpersons of DLSAs (Principal District & Sessions Judges) also Secretaries of DLSAs which include 14 dedicated Secretaries recently nominated, attended the programme and they shall carry the message across in their smooth functioning to achieve the objectives of Legal Services Authorities Act, Rules and Regulations, as well as schemes formulated there under by National Legal Services Authority and State legal services Authority.

The programme was also attended by Mr. Sanjay Dhar, Registrar General, Mr. R. K. Watal, Registrar Vigilance and Ms. Bala Jyoti, Registrar Rules, High Court of J&K.

One Day Orientation Programme for Retainer Lawyers/Panel Lawyers and Para Legal Volunteers of District Jammu, Kathua, Samba, Udhampur and Rajouri

J&K State Legal Services Authority in collaboration with J&K State Judicial Academy and District Legal Services Authority Jammu organised One Day Orientation Programme for Retainer

Lawyers/Panel Lawyers and Para Legal Volunteers of District Jammu, Kathua, Samba, Udhampur and Rajouri at Conference Hall of District Court Complex Jammu on 23rd December, 2018.

The Programme was Inaugurated by Hon'ble Mr. Justice Tashi Rabastan, Judge High Court of J&K. In his inaugural speech, His Lordship elaborated upon various schemes formulated by National Legal Services Authority and J&K State Legal Services Authority. His Lordship also stressed upon the Retainer Lawyers to come forward for redressal of Grievances of downtrodden sections of the society by visiting their door steps and making them aware about their legal rights. The main object behind this programme was to sensitize the Retainer Lawyers and Para Legal Volunteers to move the concerned authorities to mitigate the sufferings of the marginalised sections of the society and addressing the beneficiaries on how to redress their grievances in terms of Legal Services Authorities Act.

The State Legal Services Authority utilized the services of Resource Persons, Ms. Geetanjali Goel Special Secretary Delhi Legal Services Authority, Ms. Tanvi Khurana from District Legal Services Authority, Delhi and Master Trainers Ms. Jyoti Sharma advocate and Ufaira Rashid advocate. Principal District and Sessions Judge Jammu Mr. Vinod Chatterji Koul, Chairman District Legal Services Authority Jammu and Mr. Mohd Akram Chowdhary, Member Secretary, SLSA also spoke on the occasion and highlighted various objectives of the J&K State Legal Services Authorities Act.

The programme was also attended by Mr. R. K. Watal, Registrar Vigilance and Ms. Bala Jyoti, Registrar Rules, High Court of J&K, Mr. Rajiv Gupta Director State Judicial Academy and Mr. Naushad Ahmad Khan Secretary DLSA Jammu. 65 Retainer Lawyers and 169 Para Legal Volunteers from District Jammu, Udhampur, Kathua, Samba and Rajouri participated in the training programme, and took home the message that they have to work with extra

zeal to make the common masses aware about their rights under the constitution and various statutes and schemes formulated by National Legal Services Authority and J&K State Legal Services Authority.

Training programme on Cyber Law

Training Programme on Cyber Law organized by the State Judicial Academy on December 29, 2018 at Jammu in which Judicial Officers of all ranks, Public Prosecutors and Investigating Officers participated. Simultaneously, this programme was conducted through video linkage at Conference Hall, High Court Complex, Srinagar, in which Judicial Officers, Public Prosecutors and the Investigating Officers from Kashmir province participated.

At the initiative of Hon'ble the Chief Justice Ms. Justice Gita Mittal, the top ranking and world renowned experts on Cyber Law, namely, Dr. Pavan Duggal, and Dr. Karnika Seth conducted the programme. Dr. Pavan Duggal happens to be Chairman, International Commission on Cyber Law (President of Cyberlaws.net). Dr. Karnika Seth is also associated with various organizations dealing with Cyber Law regime, including United Nations. Both the resource persons are considered to be the best experts who have conducted various training programmes in India and abroad. With such calibre of resource persons, the issues concerning all the spheres of Cyber Law which include cyber crimes and cyber forensics were dealt with ease and the participants got to know about the wide sphere and intricacies of the Cyber Law, as also the way it is affecting every individual who is connected with information technology and the internet. All the stakeholders in the Judicial dispensation including Judicial Officers, Investigation Officers and public Prosecutors were brought on a common platform to understand the requirements and difficulties of cyber Law from each others perspectives.

Hon'ble Mr. Justice Rajesh Bindal, Chairman Governing Committee of Judicial Academy and E-Courts Committee, in his opening remarks highlighted the need to have greater knowledge about the Cyber Law and various aspects concerning the law enforcement agencies, prosecuting agencies and the courts of law as serious challenge is posed by the unscrupulous persons, threatening the economic and social order of the country. It was highlighted by Mr. Justice Bindal that having knowledge of laws relating to information technology and the internet and the security regime connected with it, shall be of immense help for proper safe guard against the ill effects of the technology.

Dr. Pavan Duggal dealt with silent aspects of Indian Cyber Law enacted as Information Technology Act, 2000 alongwith Rules framed thereunder, electronic evidence and the issues as to their applicability to the Judicial proceedings. The speaker also discussed whole gamut of case law concerning important issues coming up before the courts of law.

Dr. Karnika Seth dealt with different aspects of Cyber crimes and especially dealt with crimes against women and children. The speaker also dealt with the connected cyber law regime and elaborated upon the brighter and darker side on the internet. She also highlighted the upcoming challenges and opportunities with which the courts of law, investigating agencies and the prosecution shall be facing in near future.

Participants in the programme interacted freely with the experts and posed curious and intelligent questions and the experts ably answered their quires to the satisfaction of the participants. The experts wished to have interaction with the participants in future also through electronic modes of communication and encouraged the participants to communicate to them all their queries enabling them to clear their doubts.

Recent Legislative Amendments

Jammu and Kashmir Civil Procedure (Amendment) Act, 2018.

This Act has introduced few amendments in the existing provisions of Code of Civil Procedure as also has introduced new concept of Case Management Hearings. The changes made in the Code of Civil Procedure are summarized as under :-

Section 35:-

Section 35 has been drastically amended replacing the existing provisions as to costs. Section 35-A, has been omitted and the provisions thereof have been merged in Section 35. New Section 35 encompasses all the spheres of imposition of costs. As illustration, many instances have been included in the provisions giving insight into the manner and the procedure for imposing costs.

Earlier, Section 35-A, provided compensatory costs maximum of Rs 3000, however, in the amended provisions, there is no restriction on imposition of compensatory costs. The provision also now provides for the specific instances of imposing costs, including the fees and expenses of witnesses incurred, legal fees and expenses incurred and any other expenses incurred in connection with the proceedings. This makes the provision clear and easy to apply.

Conduct of the parties and reasonable opportunity available to the parties to settle the claim wholly or in part shall also be determining factors in accessing the amount of costs. Frivolous claims or counter claims would be important instances of imposing costs. The provision also prescribe for imposing proportionate costs unaffected by success or failure of the parties in the suit.

Order V Rule 1 and Order VIII R 1 now have been amended, making it compulsory to file written statement within the outer limit of 120 days, with a penal clause of forfeiture of right of the defendant to file

completion of inspection or any later date as fixed by court. Each party shall set out reason for denying a document. An affidavit in support of denials and admission shall also be filed.

Order XI Rule 5 — Production of documents.

Any party to suit can be ordered to produce documents in his possession, control or power at any time during the pendency of the suit.

Any party or person to whom such motive to produce is issued shall not be given less than 7 days and more than 15 days to produce such documents.

Order XV-A : With a view to expedite the proceedings in a civil trial, the Amendment Act, 2018 has introduced the concept of Case Management Hearings. Order XV-A has been added requiring the court to hold first cases management hearing not later than four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit. The courts would now have the power to control the proceedings by involvement of the parties and their counsels who would be required to clearly chalk out the timeline in which they would complete their part of procedural requirements including the completion of the evidence. From the date of first case management hearing, the court would be required to complete the process of hearing arguments within six months. It would require the courts to dispose of the case effectively and expeditiously. Since the parties shall fix the timeline for themselves, it would leave hardly any scope for the parties to escape from adhering to the timeline so fixed by them. This would also facilitate the court in controlling the trial proceedings.

Order XV-A Rule 6 : Rule 6 of Order XV-A enlists the powers of court at case management hearing which would give extensive powers to the court to decide the course of trial and the time in which the case shall be disposed of. Non-adherence to the schedule settled at case management hearing gives the power to the court to impose costs, foreclose the right of either of

the parties to file affidavits or to cross-examine the witness or to file written submissions or to address oral arguments. The court shall also has the power to dismiss the plaint or allow the suit on repeated non-compliance by the opposite parties to the suit of the schedule fixed for completion of trial.

Order XVIII : Order XVIII has been amended incorporating sub-rule 3-A to 3-F in Rule 2, whereby the parties would be required to submit written arguments four weeks prior to commencing oral arguments. The parties shall also has to chance to submit reply to written arguments.

This provisions would ensure certainty and transparency at hearing of arguments by the court. Fixed schedule for doing the needful would ensure the completion of the arguments in timely manner leaving no scope for adopting delaying tactics by the counsels for the parties.

Order XIX : Order XIX has been amended giving more powers to the court to control the evidence, so as to exclude the frivolous and unnecessary evidence to be given by the parties. The courts have been given power to redact or reject any part of evidence in affidavits or otherwise which is useless for the purpose of trial proceedings.

Code of Criminal Procedure (Amendment) Act, 2018, (Governor's Act No. XLVIII of 2018, dated: 13-12-2018)

Following amendments have been made in the Code of Criminal Procedure, Svt. 1989 :-

1. Amendment in the proviso to sub-section (2) of Section 167, clause (b) substituted as :

“(b) no Magistrate shall authorize detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video

written statement.

The provisions also mandates to the courts not to receive written statement after the expiry of 120 days, making the provision as to extension in the matter of filing written statement to be redundant.

Amendment in Order VII now introduces Rule 2A as under :

(1) where plaintiff seeks interest - plaint shall contain a statement to that effect.

(2) Plaint shall state, whether plaintiff is seeking interest in relation to commercial transaction or under terms of some contract on under an Act or some other basis - the same is to be specified in the plaint.

(3) Pleadings shall State:-

- a) Rate of Interest claimed.
- b) Date from which it is claimed.
- c) Date to which it is calculated.
- d) Total amount of interest claimed to the date calculation.
- e) Daily rates of which interest accrues after the date.

Order VIII has been amended introducing the following Rule 3-A :

3-A. Denial by the defendant in suits. -

- (1) Denial shall be in manner provided in Sub-Rules (2) to (5) of this Rule.
- (2) The defendant shall state which of the allegations in the particulars of the plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.
- (3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.
- (4) If the defendant disputes the jurisdiction of the court he must state the reasons for doing so, and if he is able, give his own statement as to which court ought to have jurisdiction.
- (5) If the defendant denies the plaintiff's valuation of the suit, he

must state the reasons for doing so, and if he is able, give his own statement as to which court ought to have jurisdiction.

Now in terms of Rule 5 of Order VIII, if the denial is not in the manner provided under Rule III-A, the allegation shall be deemed to have been admitted.

Order XI as to disclosure, discovery and inspection of documents has been amended.

Both plaintiff and defendant under Order XI are required to file list of documents and Photostat copies of documents in their powers, possession, control or custody pertaining the suit. The new law also contains provision with regard to declaration on oath by the parties with regard to verification of genuineness of the documents.

The parties are barred from relying on the documents in their power, possession, control or custody, if they have not disclosed it in the list of documents.

In case of urgent filing, the plaintiff can seek leave to rely on additional documents. However, such additional documents shall be filed within 30 days of filing the suit.

Interrogatories – O_{XI} R_{II}

The Courts shall decide the application for leave to decline interrogatories within 7 days, from date of filing of such application.

The interrogatories shall be secured by affidavit to the filed within 10 days or within such time as the court may allow.

The application for setting aside interrogatories on the ground that they are scandalous, unnecessary, oppressive etc shall be made within 7 days of service of interrogatories.

O_{XI} R₃ Inspection

The time limit for inspection of documents is 30 days. The court may extend this time limit upon application at its discretion but not beyond 30 days in any event.

O_{XI} R₄ - Admission and denial of documents.

Every party shall submit a statement of admissions or denials of all documents disclosed and inspected within 15 days of

linkage”.

And following explanation added :

“If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of accused person may be proved by his signatures on the order authorized detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.”

2. Amendment in Section 342 :

In Section 342 of the 'principal Act', after sub-section (4), the following sub-section shall be added; namely-

“(5) The court may take help of Public Prosecutor and defence counsel in preparing relevant questions which are to be put to accused and the court may permit filing of written statement by the accused as sufficient compliance of this section.

3. Amendment of Section 353 :

In section 353 of the 'principal Act', after the words "in the presence of his pleader", the words "or, as the case may be, through the medium of Electronic Video Linkage when the court on its own motion or on an application so directs in the interests of justice" shall be added.

4. Amendment of Section 360,

In section 360 of the 'principal Act', after sub-section (3), the following sub-sections shall be added; namely:-

- (4) Nothing contained in sub-sections (1) to (3) shall apply when evidence under section 353 is taken: through the medium of Electronic Video Linkage.
- (5) The evidence taken through the medium of Electronic Video Linkage in electronic form shall be the electronic record within the meaning of clause (1) of section 2 of the Information Technology Act, 2000 (Central Act No. 21 of 2000).

5. Amendment of Section 364

In section 364 of the 'principal Act', in sub-section (4), for the words "the examination of an accused person under section 263", the

words “the examination of an accused person either through the medium of Electronic Video Linkage or under section 263” shall be substituted.

6. Amendment of Section 540-A

In section 540-A of the 'principal Act', the following Explanation shall be added, namely:-

“Explanation:- For the purpose of this section “personal attendance of the accused” shall include his attendance through the medium of Electronic Video Linkage as provided in section 353.”

In a Public Interest Litigation titled Court on its Own Motion v. State of Jammu and Kashmir, the Hon'ble High Court, vide its order dated 15-13-2018, directed the State to examine the concept of 'Sextortion' in the context of applicable laws and to undertake an exercise to make necessary amendments in the existing penal laws so that illegal acts, unwarranted demands for sexual favours and inappropriate contacts by the persons in authority are made punishable. a

The matter was examined by the Government and it was found that in order to prevent misuse of authority for unwanted sexual favours, it is expedient to amend the existing laws so as to curb this menace and prevent and check such misuse of position by persons in authority, fiduciary relationship or by a public servant.

In exercise of the powers vested under Proclamation No. P-1/13 of 2018, dated 20th of June, 2018, the Governor is pleased to enact the Jammu and Kashmir Criminal Laws (Sexual Offences) (Amendment) Act, 2018, whereby concept of 'Sextortion' is introduced and Section 354-E inserted in the Ranbir Penal Code, Svt. 1989 :-

“354E. Sextortion.- (1) Whoever, -

- (a) being in a position of authority; or
- (b) being in a fiduciary relationship; or
- (c) being a public servant,

abuses such authority or fiduciary relationship or misuses his official position to employ physical or non physical forms of coercion to extort or demand sexual favours from any woman in exchange of

some benefits or other favours that such person is empowered to grant or withhold, shall be guilty of offence of Sextortion.

Explanation- 'Sexual favour' shall mean and include any kind of unwanted sexual activity ranging from sexually suggestive conduct, sexually explicit actions such as touching, exposure of private body parts to sexual intercourse. including exposure over the electronic mode of communication.

(2) Any person who commits the offence of sextortion, shall be punished with rigorous imprisonment for a term which shall not be less than three years but may extend to five years and with fine."

Amendment of Section 375.

In section 375 of the Penal Code-

I. for the words "following seven descriptions', the words "following eight descriptions shall be substituted; and

II. after description Seventhly, the following description shall be inserted, namely :-

"**Eighthly.**- With her consent obtained in exchange for exercising or misusing authority."

Amendments to the Code of Criminal Procedure, Samvat 1989

Amendment of Section 154

In section 154 of the Code of Criminal Procedure, Svt 1989, (hereinafter referred to as the Code of Criminal Procedure) in sub-section (1) in first proviso thereto, for the words and figures "section 354D", the words and figures 'section 354D, section 354E", shall be substituted.

5. Amendment of Section 161

In section 161 of the Code of Criminal Procedure, in sub-section (3), in second proviso thereto, or the words and figures "section 354 D", the words and figures "section 354D, section 354E", shall be substituted.

Amendments to the Evidence Act, Samvat 1977

Amendment of section 53A

In section 53A of the Evidence Act, Samvat 1977, for the words and figures "section 354D", the words and figures "section 354D, section 354E", shall be substituted.

What lead to enactment of Criminal Law Amendment Act, 2018.

This followed the Criminal Law (Amendment) Ordinance, 2018 and has brought amendments in four major Acts.

The Ranbir Penal Code, Svt 1989 and the Code of Criminal Procedure, Svt 1989.

Before the amendment, Section 376 dealt with punishment for the rape of women in two circumstances.

Section 376(1) dealt with punishment for rape of a woman in all the circumstances except those mentioned in Section 376(2). The punishment in such cases was rigorous imprisonment of a minimum eight years, which now has been raised to not less than 10 years but which may be extended to imprisonment for life.

Section 376(2) dealt with punishment for the rape of a woman done by police officers, public servants, member of the armed forces, etc. This punishment has now been amended so far as the victim below the age of 16 years is concerned. In that case, the minimum punishment shall be rigorous imprisonment for a term which shall not be less than 20 years extending upto imprisonment for life.

Punishment for rape on a woman under twelve years of age has also been added by the amendment. The punishment in such cases is defined as a minimum twenty years rigorous imprisonment which may extend to imprisonment for life. The offender in such cases can also be punished with death penalty. [**Section 376AB**]

Thus, for the first time, death penalty has been introduced for the offence of rape considering the gravity of the offence.

Moreover, **Section 376DA and 376DB** have been added by the amendment which deals with punishment for gang rape on a woman under sixteen years and twelve years respectively. The punishment in such cases has to be invariably imprisonment of life. However, for gang rape on a woman under twelve years of age death penalty can also be awarded.

The Code of Criminal Procedure, Svt 1989 : There have been simultaneous amendments in the Cr.P.C to meet the ends

of justice in such cases of rape. If a person is accused of rape on a woman of under sixteen years of age, he shall not be granted bail under Section 497-C of CrPC.

A sub-section has been inserted which makes the presence of informant or a person authorized by him mandatory during the hearing of bail application of the accused in such cases.

A proviso has been inserted which states that the High Court or the Session Court has to give notice to the public prosecutor within 15 days of which it receives the bail application of an accused of raping a girl under 16 years of age.

The amendment has provided for speedy trial and investigation. The investigation has to be mandatorily completed within two months. The appeal in rape cases has to be disposed within six months.

The Evidence Act, Svt 1977 : Section 53A and Section 146 have been amended to make the provision of the Act to be in consonance with the amendments in other Acts.

The amendment in Criminal Law with respect to the introduction of the death penalty triggered the debate whether such punishment addresses the issue at hand.

The Criminal Law (Amendment) Act, 2018 has brought significant changes in the criminal law of the State. These amendments have the objective of making laws against rape more severe so as to decrease the rate of crime. The time frame of investigation and appeal, if implemented properly, can bring down the crime rate. However, these amendments need to be supplemented with other changes in the criminal justice system for overall effective results.



Judicial Officers' Column

Indian Legal system is infamous for living up to the exact meaning of the proverb 'Justice delayed is justice denied'. Increasing number of civil cases, with delays in disposal being one of the major contributory to that, has been a matter of grave concern for the judicial institution in India. The delays, without doubt, have affected the faith of the people whose civil rights are violated by the wrongdoers. Delay in timely disposal of a case, attacks the very root of a judicial adjudication which is the fairness and reasonableness. The delays may further lead to other evils like favouritism and nepotism, corruption and dilly dallying tactics which are generally attributable to bureaucratic functioning as deliberated by various political thinkers and authors in their academic works.

The word 'Delay' does not need any definition or any statutory meaning. It simply means more than the time expected to be consumed in deciding a case. However, a cue may be taken from the proceedings contemplated by the procedural Codes, with time limits or the number of adjournments having been indicated in the relevant provisions dealing with different stages of trial of cases, as also the necessity of recording of reasons for adjournments further having been stipulated in the Codes.

Hon'ble Supreme Court has also expressed serious concerns, time and again, about the monstrous problem which has assumed huge proportions.

Hon'ble Supreme Court of India suggested remedial measures also in the case titled **Rameshwari Devi and others v. Nirmala Devi and Ors.**, (2011) 8 SCC 249 (para 52). Hon'ble Supreme Court observed that the existing system can be changed drastically or improved in the following steps taken by the trial courts take the following steps while dealing with civil trial:

1. To carefully scrutinize the pleadings, and the documents filed by the parties, immediately after the filing.
2. The court should resort to discovery and production of, and interrogatories at the earliest, according to the object of the Code. If the exercise is carried out carefully, it would focus the controversies involved in the case, and help the court in arriving at truth of the matter and doing substantial justice.
3. Imposition of actual, realistic or proper costs, and ordering of prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents, by the litigants.
4. The court must adopt realistic and pragmatic approach in granting *mesne* profits.
5. The court should be extremely careful and cautious in granting ex-party interim injunctions or stay order. Ordinarily short notice should be issued to the defendants or respondents, and only hearing the parties, appropriate orders should be passed.
6. Litigants who obtained ex parte interim injunction on the strength of false readings and forged documents should be adequately punished. No one should be allowed to abuse the process of Court.
7. The principle of restitution be fully applied in a pragmatic manner, in order to do real and substantial justice.
8. Every case emanates from a humane or a commercial problem . And the court must make a serious endeavour to resolve the problem within the framework of law, and in accordance with the well-settled principles of law and justice.
9. If ex parte injunction is granted, the said application for grant of injunction should be disposed of on merits, after hearing both sides as expeditiously as possible on a priority basis, and undue adjournments should be avoided.

10. At the time of filing of plaint, the trial court should prepare complete schedule, and fix dates for all stages of this, right from the filing a written statement till pronouncement of judgment. And the courts should adhere to the said dates and timetable as far as possible. If any interlocutory application is filed, the same may be disposed of in between the said dates of hearing in the said, the dates fixed for the main suit are not disturbed.

By following the methods as directed by the Hon'ble Supreme Court, the arrears of pendency can be lowered to a great extent. Moreover, the positive actions in this regard may yield not only the direct results in curbing the problem but also make the judges more sensitized towards the issue. And when the Judges are sufficiently sensitized towards the problems in the mounting arrears of cases as well as the miseries of a litigant, a big part of the job is done. It is only the action part as is required to follow the said sensitization, which remains to be accomplished. With sensitization of the graveness of the problem having been made, the action will automatically follow. And the same would ultimately lead the Judicial Institution to deliver justice well within time, and not to deny the same on account of delay in the deliverance thereof.

-Ritesh Dubey
Presiding Officer,
One Man Forest Authority

