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Topic of the Month

"India is not an association or confederation of States, it is a Union of States and there is only one nationality that is India. Hence, every Indian has a right to go anywhere in India, to settle anywhere and work and do business of his choice in any part of India, peacefully. These days unfortunately some people seem to be perpetually on a short fuse and are willing to protest often violently about anything under the sun on the ground that a book or painting or film etc has 'hurt the sentiments' of their community. These are dangerous tendencies and must be curbed with an iron hand. We are one nation and must respect each other and should have tolerance.

Since India is a country of great diversity, it is absolutely essential if we wish to keep our country united to have tolerance and respect for all communities and sects. It was due to the wisdom of our Founding Fathers that we have a Constitution which is secular in character and which caters to the tremendous diversity in our country....Thus it is the Constitution of India which is keeping us together despite all our tremendous diversity, because the Constitution gives equal respect to all communities, sects, lingual and ethnic groups etc in the country.

The architect of modern India was the great Mughal Emperor Akbar who gave equal respect to people of all communities and appointed them to the highest offices on their merits irrespective of their religion, caste etc. Emperor Akbar conceived the idea of becoming the father of all his subjects, rather than the leader of only the Muslims and he was far ahead of his times. As mentioned by Jawahar Lal Nehru in *The Discovery of India*, 'Akbar's success is astonishing, for he created a sense of oneness among the diverse elements of India'. Emperor Akbar was a propagator of *Suleh-i-Kul* (universal toleration) at a time when Europeans were indulging in religious massacres e.g. The St. Bartholomew Day massacre in 1572 of Protestants (called Huguenots) in France by the Catholics, the burning at the stake of Protestants by Queen Mary of England, the massacre by the Duke of Alva of millions of people for their resistance to Rome and the burning at the stake of Jews during the Spanish inquisition. The subsequent massacre of the Catholics in Ireland by Cromwell and the mutual massacre of Catholics and Protestants in Germany during the Thirty Year's War from 1618 to 1648 in which the population of Germany was reduced from 18 million to 12 million may also be mentioned. Thus, Emperor Akbar was far ahead of even the Europeans of his times. *(Markandey Katju, J in 'Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat', (2008)5 SCC 33).*

SOME RECENT SUPREME COURT JUDGMENTS OF PUBLIC IMPORTANCE (Delivered from 01-01-2008 to 31-03-2008)

1. On 11th January, 2008, a two Judges Bench in Brajendra Singh vs State of M.P. & Anr. [Civil Appeal No.7764 of 2001] held that a Hindu married woman "cannot adopt at all during the subsistence of the marriage except when the husband has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind. If the husband is not under such disqualification, the wife cannot adopt even with the consent of the husband".

In the instant case, a Hindu lady because of her physical deformity lived separately from her husband and that too for a very long period right from the date of marriage. Appellant was adopted by the said lady so that he can look after her. There is no dispute that Appellant was in fact doing so. The said lady claimed entitlement to the declaration that Appellant was her adopted son. Examining the issue, the Bench held that though "the husband and wife were staying separately for a very long period and the wife was living a life like a divorced woman", but "there is conceptual and contextual difference between a divorced woman and one who is leading life like a divorced woman" and "both cannot be equated". The Bench held that the said lady was not entitled to the declaration sought for" since "there was no dissolution of marriage or a divorce in the eye of law".

2. On 16th January, 2008, a three Judges Bench in Samira Kohli vs Dr. Prabha Manchanda & Anr. [Civil Appeal No.1949 of 2004] inter alia examined the questions as to (i) whether informed consent of a patient is necessary for surgical procedure and if so what is the nature of such consent and (ii) whether, when a patient consults a medical practitioner, consent given for diagnostic surgery can be construed as consent for performing additional or further surgical procedure -- either as conservative treatment or as radical treatment-- without the specific consent for such additional or further surgery, and held as follows:-

"(i) A doctor has to seek and secure the consent of the patient before commencing a 'treatment' (the term 'treatment' includes surgery also). The consent so obtained should be real and valid, which means that : the patient should have the capacity and competence to consent; his consent should be voluntary; and his consent should be on the basis of adequate information concerning the nature of the treatment procedure, so that he knows what he is consenting to;

(ii) The 'adequate information' to be furnished by the doctor (or a member of his team) who treats the patient, should enable the patient to make a balanced judgment as to whether he should submit himself to the particular treatment or not. This means that the Doctor should disclose (a) nature and procedure of the treatment and its purpose, benefits and effect; (b) alternatives if any available; (c) an outline of the substantial risks; and (d) adverse consequences of refusing treatment. But there is no need to explain remote or theoretical risks involved, which may frighten or confuse a patient and result in refusal of consent for the necessary treatment. Similarly, there is no need to explain the remote or theoretical risks of refusal to take treatment which may persuade a patient to undergo a fanciful or unnecessary treatment. A balance should be achieved between the need for disclosing necessary and adequate information and at the same time avoid the possibility of the patient being deterred from agreeing to a necessary treatment or offering to undergo an unnecessary treatment;

(iii) Consent given only for a diagnostic procedure, cannot be considered as consent for therapeutic treatment. Consent given for a specific treatment procedure will not be valid for conducting some other treatment procedure. The fact that the unauthorized additional surgery is beneficial to the patient, or that it would save considerable time and expense to the patient, or would relieve the patient from pain and suffering in future, are not grounds of defence in an action in tort for negligence or assault and battery. The only exception to this rule is where the additional procedure though unauthorized, is necessary in order to save the life or preserve the health of the patient and it would be unreasonable to delay such unauthorized procedure until patient regains consciousness and takes a decision;

(iv) There can be a common consent for

diagnostic and operative procedures where they are contemplated. There can also be a common consent for a particular surgical procedure and an additional or further procedure that may become necessary during the course of surgery;

(v) The nature and extent of information to be furnished by the doctor to the patient to secure the consent need not be of the stringent and high degree mentioned in Canterbury case but should be of the extent which is accepted as normal and proper by a body of medical men skilled and experienced in the particular field. It will depend upon the physical and mental condition of the patient, the nature of treatment, and the risk and consequences attached to the treatment."

3. On 18th January, 2008, a two Judges Bench in Premkumari & Ors vs Prahlad Dev & Ors [Civil Appeal No.490 of 2008] while examining the question as to whether the insurer was liable in case the driver had a fake licence held that "when the owner after verification satisfied himself that the driver has a valid licence and driving the vehicle in question competently at the time of the accident there would be no breach of Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988, in that event, the Insurance Company would not be absolved of liability."

The Bench held that "even in the case that the licence was fake, the Insurance Company would continue to remain liable unless they prove that the owner was aware or noticed that the licence was fake and still permitted him to drive."

4. On 25th January, 2008, a two Judges Bench in Mangat Ram vs State of Haryana [Criminal Appeal No.182 of 2008] held that "when the matter is decided by a Court, reasons must be recorded in support of such decision. It is because the aggrieved party may make grievance in the superior Court that the reasons recorded by the trial Court were non-existent, extraneous, irrelevant, etc. The successful party, on the other hand, may support the reasons recorded by the Court in his favour. Finally, the superior Court may also consider whether reasons recorded by the Court in support of the order passed by it were in consonance with law and whether interference is called for."

The Bench observed that "if the final order is without any reason, several questions may arise and it will be difficult for the parties to the proceedings as well as the superior Court to decide the matter one way or the other. This Court has, therefore, deprecated the practice of pronouncing final order without recording reasons in support of such order."

5. On 30th January, 2008, a two Judges Bench in Ran Singh and Anr. vs State of Haryana and Anr. [Criminal Appeal No.222 of 2008] referring to the word 'dowry' as defined in Section 2 of the Dowry Prohibition Act, 1961 held that "there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third 'at any time' after the marriage. The third occasion may appear to be unending period. But the crucial words are 'in connection with the marriage of the said parties'." Other payments which are customary payments e.g. given at the time of birth of a child or other ceremonies as are prevalent in different societies are not covered by the expression 'dowry'."

6. On 1st February, 2008, a two Judges Bench in State of Rajasthan vs Madan Singh [Criminal Appeal No.234 of 2008] held that "the measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy."

"Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence", the Bench said.

"The legislative mandate to impose a sentence for the offence of rape on a girl under 12 years of age, for a term which shall not be less than 10 years, but which may extend to life and also to fine reflects the intent of stringency in sentence. The proviso to Section 376(2) IPC, of course, lays down that the court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment of either description for a term of less than 10 years. Thus, the normal sentence in a case where rape is committed on a child below 12 years of age is not less than 10 years' RI, though in exceptional cases 'for special and adequate reasons' sentence of less than 10 years' RI can also be awarded. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso

particularly in such like penal provisions. The courts are obliged to respect the legislative mandate in the matter of awarding of sentence in all such cases. Recourse to the proviso can be had only for 'special and adequate reasons' and not in a casual manner. Whether there exist any 'special and adequate reasons' would depend upon a variety of factors and the peculiar facts and circumstances of each case. No hard and fast rule of universal application can be laid down in that behalf", the Bench said.

7. On 20th February, 2008, a two Judges Bench in Board of Directors, H.P.T.C.& Anr vs K.C. Rahi [Civil Appeal No.4524 of 2006] held that "the principles of natural justice cannot be put in a straight jacket formula. Its application depends upon the facts and circumstances of each case. To sustain a complaint of non-compliance of the principle of natural justice, one must establish that he has been prejudiced thereby for non-compliance of principle of natural justice."

Inasmuch as Respondent knew that a departmental enquiry was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk, the Bench held that "the plea of principle of natural justice" would be "deemed to have been waived" and he would be "estopped from raising the question of non-compliance of principle of natural justice."

8. On 20th February, 2008, a two Judges Bench in K.V. Rami Reddi vs Prema [Civil Appeal No.2551 of 2001] held that "the declaration by a Judge of his intention of what his `judgment' is going to be, or a declaration of his intention of what final result it is going to embody, is not a judgment until he had crystallized his intentions into a formal shape and pronounced it in open court as the final expression of his mind"

The Bench observed that the "CPC does not envisage the writing of a judgment after deciding the case by an oral judgment and it must not be resorted to and it would be against public policy to ascertain by evidence alone what the `judgment' of the Court was, where the final result was announced orally but the `judgment', as defined in the CPC embodying a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision, was finalized later on".

9. On 11th March, 2008, a two Judges Bench in Divine Retreat Centre vs State of Kerala & Ors. [Criminal Appeal No.472 of 2008] held that the "Public Interest Litigant must disclose his identity so as to enable the court to decide that the informant is not a wayfarer or officious intervener without any interest or concern."

The Bench said that "there is heavy duty cast upon the constitutional courts to protect themselves from the onslaught unleashed by unscrupulous litigants masquerading as Public Interest Litigants".

"The individual judges ought not to entertain communications and letters personally addressed to them and initiate action on the judicial side based on such communication so as to avoid embarrassment; that all communications and petitions invoking the jurisdiction of the court must be addressed to the entire Court, that is to say, the Chief Justice and his companion Judges. The individual letters, if any, addressed to a particular judge are required to be placed before the Chief Justice for consideration as to the proposed action on such petitions. Each Judge cannot decide for himself as to what communication should be entertained for setting the law in motion be it in PIL or in any jurisdiction", said the Bench.

10. On 12th March, 2008, a two Judges Bench in Manipal Academy of Higher Education vs Provident Fund Commissioner [Civil Appeal No.1832 of 2004] while examining the question as to whether the amount received by encashing the earned leave is a part of "basic wage" under Section 2(b) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 requiring pro rata employer's contribution observed that "in many cases the employees do not take leave and encash it at the time of retirement or same is encashed after his death which can be said to be uncertainties and contingencies. Though provisions have been made for the employer for such contingencies unless the contingency of encashing the leave is there, the question of actual payment to the workman does not take place".

"The inevitable conclusion is that basic wage was never intended to include amounts received for leave encashment", the Bench said.

11. On 14th March, 2008, a two Judges Bench in Chand Patel vs Bismillah Begum & Anr [Criminal Appeal Nol.488 of 2008] held that under the Hanafi law as far as Muslims in India are concerned, "an irregular marriage continues to subsist till terminated in accordance with law and the wife and the children of such marriage would be entitled to maintenance under the provisions of Section 125 CrPC.

The Bench held that "the bar of unlawful conjunction (jama bain-al-mahramain) renders a marriage irregular and not void."

NEWS AND VIEWS

Lok Adalat

In the month of May 2008, 353 cases were settled in the Lok Adalats held in the different parts of the State of Jammu & Kashmir. Out of these, 84 cases were settled at pre-litigation stage. Compensation to the tune of Rs 41.75 lacs was awarded in Motor Accident Claim cases during the month. These Lok Adalats were organized by different District Legal Services Authorities/Tehsil Legal Services Committees of the State. Beside this, 67 eligible persons were given free legal aid during the month.

Deal sternly with perjury: SC

Expressing concern over the increasing number of witnesses adducing false evidence to trap innocent victims, the Supreme Court has asked the trial courts and High Courts to deal sternly with such cases.

"The evil of perjury has assumed alarming propositions in cases depending on oral evidence and in order to deal with the menace effectively it is desirable for the courts to use the provision more effectively and frequently than it is presently done," said a Bench of Justice Arijit Pasayat and Justice P. Sathasivam.

Writing the judgment Justice Pasayat said, "The purpose of enacting Section 344, Cr.P.C. (Summary procedure for trial for giving false evidence) appears to be further arm the court with a weapon to deal with more flagrant cases and not to take away the weapon already in its possession.

"The object of the legislature underlying enactment of the provision is that the evil of perjury and fabrication of evidence has to be eradicated.. The object of the provision is to deal with the evil of perjury in a summary way."

In the instant case Mahila Vinod Kumar, appellant lodged a case against two persons at Pichhore Police Station in Madhya Pradesh that she was raped by them, one after another. However, during trial she resiled from the statement made during investigation and said she was not raped and she made a false complaint. The trial court found that she had tendered false evidence and acquitted the two accused and sentenced her to undergo three months' simple imprisonment.

The Madhya Pradesh High Court confirmed the punishment and the present appeal is directed against that judgment.

The appellant contended that being an illiterate lady "she does not understand law and the particulars of the offence were not explained to her and, therefore, the appeal should be allowed."

Rejecting her contention, the Bench said "It is a settled position in law that so far as sexual offences are concerned, sanctity is attached to the statement of a victim." In the present case, on the basis of the allegations made by the petitioner, two persons were arrested and had to face trial and suffered the ignominy of being involved in a serious offence like rape. Their acquittal, may, to a certain extent, have washed away the stigma, but that is not enough. In the case at hand, the court has rightly taken action and we find nothing infirm in the order of the Trial Court and the High Court to warrant interference" the Bench said and dismissed the appeal.

(Hindu/15.07.2008)

Delhi Court dismayed over plight of rape victims - directions issued to sensitize probe agencies and prosecution over the need to rehabilitate victims

Delhi High Court has passed a series of directions aimed at sensitizing the investigating agencies and the prosecution to the need to rehabilitate victims of sexual assault, particularly minors. Issuing the directions, a Division Bench of the Court comprising Justice Manmohan Sareen and Justice S.L. Bhayana expressed shock that no concrete guidelines had been put in place so far for meting out sympathetic and kind treatment to rape victims during investigation and trial of their cases. "We are concerned and are indeed dismayed that as yet no concrete steps have been taken or any scheme for rehabilitation of victims of rape or child rape victim has been put in operation," the Bench observed.

The Bench was of the opinion that investigating officers and public prosecutors generally ignore the mental agony and social stigma of the rape victim while interrogating and examining her during investigation and trial.

The Bench directed the Delhi Government to engage trained social workers to take care of the agony of the rape victim and bring her back into society by empathizing with her during the most traumatic phase of her life. It further stressed the need for training all the personnel engaged in investigation and prosecution of rape cases in the skill of reducing mental trauma of the rape victim. In the case of sexual

assaults on minors, the Delhi police should immediately inform the Delhi Legal Services Authority which would depute a social worker to help in sympathetic handling of the case and rehabilitation of the victims, the Bench stated.

The directions came on 12 appeals filed by rape accused against their conviction in 12 different rape cases by different trial courts in separate years. The appeals were between 10 and 12 years old. Significantly, in all the cases the victims were minors ranging in age from three years to 11 years.

(Hindu/09.07.2008)

Immunity cannot be given against fraud : SC

The Supreme Court today made it clear that immunity cannot be given against fraud and told a petitioner, who had sold an imported Land Cruiser car to Bollywood actress Sushmita Sen, to go and face the proceedings pending in the Bombay High Court. A bench comprising Justices S.H. Kapadia and B Sudershan Reddy refused to interfere with the High Court order and entertain the petition filed by Haren Choksey.

Sushmita Sen was earlier issued a show cause notice in 2005, when she had bought the car, by the Customs authorities for making misrepresentation to evade Customs Duty. She later paid Rs 20,32,836, with a penalty of Rs two lakh, to the Settlement Commissioner, who granted her exemption/immunity against any other proceedings in the case. Later, the Brihanmumbai Municipal Corporation (BMC) also issued show cause notice to Sushmita Sen, asking for payment of some local taxes. Sushmita challenged the demand notice in the Bombay High Court, contending that local bodies are not entitled to demand taxes on the imported car. The Bombay High Court allowed her petition, but made some observations, based on which an FIR was registered against Haren Choksey, who was arrested in May 2005.

He did not challenge the FIR, but questioned the observations made by the High Court in the Supreme Court. The apex court, however, permitted him to withdraw his petition. The value of the car is about Rs 60 lakh. At present, no proceedings are pending against the actress. The car was purchased abroad by one Vasu Thamala.

(DE/10.07.2008)

Radiological Examination not conclusive proof of age

An attempt by a convict to escape punishment by claiming before the Madurai Bench of the Madras High Court that the girl had completed 16 years of age at the time of coitus with her consent has come to naught.

The convict contented that the police should have prosecuted him for cheating and not rape. As per Section 375(6) of the Indian Penal Code, sexual intercourse with a girl aged below 16 years, even with her consent, is an offence punishable under Section 376 of the Code. The girl from Tuticorin claimed that she consented because the man promised to marry her.

Holding that the victim was only 15 years old on the date of occurrence as per her school transfer certificate, Justice A. Selvam said a radiological examination (which held that she was above 16 and below 17 years) was only a guiding factor and not conclusive proof or an absolute indicator of age.

The Judge recalled that the Supreme Court in the *'Jaya Mala v/s Government of Jammu and Kashmir'* (1982) case had ruled that the margin of error in radiological examination was two years on either side. Therefore, the court could very well accept the date of birth mentioned in the transfer certificate.

Pointing out that the girl's age was mentioned as 17 in the complaint, the Judge said it was an everlasting principle of law that parties to a proceeding might lie, but documents would not. The girl might have given her age erroneously as 17 in the complaint. But, on the basis, the court could not come to a conclusion that she had attained 17 years of age. On the convict's contention that the school transfer certificates usually carry an approximate date of birth and not an exact date, the Judge said there was no basis for such contention as the school principal had not been cross-examined on the issue.

The judgment was passed while dismissing a criminal revision petition filed by the rapist against the conviction and seven years rigorous imprisonment imposed on him by the trial court at Kovilpatti in 2001 and confirmed by the appellate court in Tuticorin in 2005.

(Hindu/08.07.2008)

Don't poison child's mind, HC tells woman in matrimonial case

A woman's attempt to use her 'tutored' son as a witness against her husband, involved in a matrimonial dispute with her, today failed in the Delhi which accused her of poisoning the five year old boy's mind. The High Court expressed its displeasure over the woman's alleged bid to prevent her son from meeting his father, despite court permission.

"The manner in which the boy answered the courts queries clearly reflects that he has been well tutored by you to speak against the father", said

Justice S.N. Dhingra, adding that she should not poison the child's mind.

A family court has granted the child's custody to his mother and allowed the father to meet the boy for three hours every Sunday between 1 pm to 4 pm. The Court's observation came after the woman told the court that she was not restraining the son from meeting his father but he himself did not want to meet him. She then produced her son before the court, although the Judge did not ask her to do so. While Justice Dhingra asked the woman if an arrangement could be made for a meeting between the boy and his father, the boy started crying in the packed court room and said, "I do not want to go".

To the Judge's query on why he did not want to meet his father, the boy answered that his father beat him and his mother as well. She alleged her husband had ill-treated her family members who escorted the boy for a meeting with him. She said her brother-in-law was once humiliated by her husband. The woman's husband had moved High Court alleging his wife had violated a court order by not allowing him to meet the boy.

When Justice Dhingra questioned the boy on how many times the father beat him and the mother, the five year old said he was beaten up six time and the mother was beaten 10 times. After this, the boy started repeatedly say that he did not want to go to his father.

The Judge found himself helpless and suggested the woman's counsel to accompany the boy for a meeting with the father. However, the counsel said what will he(lawyer) do while he would be alone for four hours when the father and son meet.

(PTI/2/07/2008)

Right to speedy trial a Constitutional right: SC

Maintaining that a right to speedy trial is a Constitutional right, the Supreme Court has quashed a criminal case against a man charged with an offence by the Maharashtra government 26 years ago.

"The right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well," the apex court observed.

A bench of Justices C K Thakker and D K Jain passed the observation while quashing the charges filed against Pankaj Kumar, a business man.

Kumar, according to the defence, was a minor when he was roped in as an accused by the state's Anti-corruption Bureau along with his parents in 1981. The charge against the trio was that they had entered into a clandestine deal for supply of spare parts to a milk dairy owned by the government.

The Apex Court pointed out that the FIR was recorded by the police on May 12, 1987, for the offences allegedly committed in 1981. Thereafter the charge sheet was submitted in the court on February 22, 1991. In the meantime the parents of Kumar, who was also arrayed as accused, had died. "We feel that the extreme mental stress and strain of prolonged investigation by the ACB and the sword of Damocles hanging perilously over his head for over 15 years must have wrecked his career," the apex court observed while quashing the case.

(HT/13.07.2008)

LEGAL JOTTINGS

(Case No: Civil Appeal Nos. 2898, 3466 & 3467 of 2006)

Tata Power Company Limited versus Reliance Energy Limited & others

Date of Decision: 8/7/2008.

Judge(s): Hon'ble Mr. Justice Ashok Bhan and Hon'ble Mr. Justice Altamas Kabir.

Subject Index: Electricity Regulatory Commission Act, 1998 section 22(2)(e) and (n) petition under the Appellate Tribunal for Electricity erred in coming to a finding that under its licences Tata Power was entitled to supply energy only in bulk and not for general purposes and in retail to all consumers, irrespective of their demand, except for those consumers indicated in Sub-clause (I) of clause 5 of the several licenses held by Tata Power.

(Case No: Criminal Appeal No.1053, 1054, 1055, 1056, 1057 of 2003)

Aslam Mohd. Merchant versus Competent Authority & others

Date of Decision: 8/7/2008.

Judge(s): Hon'ble Mr. Justice S.B. Sinha and Hon'ble Mr. Justice V.S. Sirpurkar.

Subject Index: NDPS Act, 1985 chapter VA providing for forfeiture of property derived from or used in illicit traffic interpretation and application of the provisions dealing in narcotics is a social evil that must be curtailed or prohibited at any cost. Chapter VA seeks to achieve a salutary purpose. But, it must also be borne in mind that right to hold property although no longer a fundamental right is still a

constitutional right. It is a human right the provisions of the Act must be interpreted in a manner so that its constitutionality is upheld. The validity of the provisions might have received constitutional protection, but when stringent laws become applicable as a result whereof some persons are to be deprived of his/her right in a property, scrupulous compliance of the statutory requirements is imperative.

CASE COMMENTS

Dinesh M.N. (S.P) v. State of Gujarat
(2008)5 SCC 66

The materials which are required to be taken note of and those that are to be avoided, while considering grant or cancellation of bail by the court was the point of discussion before the Hon'ble Supreme Court in the afore noted case. In this case appellant-accused was granted bail by the Additional Sessions Judge, which was cancelled by the High Court in terms of Section 439(2) of the Code of Criminal Procedure (Central).

In this case learned trial court while granting bail to the appellant-accused had noted that the accused, a senior police officer, was having a meritorious service career and that he was alleged to have committed the murder of the deceased criminal who had a shady reputation and criminal antecedents.

Hon'ble Apex Court while upholding the order of cancellations of bail passed by the High Court held that the plea that the person who was killed by the accused, was a hardened criminal, being irrelevant, is untenable. The shady antecedents of the deceased/victim is not certainly a factor which is to be considered while granting bail. It is the nature of the acts of offence which ought to be considered. The Hon'ble Court further laid down that once it is concluded that bail has been granted on untenable grounds by taking into consideration irrelevant materials and keeping out of consideration the relevant factors, the plea of absence of supervening circumstances has not leg to stand.

The Hon'ble Court went further to observe that though re-appreciation of the evidence by the court granting bail is to be avoided, yet the court, while dealing with an application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure can consider whether irrelevant material were taken into consideration at the time of grant of bail. It is so, because otherwise it is difficult to know as to what extent the irrelevant materials have weighed with the court for accepting the prayer for bail.

(Sanjay Dhar)
Secretary
High Court Legal Services Committee

Thiruvengada Pillai v. Navaneethammal & Anr.
AIR 2008 SC 1541

Section 54 of the Stamp Act, 1899 (Central) does not prescribe any period of limit for the use of stamp paper. A sort of confusion was existing in the mind of legal fraternity that once a stamp paper was purchased, it should be used only within six months from the date of purchase.

The Apex Court has in the above cited case cleared this confusion and has authoritatively laid down that the Stamp Act, 1899 (central) no where prescribes any expiry date for use of a stamp paper. Section 54 of the said Act merely provides that a person possessing a stamp paper for which he has no immediate use (which is not spoiled or rendered unfit or useless) can seek refund of the value thereof by surrendering such a stamp paper to the Collector provided it was purchased within the period of six months next preceding the date on which it was so surrendered. The stipulation of the period of six months prescribed in Section 54 is only for the purpose of seeking refund of the value of the unused stamp paper and not for use of the stamp paper. Section 54 does not require the person who has purchased a stamp paper to use it within six months. Therefore, there is no impediment for a stamp paper purchased more than six months prior to the proposed date of execution, being used for a document.

The Apex Court has further held that the Stamp Act is a fiscal enactment intended to secure revenue for the State. In the absence of any Rule requiring consecutively numbered stamp papers purchased on the same day, being used for an instrument which is not intended to be registered, a document cannot be termed as invalid merely because it is written on two stamp papers purchased by the same person on different dates. Even assuming that use of such stamp papers is an irregularity, the Court can only deem the document to be not properly stamped, but cannot only on that ground, hold the document to be invalid. Even if an agreement is not executed on requisite stamp paper, it is admissible in evidence on payment of duty and penalty under section 35 or 37 of the Stamp Act.

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