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From the Editor's Desk

Advocates are the essential components of justice delivery system. It has been realised that for effective adjudication of the matters coming before the courts, knowledge and skills of an advocate plays a very important role. Effectiveness of a lawyer in an adjudicatory process is of utmost necessity. An advocate appearing for a party in a case is required to put his best efforts from the point of view of his client, but equally important for an advocate, bound by professional ethics, is to render best assistance to the court. It is trite that an advocate is considered to be an officer of the court. Therefore, for strengthening a judicial system it is needed that efforts are made to work for capacity building of lawyers. It is seen that Law Colleges, except for a few, are not able to develop a proper culture requisite for the robust legal education, which is essential for an advocate to render proper assistance to the court. There is hardly any system in place that would focus on continuing legal education for the lawyers' community. In a fast changing legal landscape it is essential that lawyers catch up with the latest trends in legislation and precedents. Not just that, it is also essential that lawyers are sensitized to the need to continue to update their knowledge and sharpen their professional skills.

Over a period of time it is found that there is lot of potential to work in the direction of correcting flaws in the legal education. Continuing legal education can effectively plug the loopholes in the legal education imparted at the Law Colleges level. There is lot of urge and craving among the lawyers in general to devote some time for skills development, if there is any effective training programme directed towards that objective.

Eagerness and keenness of the advocates to learn new realms of law and exploring new horizons is noticed while interacting with them in some programmes organised by the Judicial Academy, be it lectures on Judicial Ethics on the sidelines of Oath Ceremony for them or formal training programmes like one recently organised on Cyber Law. Constant engagement with advocates in academic pursuits appears to be a bright possibility and if it is done, is sure to prove productive and conducive for the professional excellence. In this process it is highly likely that professional culture among the lawyers shall improve considerably.

Legal Jottings

CRIMINAL

"(. . .) a Constitution is a declaration of articles of faith, not a compilation of laws, a prior pronouncement must be put out of the way if it has breached our constitutional philosophy or amputated the amplitude of cardinal creeds expressed in its vital words."

V.R. Krishna Iyer, J. in *Samsher Singh* v. *State of Punjab*, (1974) 2 SCC 831, para 128

Criminal Appeal No.819 of 2019
State By Karnataka Lokayukta Police Station, Bengaluru v. M. R. Hiremath
Decided on May 1, 2019

Hon'ble Supreme Court has held that the conclusion that the failure to produce a certificate under Section 65-B(4) of the Evidence Act at the stage when the charge-sheet was filed was fatal to the prosecution, is wrong. The need for production of such a certificate would arise when the electronic record is sought to be produced in evidence at the trial. It is at that stage that the necessity of the production of the certificate would arise.

In this case, Hon'ble Supreme Court maintained an order of the Trial Court rejecting the application of the accused for discharge under Section 239 of the CrPC.

Hon'ble Court also held that it is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on the record by the prosecution, is true, and evaluate the material in order to determine whether the facts emerging from the material, taken on their face value, disclose the existence of the ingredients necessary to constitute the offence.

Hon'ble Court referred to its decision in the case titled State of Tamil Nadu v. N Suresh Rajan (2014) 11 SCC 709, and reproduced the following:

"29...At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

Hon'ble Supreme Court further held that the conduct of preliminary enquiry in the present case was proper. The judgment in Lalita Kumari v Government of Uttar Pradesh, (2014) 2 SCC 1 was also referred wherein it has been held that the scope of preliminary inquiry is not to verify the veracity or otherwise of the information received, but only to ascertain whether the information reveals any cognizable offence, while further holding that the cases in which preliminary inquiry is to be conducted will depend on the facts and circumstances of each case, and that the category of cases in which a preliminary inquiry may be made are Matrimonial/ family disputes, Commercial offences,

Medical negligence cases, Corruption cases, and cases where there is abnormal delay in initiating criminal prosecution.

Criminal Appeal No. 875 of 2019
Birla Corporation Limited v. Adventz Investments and Holdings Limited and others
Decided on May 09, 2019

Hon'ble Supreme Court held that the purpose of enquiry u/section 202 Cr.P.C. is to determine whether a prima facie case is made out, and whether there is sufficient ground for proceeding against the accused. The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint, in order to determine whether process should be issued or not under Section 204 Cr.P.C, or whether the complaint should be dismissed by resorting to Section 203 Cr.P.C on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202 Cr.P.C, the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint, to satisfy him that there is sufficient ground for proceeding against the accused. (see para 27)

The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The application of mind has to be indicated by disclosure of mind on the satisfaction. (see para 34)

At the stage of issuance of process to the accused, the Magistrate is not required to record detailed orders. But based on the allegations made in the complaint or the evidence led in support of the same, the Magistrate is to be prima facie satisfied that there is sufficient ground for proceeding against the accused. (see para 37)

Temporary removal of original documents for the purpose of replicating the information contained in them in some other medium would thus fulfill the requirement of 'moving' of property which is the actus reus of the offence of 'theft' as defined under Section 378 IPC. (see para 64)

A document is a 'moveable property' within the meaning of Section 22 IPC, and can be the subject matter of theft. A 'document' is a 'corporeal property'. (see para 66)

Intention is the gist of the offence. It is the intention of the taker which must determine whether taking or moving of a thing is theft. The intention to take 'dishonestly' exists when the taker intends to cause wrongful loss to any other which amounts to theft. It is an essential ingredient of the offence of 'theft' that the movable property should have been 'moved' out of the possession of any person without his consent.

Criminal Appeal No(s). 865 of 2019
Union of India v. Mubarak @ Muhammed Mubarak
Decided on May 07, 2019

Hon'ble Supreme Court reiterated the law laid in State of Maharashtra V. Surendra Pundlik Gadling & Ors. 2019 SCC Online SC 188 (Bhima Koregaon case), that the necessary ingredients of the proviso to Section 43-D (2)(b) of the Unlawful Activities Prevention Act, 1967 have to be fulfilled for its proper application, which are as under:-

(i) It has not been possible to complete the

investigation within the period of 90 days;

(ii) A report shall be submitted by the Public Prosecutor;

(iii) Said report indicates the progress of investigation and specific reasons for detention of the accused beyond the period of 90 days;

(iv) Satisfaction of the Court in respect of the report of Public Prosecutor, is recorded.

Hon'ble Court further held that the request of an IO for extension of time is not a substitute for the report of public prosecutor for the purpose of Section 43-D (2)(b) of the Unlawful Activities Prevention Act, 1967. Application of mind by the public prosecutor must be done. But if application of mind by the public prosecutor as well as an endorsement by him is revealed, the infirmities in the form should not entitle the claimants to the benefit of a default bail when in substance there has been an application of mind.

Criminal Appeal No(s). 837 of 2019
Atul Shukla v. The State of Madhya Pradesh & Anr.
Decided on May 6, 2019

Hon'ble Supreme Court held that an application for review or modification of an order could not have been entertained, in view of the specific bar contained in Section 362 of the CrPC providing that no Court, shall alter or review the same except to correct a clerical or arithmetical error, when it has signed its judgment or final order disposing of a case, save as otherwise provided by this Code or by any other law for the time being in force.

Petition for Special Leave to Appeal (Crl.) No. 4899/2019
Wasim Ahmed v. State of West Bengal
Decided on May 20, 2019

The question under consideration was whether the petitioner could indefinitely be kept in jail for inability to fulfil the condition of producing a registered surety, and that too when he was unable to produce a registered surety for reasons entirely beyond his control, and the Hon'ble Supreme Court held that the answer to the aforesaid question necessarily had to be in the negative.

Hon'ble Court directed the Chief Metropolitan Magistrate concerned to consider modifying the orders on such appropriate terms as may be deemed necessary, including cash security and/or reliable surety though not registered, without insisting on registered surety.

Criminal Appeal Nos. 751-752 of 2019
N. Ramamurthy v. State by Central Bureau of Investigation, ACB Bengaluru
Decided on April 26, 2019

Hon'ble Supreme Court held that the length of imprisonment to be served under an impugned order of sentence has obvious bearing on the consideration of the prayer for suspension of execution of sentence during the pendency of an appeal or revision. (see para 7)

In the case wherein the sentence of imprisonment all put together were 45 years of rigorous imprisonment, Hon'ble Court held that the application for suspension of sentence ought to have been considered while keeping in view the fact that with concurrent running of sentences, the maximum period for imprisonment envisaged by the order of the Trial Court was 7 years.

Hon'ble Court also held that the Court had indicated in K.C. Sareen v. CBI, Chandigarh: (2001) 6 SCC 584, that ordinarily, the superior Court should

suspend the sentence of imprisonment in the matters relating to the offence under the PC Act, unless the appeal could be heard soon after filing, and that the Court pointed out the subtle distinction in the proposition for suspension of an order of conviction on one hand and that for suspension of sentence on the other.

A reference to the case of Navjot Singh Sidhu v. State of Punjab & Another (2007) 2 SCC 574 was also made wherein the Court, with respect to Section 389 (1) of Cr.P.C and suspension of the order appealed against, had observed that the Appellate Court can suspend the order of conviction only when the convict specifically shows the consequences that may follow, if the order is not suspended or stayed. Further, grant of stay of conviction can be resorted to in the rare cases depending upon the special facts of the case.

Criminal Appeal No. 594 of 2019
Rashmi Chopra v. The State of Uttar Pradesh and another
Decided on April 30, 2019

In this case, the complaint as well as summoning order were quashed by the Hon'ble Supreme Court, against all the accused except one, when the complaint or the statements did not allege any offence against others.

After having noted Nupur Talwar V. Central Bureau of Investigation & Anr., (2012) 11 SCC 465, Hon'ble Court held that there can be no dispute to the proposition of law laid down by the Hon'ble Court that while taking cognizance of an offence, a Magistrate is not required to pass a detailed order.

Hon'ble Court further referred Dy. Chief Controller of Imports & Exports V. Roshanlal Agarwal & Ors., (2003) 4 SCC 139, and reproduced inter alia the following from the said judgment-

"9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons..... " (para 11)

Hon'ble Court further held that there is nothing in Section 498-A, which may indicate that a complaint has to be filed necessarily by the women subjected to cruelty. A perusal of Section 498-A, indicates that the provision does not contemplate that complaint for offence under Section 498-A should be filed only by women, who is subjected to cruelty by husband or his relative.

With respect to facts involved in this case, Hon'ble Court also held that the perusal of complaint indicated that the allegations against the appellants for offence under Section 498-A IPC and Section 3/4 of D.P. Act were general and sweeping, no specific incident dates or details of any incident had been mentioned, the complaint had been filed after the proceedings for divorce were initiated by the husband wherein the wife participated and divorce was ultimately granted, the complaint had been filed in the Court of C.J.M a few months after filing of the divorce petition, and that the sequence of the events and facts and circumstances of the case led the Hon'ble Court to conclude that the complaint under Section 498-A IPC and Section 3/4 of D.P. Act had been filed as counter blast to

divorce petition proceeding.

Criminal Appeal No. 603 of 2019
G Ramesh v Kanike Harish Kumar Ujwal and another
Decided on April 05, 2019

Hon'ble Supreme Court held that it is necessary to bear in mind the principle of law that a partnership is a compendious expression to denote the partners who comprise of the firm, in determining as to whether the requirements of the above provision i.e. section 141 NI Act have been fulfilled. By the deeming fiction in Explanation (a) the expression company is defined to include a firm.

Criminal Appeal No. 617 of 2019
Ajay Kumar v. Lata @ Sharuti and others
Decided on April 08, 2019

In this case, the submission which had been urged on behalf of the appellant was that there was no basis under the provisions of the Protection of Women from Domestic Violence Act, 2005, to fasten liability on him, who was the brother of the deceased spouse of the respondent, and that the sole basis on which liability had been fastened was that the appellant and his deceased brother carried on a joint business.

Hon'ble Supreme Court held that the substantive part of Section 2(q) of the Protection of Women from Domestic Violence Act, 2005 indicates that the expression 'respondent' means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom relief has been sought. The proviso indicates that both, an aggrieved wife or a female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner, as the case may be.

And Section 2(f) of the said Act defines the expression 'domestic relationship' to mean a relationship where two persons live or have lived together at any point of time in a shared household when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are members living together as a joint family.

Fulfilling of the requirements of Section 2(f), Section 2(q), and Section 2(s) is a matter of evidence which will be adjudicated at the trial. For the purpose of an interim order for maintenance, it was held in this case that there was material which justified the issuance of a direction in regard to the payment of maintenance.

Criminal Appeal Nos. 917-944 of 2019
Surinder Singh Deswal @ Col. S.S. Deswal and Ors. v. Virender Gandhi
Decided on May 29, 2019

Hon'ble Supreme Court held that, considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act, on purposive interpretation of Section 148 of the N.I. Act as amended, Section 148 of the N.I. Act as amended, shall be applicable in respect of appeals against the order of conviction and sentence for the offence under Section 138 N.I. Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I. Act were filed prior to amendment Act No. 20/2018 i.e., prior to 01.09.2018, and that if such a purposive interpretation is not adopted, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated, and that no error had been committed by the first appellate court directing the appellants to deposit 25% of the amount of fine/

compensation as imposed by the learned trial Court considering Section 148 of the N.I. Act, as amended.

Submission that amendment in Section 148 of the N.I. Act shall not be made applicable retrospectively shall not be applicable, has no substance, and cannot be accepted, as by amendment in Section 148 of the N.I. Act, no substantive right of appeal has been taken away and/ or affected.

Considering the amended Section 148 of the N.I. Act as a whole read with the statement of Objects and Reasons of the amending Section 148 of the N.I. Act, though it is true that in amended Section 148 of the N.I. Act, the word used is "may", it is generally to be construed as a "rule" or "shall", and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned.

The submission relying upon Section 357(2) of the Cr.P.C. that once the appeal against the order of conviction is preferred, fine is not recoverable pending appeal, and therefore such an order of deposit of 25% of the fine ought not to have been passed and in support of the above reliance placed upon the decision of this Court in the case of Dilip S. Dhanukar (supra), was held to have no substance. The opening words of amended Section 148 of the N.I. Act are that "notwithstanding anything contained in the Code of Criminal Procedure.....".

Therefore, irrespective of the provisions of Section 357(2) of the Cr.P.C., pending appeal before the first appellate court, challenging the order of conviction and sentence under Section 138 of the N.I. Act, the appellate court is conferred with the power to direct the appellant to deposit such sum pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the trial Court.

In this case, three months' time to deposit the amount as per the order passed by the first appellate court, and confirmed by the High Court, was sought before the Hon'ble Supreme Court, which was opposed with the submission that as per amended Section 148 of the N.I. Act, the accused had to deposit the amount of compensation/fine as directed by the appellate court within a period of 60 days which could be extended by a further period of 30 days as may be directed by the Court on sufficient cause, the Hon'ble Court granted further four weeks' time to the appellants to deposit the amount, in the facts and circumstances of the case and considering the fact that the appellants were bonafidely litigating before the Hon'ble Court Court challenging the order passed by the first appellate court, and also the fact that the amount to be deposited was a huge amount.

Criminal Appeal Nos. 567 of 2019
Rafiq Qureshi v. Narcotic Control Bureau Eastern Zonal Unit
Decided on May 07, 2019

Hon'ble Supreme Court reduced the punishment of imprisonment for 18 years imposed by the trial court, which was reduced to 16 years by the High Court. Confirming the conviction under Sections 21(c) and 32-B of NDPS Act, 1985, Hon'ble Supreme Court imposed sentence of imprisonment for 12 years.

It has been taken into consideration by the Hon'ble Court that specific words used in Section 32-B that court "may" in addition to such factors as it may deem fit, clearly indicate that the court's discretion to take such factors as enumerated in clauses (a) to (f) of Section 32-B to award punishment higher than the minimum

prescribed in the Act. Section 32-B is a provision which is brought in the statute book to rationalize the sentencing structure.

CRMC No. 670/2018
Nazir Hussain Shah v. State & Anr
Decided on April 30, 2018
High Court of Jammu & Kashmir

Hon'ble Court in this case held that lodgement of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter FIR relating to the same or connected cognizable offence. It further held that what is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint.

CRA No. 42/2016
Rajinder Singh v. State of J&K
Decided on 26th April, 2019
High Court of Jammu & Kashmir

Hon'ble Court in this case held that the Courts while trying an accused on charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of witness which are not of a substantial character. The onus in case of rape is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in rape case the victim and other witnesses have falsely implicated the accused.

CRMC No. 68/2019
Ashiq Feroz Ahangar v. State of J&K & Ors
Decided on May 03, 2019
High Court of Jammu & Kashmir

Petitioner has sought quashment of order dated: 18-02-2019 passed by the Court of Judicial Magistrate, Bijbehara, on the ground that the Magistrate has not followed the procedure prescribed under Section 488(3) of CrPC and warrant has not been issued in accordance with Section 386 under chapter XXXVIII CrPC. Hon'ble High Court after considering the order passed by Magistrate and perusal of the relevant provisions held that, the Learned Magistrate was required to issue a warrant for levy of amount due in the manner provided for levying of fine for every breach and to sentence such person for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant. The Learned Magistrate has not followed the procedure prescribed, which warrants setting aside of the order impugned, it being in violation of the Section 386 and Section 488(3).

CRR No. 1/2018
State of J&K v. Abrar Hussain Shah & Anr
Decided on May 24, 2019
High Court of Jammu & Kashmir

Hon'ble High Court upheld the order of Principal Sessions Judge Poonch dated: 17-01-2018 by virtue of which Principal Sessions Judge has directed the petitioner to deposit an amount of Rs. 1,29,000/- within a period of 1 week on the ground that the amount shown to have been stolen from Malkhana. Seizure of the property by the police amounts to a clear entrustment

of the property to the Government servant and in case officer fails to make out defence that State or its officers had taken due care and caution in respect of the property, the State or its officers can be made liable for loss of property and can be directed to reimburse the same.

The Hon'ble Court in this case has placed reliance on the Apex Court's judgement titled Basava Kom Dyamogouda Patil v. State of Mysore & another, (1977) 4 SCC 358.

CRMC No. 618/2015
Dr. Arvind Bhagat & Ors. v. State & another
Decided on May 20, 2019
High Court of Jammu & Kashmir

Instant petition was filed under Section 561-A CrPC seeking quashment of criminal challan in the case arising out of FIR No. 50/2011 under Sections 420, 467, 468, 471, 120-B and 201 RPC, on the ground of compromise arrived at between the petitioners and the respondent no. 2. Hon'ble Court relying upon the Supreme Court judgement, Gian Singh v. State of Punjab & Anr. (2012)10 SCC 303, held that quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offences. Power given to the Court under Section 320 (Section 345 of J&K CrPC) is materially different from quashment of criminal proceedings by High Court in exercise of its inherent jurisdiction where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable. It does so if in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor.

It was held that continuance of criminal cases subsequent to amicable arrangement arrived at between parties is mere wastage of time. As the parties have compromised, there would be no chance of conviction of accused in the case. Offences for which criminal prosecution has been launched are not heinous one.

CRMC No. 617/2018
Varun Slathia and others v. Divya Gupta
Decided on May 24, 2019
High Court of Jammu & Kashmir

Hon'ble High Court while dealing with a petition, in which petitioners had challenged two orders of maintenance passed against him by two different Courts, one under Section 488 of CrPC and one under DV Act, 2010, held that, Monetary relief whether interim or final under D.V. Act is in addition to maintenance already granted under Section 488 CrPC. Hon'ble Court referred to the law laid down in Karamchand & Ors v. State of West Delhi & Ors (2011) and law laid down by Hon'ble Supreme Court of India in Juveria Abdul Majid khan Patni v. Atif Iqbal Masoori, (2014) 10 SCC 736, wherein the Supreme Court has held that monetary relief as stipulated under Section 20 of DV Act is different from maintenance, which can be in addition to an order of maintenance under Section 125 CrPC or any other law. Further, it may be seen that proceedings under DV Act and section 125 CrPC are independent of each other and have different scopes though there is an overlap. In so far as the overlap is concerned law has catered for that eventuality and laid down that at the time

of consideration of an application for grant of maintenance under DV Act, maintenance fixed under Section 125 CrPC shall be taken into account.

CRMC No. 491/2018
Sh. Dewan Chand Sharma v. Sh. Paramjeet Singh
Decided on May 17, 2019
High Court of Jammu & Kashmir

Hon'ble Court held that when statement of the accused has been recorded under Section 242 CrPC and he has admitted his guilt and prays for repaying the cheque amount in instalments and made some payment also, the Trial Court cannot direct the petitioner/complainant to produce the evidence in support of accusation. Evidence can only be directed to be produced in terms of Section 244 CrPC when the accused does not admit the accusation or his guilt.

In view of the above the order impugned of Trial Court was quashed and the Trial Court was directed to proceed according to law in terms of Section 243 CrPC.

CRMC No. 43/2010
M/s Maneesh Pharmaceuticals Pvt. Ltd. & others v. M/s Pharose Remedies Ltd. And another
Decided on May 24, 2019
High Court of Jammu & Kashmir

In the instant petition, petitioners seek quashment of Criminal Complaint instituted for offences under Sections 406, 418, 420, 420-A, 422 read with Section 120-B RPC. Hon'ble High Court on the basis of law laid down by the Apex Court in State of Telengana v. Habib Abdullah Jeelani & other, Indian Oil Corporation v. NEPC India Ltd & other, V.P Shrivastava v. Indian Explosive Limited and other and V.Y Jose & another v. State of Gujarat & another, held that allegations against the accused do not fulfil the ingredients as to cheating against the accused. The only allegation that is established against the petitioner is that he did not make payment to the respondents/complainants. There is not an iota of allegations as to the dishonest intention or misappropriation. Mere fact that the accused did not make the payment, does not amount to criminal breach of trust. In the present case it appears a matter of breach of agreement between the parties, hence it cannot be termed as 'Cheating' or 'Misappropriation'. Even if all the allegations in the complaint are taken at their face value, the essential ingredients of 'dishonest misappropriation' & 'cheating' are missing. Criminal proceedings are not a short cut for other remedies. Prosecution of the accused persons is liable to be quashed.

CRMC No. 155/2019
Manav Kohli v. Ranjana and others
Decided on May 17, 2019
High Court of Jammu & Kashmir

Trial Court Rejected the application filled under Section 464 CrPC in petition under Section 12 DV Act. Same order was upheld by Sessions Court. Both orders were challenged before the High Court.

Held that - Section 464 CrPC is applicable only to the trial or inquiry. Magistrate while dealing with petition under Section 12 DV Act neither conducts inquiry or trial; because he has not to either convict or acquit the respondent after conclusion of proceedings. Even a casual reading of the object would make it clear that the DV Act is Civil in nature and not Criminal.

Court has first to form an opinion that it has reason to believe that the

accused is of unsound mind. This reason has to be formed on the basis of some material on record. On bare version without any substantial material, court is not obliged to form an opinion in this regard.

OWP No. 53/2019
Jahangir Bashir Sathoo v. State of J&K & Ors
Decided on May 01, 2019
High Court of Jammu & Kashmir

In the instant petition filed under Section 561-A of CrPC for quashing proceedings in a complaint titled IGI Global Ltd v. Jahangir Bashir Sathoo, and process issued u/s 204 CrPC and non-bailable warrant by Metroppolitan Magistrate, Calcutta.

The moot question involved in this case was whether the J&K High Court can quash the order passed by Metropolitan Magistrate, Calcutta. Hon'ble High Court held that it has no territorial jurisdiction over the Courts of Calcutta. Therefore, the Court cannot exercise power under Article 226 read with Section 561-A CrPC, to quash any proceeding instituted outside the territorial jurisdiction of the Court. It was further held that the jurisdiction to issue a writ is coextensive with the territorial jurisdiction of the High Court, within whose jurisdiction the subordinate Court takes cognizance of a complainant. The proceeding instituted within the jurisdiction of one High Court cannot be stayed by another High Court. The remedy available to the aggrieved person can be invoked only in that High Court, within whose jurisdiction a subordinate court has taken cognizance and not in any other High Court; else it would amount to territorial transgression.

CRM (M) No. 128/2019
Ghulam Qadir Lone v. Central Bureau of Investigation
Decided on May 16, 2019
High Court of J&K

The petitioner had challenged the orders passed on various dates by the Special CBI Court. The Hon'ble Court upheld the orders of trial court, rejecting application for summoning of records and application for sending the document for forensic examination on the ground that petitioner/accused has not yet entered into defence. Incriminating material, if any available, on the basis of evidence has to be put to the accused/petitioner for tendering explanation and only thereafter the plea of calling any record from any court or sending any document for forensic examination can be considered. A mini trial cannot be permitted to be initiated within trial by allowing an accused to ask the court to have perusal of certain documents with regard to order dated 30-4-2011, wherein the trial court had closed the right to cross examine the Investigating Officer. The Hon'ble High Court held that the order is not bad. However, to meet the ends of justice the Hon'ble Court modified the said order and directed the trial court to allow accused/ petitioner to cross examine the Investigating Officer.

CIVIL

"Constitutional adjudication is like no other decision making. There is a moral dimension to every major constitutional case; the language of the text is not necessarily a controlling factor. Our constitution works because of its genaralities, and because of the good sense of the judges when interpreting it. It is that informed freedom of action of the judges that helps to preserve and protect our basic document of governance"

S.H. Kapadia Iyer, J. in *M. Nagraj* v. *Union of India*, (2006) 4 SCC 225, para 1370

Civil Appeal No. 4669 of 2019
Bhivchandra Shankar More v. Balu Gangaram More and others
Decided on May 07, 2019

Hon'ble Supreme Court reiterated the law that the right of appeal under Section 96(2) CPC is a statutory right, and the defendant cannot be deprived of the statutory right of appeal merely on the ground that the application filed by him under Order IX Rule 13 CPC has been dismissed. The law that remedies provided being simultaneous and not consecutive remedies cannot be applied in a rigid manner and as a straitjacket formula. It has to be considered depending on the facts and circumstances of each case. Only in cases where the defendant has adopted dilatory tactics or where there is lack of bonafide in pursuing the two remedies consecutively, the court may decline to condone the delay in filing the first appeal.
In this regard, Hon'ble Court also relied on Bhanu Kumar Jain v. Archana Kumar and Another (2005) 1 SCC 787.

With respect to condonation of delay, Hon'ble Court also held that it is a fairly well settled law that "sufficient cause" should be given liberal construction so as to advance sustainable justice when there is no inaction, negligence or want of bonafide imputable to the appellant.

Civil Appeal No. 1676 of 2019
Anjum Hussain and others v. Intellicity Business Park Pvt. Ltd. and others
Decided on May 10, 2019

Hon'ble Supreme Court held the applications filed under Section 12 (v) (o) of the Consumer Protection Act, as maintainable in this case. Hon'ble Court reversed the decision of the National Consumer Commission that had concluded that the case could not be accepted as class action, and had dismissed the same.

Hon'ble Court also referred to case law in Chairman, Tamil Nadu Housing Board, Madras v. T. N. Ganapathy, (1990) 1 SCC 608, wherein it was held that the persons who may be represented in a Suit under Order 1 Rule 8 of Civil Procedure Code, need not have the same cause of action, and all that is required for application of said provision is that the persons concerned must have common interest or common grievance. What is required is sameness of interest.

Hon'ble Court also referred to a Full Bench judgment of the National Commission in Ambrish Kumar Shukla and Ors. v. Ferrous Infrastructure Pvt. Ltd. Consumer Case No.97 of 2016, decided on 07.10.2016 wherein it had also relied upon the decision of in T.N. Housing Board. Hon'ble Court reproduced inter alia the following:-

"10. Since by virtue of Section 13(6) of the Consumer Protection Act, the provisions of the Order 1 Rule 8 of CPC apply to the

consumer complaints filed by one or more consumers where there are numerous consumers having the same interest, the decision of the Hon'ble Supreme Court in Tamil Nadu Housing Board (supra) would squarely apply, while answering the reference. The purpose of giving a statutory recognition to such a complaint being to avoid the multiplicity of litigation, the effort should be to give an interpretation which would subserve the said objective, by reducing the increasing inflow of the consumer complaints to the Consumer Forums. ....''

Civil Appeal No. 4805 of 2019
Mangathai Ammal (Died) through LRs and Others v. Rajeswari & Others
Decided on May 09, 2019

Hon'ble Supreme Court reiterated the six principles laid in Jaydayal Poddar v. Bibi Hazra (1974) 1 SCC 3, P. Leelavathi v. V. Shankarnarayana Rao (2019) 6 SCALE 112, and other cases noted in the judgment, for determination of a transaction as benami. Those are as under:

The source from which money came; the nature and possession of the property after the purchase; motive if any, between the claimant and the alleged benamidar; the custody title deeds after the sale; and the conduct of the parties concerned in dealing with the property after the sale.

Hon'ble Court also held that the payment of part sale consideration cannot be the sole criteria to hold the sale/ transaction as benami. While considering a particular transaction as benami, the intention of the person who contributed the purchase money is determinative of the nature of transaction.

Similarly, merely because the stamp duty was purchased by a person, at the time of execution of the sale deed, that by itself cannot be said that the sale deed was a benami transaction.

Civil Appeal No. 4956 of 2019
Sai Babu v. M/S Clariya Steels Pvt. Ltd.
Decided on May 01, 2019

While referring SREI Infrastructure Finance Limited v. Tuff Drilling Private Limited (2018) 11 SCC 470, Hon'ble Supreme Court held that it is clear that a distinction was made by the Hon'ble Court, between the mandate terminating under section 32 and proceedings coming to an end under section 25, and that the Hon'ble Court had clearly held that no recall application would, lie in cases covered by section 32(3) of Arbitration and Conciliation Act, 1996.

Civil Appeal No. 4767 of 2019
Vibha Bakshi Gokhale & Anr. v. M/s Gruhashilp Constructions & Ors.
Decided on May 10, 2019

Hon'ble Supreme Court held that the purpose which Parliament sought to achieve by setting up the NCDRC was to protect the rights of consumers to seek access to justice under the Consumer Protection Act 1986.

In the present case, there was a conditional order dated 16 November 2018 requiring the appellants to file a rejoinder and evidence within a period of four weeks, failing which the complaint was to stand dismissed automatically. The NCDRC declined to grant any further time to the appellants and, proceeded to observe that it is perhaps because the appellants do not have any merit in the case, that there was a delay in filing a rejoinder and evidence. This inference was held unwarranted.

Hon'ble Court further held that that the orders of this nature detract from the

true purpose for which the NCDRC has been established. The NCDRC should have borne this in mind instead of rejecting the complaint on a technicality. Such dismissals only add to the burden of litigation, and defeat the purpose of ensuring justice in the consumer fora.

Hon'ble Court also held that it had been repeatedly observing that marginal delays are not being condoned by the NCDRC on the ground that the Consumer Protection Act, 1986 stipulates a period within which a consumer complaint has to be disposed of. Though the Act stipulates a period for disposing of a consumer complaint, it is also a sobering reflection that complaints cannot be disposed of due to non-availability of resources and infrastructure. In this background, it is harsh to penalize a bona fide litigant for marginal delays that may occur in the judicial process. The consumer fora should bear this in mind so that the ends of justice are not defeated.

Civil Appeal No. 6600 of 2015
M/S. Royal Sundram Alliance Insurance Company Limited v. Mandala Yadagari Goud and ors.
Decided on April 09, 2019

Hon'ble Supreme Court reiterated the law that it is the age of the deceased, and not the age of the dependents which has to be taken into account, to arrive at compensation payable to the dependents of a deceased victim of a motor accident case.

In this regard, Hon'ble Court also referred Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr. (2009) 6 SCC 121, National Insurance Company Ltd. v. Pranay Sethi & Ors. (2017) 16 SCC 680, and Sube Singh & Anr. v. Shaym Singh (Dead) & Ors. (2018) 3 SCC 18, and Munna Lal Jain & Anr. v. Vipin Kumar Sharma & Ors. 2 (2015) 6 SCC 347.

Civil Appeal No . 7011 of2009
The State Bank of India & Others v. P. Soupramaniane
Decided on April 26, 2019

Hon'ble Supreme Court held that the release on probation does not entitle an employee to claim a right to continue in service. The observations made by a criminal court are not binding on the employer who has the liberty of dealing with his employees suitably. Hon'ble Court observed that the Court had observed on multiple occasions that in criminal jurisdiction, Courts do not have the power to pass a direction that the said conviction will not have any impact on the convict's services, while specifically referring Girraj Prasad Meena v. State of Rajasthan (2014) 13 SCC 674. (see para 5)
Hon'ble Court further held that all cases of assault or simple hurt cannot be categorized as 'crimes involving moral turpitude'. On the other hand, the use of a dangerous weapon which can cause the death of the victim may result in an offence involving moral turpitude.

Though every offence is a crime against the society, discontinuance from service according to the Banking Regulation Act can be only for committing an offence involving moral turpitude.

Acts which disclose depravity and wickedness of character can be categorized as offences involving moral turpitude. Whether an offence involves moral turpitude or not depends upon the facts and circumstances of the case. Ordinarily, the tests that can be applied for judging an offence involving moral turpitude are:

a) Whether the act leading to a conviction was such as could shock the moral conscience or society in general;
b) Whether the motive which led to the

act was a base one, and

c) Whether on account of the act having been committed, the perpetrators could be considered to be of a depraved character or a person who was to be looked down upon by the society.

Civil Appeal No. 3740 of 2019
N.K. Janu and others v. Lakshmi Chandra
Decided on April 10, 2019

Hon'ble Supreme Court held that merely because an order has been passed, it does not warrant the personal presence of the accused. Summoning of officers to the court to attend proceedings, impinges upon the functioning of the officers, and eventually it is the public at large who suffer on account of their absence from the duties assigned to them. The practice of summoning officers to court is not proper, and does not serve the purpose of administration of justice in view of the separation of powers of the Executive and the Judiciary. If an order is not legal, the Courts have ample jurisdiction to set aside such order and to issue such directions as may be warranted in the facts of the case.

Civil Appeal Nos.4031-4032 of 2019
Ganesh v. Sudhir Kumar Shrivastava and others
Decided on April 22, 2019

Hon'ble Supreme Court held that it was certainly open to the wife to give up any claim so far as maintenance or permanent alimony or stridhan were concerned, but she could not have given up the rights which vested in the daughter insofar as maintenance and other issues were concerned.

In this case, the Hon'ble Court also held that if the parties had arrived at a settlement and decided to withdraw the cases filed by each of the parties against the other, the compromise ought to be effectuated in complete sense. In this regard, Hon'ble Court also referred Gian Singh v. State of Punjab & Another, (2012) 10 SCC 303.

OWP No. 32/2015
Jai Pal v. Chairman, Tehsil Legal Service Committee Bani & Ors
Decided on April 30, 2019
High Court of Jammu & Kashmir

Hon'ble Court in this case held that no order can be passed by the Lok Adalat, if there is no compromise on settlement between the parties. It has also been held that such settlement or compromise has to be arrived at by taking consent of the parties to the litigation and Lok Adalat has to verify about the genuineness of the consent so given by the parties. Lok Adalat is not to decide the matter on merit.

OW104 No. 66/2018
Baldev Singh v. Randeep Singh
Decided on 1st May, 2019
High Court of Jammu & Kashmir

In this case supervising jurisdiction of High Court under Section 104 of the Constitution of J&K was invoked against order dated: 18-04-2018 passed by 2nd Additional District Judge, Jammu, wherein the said Court had directed both the parties to maintain status quo with regard to the suit property. Both the parties were claiming possession over the property in dispute. The Appellate Court had placed reliance on the judgement of Punjab & Haryana High Court in case of Harbajan Singh Brar v. Prabhsharan Singh, 1999(2) R.C.R (Civil) 488, wherein it was held that if there is a dispute regarding possession of the property as both the parties are asserting their possession over the property in dispute, in such a situation the

proper course to be adopted by the Court is to direct the parties to maintain status quo as to possession.

Hon'ble High Court held that, although a Court seized of the matter in ordinary course must return a finding as regards possession, as has been held in D Albert's case, AIR 1989 Madras 73, yet there may be cases where on the basis of material or record, status quo may be the only option.

CM No. 3745/2019
Oriental Insurance Co. Ltd. v. Indu Priya Dewan and others
Decided on May 16, 2019
High Court of Jammu & Kashmir

This appeal was filed by the Insurance Company against the award passed by the Motor Accident Claims Tribunal, Jammu, wherein the Tribunal has awarded a sum of Rs. 65,29,750/- as compensation in favour of the respondents/claimants. The appellant insurance company challenged the award on the ground that the Tribunal has committed an error by taking the income of the deceased as Rs. 56,739/- which was the gross salary of the deceased minus the income tax. The appellant insurance company sought deduction on account of Festival allowance, consumer loan, pension, union-fund, housing-loan etc. from the gross salary of the deceased. The appellant insurance company has put this amount at Rs. 43,818/- and stated that the award passed by the Tribunal was not just and therefore, compensation deserves to be scaled down.

Hon'ble High Court held that the amount of compensation in favour of the claimants is just and fair and require only a slight modification. For calculating the income of deceased for compensation the amount which was availed by the deceased in the form of different types of loans cannot be added in the income of the deceased and that amount has to be deducted. So the income of deceased after deducting the personal expenses comes out as Rs. 47,339/-. The compensation amount is accordingly modified and assessed as Rs. 66,11,029/-.

MA No. 399/2013
United India Insurance Co. Ltd. v. Satish Kumar & Anr.
Decided on May 21, 2019
High Court of Jammu & Kashmir

This Miscellaneous Appeal is under Section 30 of Workmen Compensation Act 1923, whereby the award dated: 24-06-2013 passed by Assistant Labour Commissioner, Jammu was challenged. Hon'ble High Court set aside the award and directed the Commissioner to re-examine the doctor to properly asses the percentage of disability of the claimant and re-determine the compensation payable to the claimant. Also to assess the age of the claimant on the basis of age on the driving license, if no other reliable evidence is there.

OWP No. 2697/2018
Director State Motor Garages v. The State Human Rights Commission & Ors
Decided on May 20, 2019
High Court of Jammu & Kashmir

The petitioners filed the instant petition seeking quashment of complaint filed by respondents before J&K State Human Rights Commission raising their service dispute. Hon'ble Court allowed the petition, thereby quashed the complaint and subsequent proceedings before the Commission on the ground that the commission had no jurisdiction to entertain and adjudicate upon service

disputes of the employees in any department by treating the same to be violation of human rights.

OWP No. 563/2019
Status Projects Pvt. Ltd. v. Cecil Pharmaceuticals Pvt. Ltd. & another
Decided on May 20, 2019
High Court of Jammu & Kashmir

A petition under Section 104 of the Constitution of J&K, challenging the order passed by the Principal District & Sessions Judge, Samba, wherein an application was filed under order I rule 10 of the Civil Procedure Code filed by the petitioner seeking impleadment as a party respondent in the appeal proceedings, was rejected. In the application it was asserted by the applicant that since he has became the owner and the title of the suit property has passed in his favour, he has become a necessary party to the suit, as such should be impleaded as a party in the suit. The appellate court rejected the application of the petitioner primarily on the ground that the presence of the petitioner would not at all help in the effective and complete adjudication of the issue.

The Hon'ble High Court held that it is a settled legal position, based on interpretation of order I Rule 10(2) is that a person is a "necessary party" if in his absence no effective decree can be passed, while a "proper party" is one in whose absence no effective order can be made out whose presence is necessary for a complete and effective adjudication of the matter. Hon'ble Court referred to judgements, Ramesh Hiranand Kundanmal v. Municipal Corporation of Greater Bombay, 1992(2) SCC 524,Thomson Press (India) Ltd. v. Nanak Builders & Investors P. Ltd and others, 2013(5) SCC 397, Khemchand Shanker Choudhary v. Vishnu Hari Patil, (1983)1 SCC 18, Amit Kumar Shaw v. Farida Khatoon, (2005)11 SCC 403, and set aside the impugned order, holding that the order of the appellate court was legally erroneous and interest of justice would be best served if the petitioner is impleaded as party respondent.

MA No. 194/2012 (O&M)
M/s Bajaj Allianz Gen. Insurance Co. Ltd. v. Lal Dei and others
Decided on May 17, 2019
High Court of Jammu & Kashmir

This order will dispose off bunch of appeals clubbed together.
The award of tribunal is notified to the extent that though Insurance Company is not liable to pay compensation, but has to pay at 1st instance and recover the same from driver/owner as per law. Moreover, the owner/driver has to produce the driving license and prove its validity in the process.

MA No. 111/2017
United India Insurance Co. Ltd. v. Suman Devi and others
Decided on 16th May, 2019
High Court of Jammu & Kashmir

The appellant challenged the award passed by Moto Accident Claims Tribunal on various grounds. The Hon'ble High Court modified the award amount by relying upon the judgements of Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation & Ors., (2009) 6 SCC 121 and National insurance Co. Ltd. v. Pranay Sethi, 2017 (4) KLT 662 (SC) and held that Tribunal has gone wrong by giving increase of 50% towards future prospects as the deceased was not a government servant and granted increase of 40% towards future prospects.

MA No. 310/2013
Karnail Chand v. M/s Govind Textiles and others
Decided on 16th May, 2019
High Court of Jammu & Kashmir

The appellant had filed the instant appeal for enhancement of award amount. The Hon'ble High Court held that award passed by the Tribunal does not represent just compensation in the light of law laid down by Hon'ble Supreme Court in Raj Kumar v. Ajay Kumar, 2011 ACJ 1 (SC). The Hon'ble Court stated that permanent disablement of right upper limb to the extent of 22% would affect the earning capacity of the injured to the extent of not less than 40%. Case of permanent disablement cannot be differentiated from a death case in so far as grant of compensation on account of loss of future prospects is concerned. efore, in the light of guidelines in Sarla Verma v. Delhi Transport Corporation & Ors., 2009 (6) SCC 121, Hon'ble Court granted increase of 40% towards future prospects.

Activities of the Academy

OATH CEREMONY

On May 3rd, 2019 J&K State Judicial Academy organized oath taking ceremony for the advocates and granted absolute enrolment certificates to practice law.

Hon'ble Mr. Justice Sanjeev Kumar, Member Governing Committee of State Judicial Academy, administered oath and distributed absolute licences among 40 newly enrolled advocates hailing from different districts of Jammu province.

Advocates took oath to uphold the Constitutional values and rule of law and to work for welfare of needy sections of the society. They also took oath to enhance excellence of the legal profession and judicial institutions.

Registrar General High Court of J&K, Sanjay Dhar, Director J&K State Judicial Academy, Rajeev Gupta, Rohit Bhagat, Vice President, Abhishek Wazir, General Secretary along with other office bearers of High Court Bar Association, officers of the High Court Registry, senior members of the bar, faculty member of Chandigarh Judicial Academy, trainee additional District Judges from Punjab and Haryana and trainee Munsiffs from J&K State participated in the programme.

Justice Sanjeev Kumar termed patience and perseverance coupled with courtesy and respect for the court as key towards success for every good lawyer. He stressed upon the advocates to work hard and develop a constant urge for updating knowledge of law to achieve higher levels in the legal professions.

Office bearers and members of the bar requested the State Judicial Academy to introduce regular programmes for newly enrolled advocates to be conducted by academic professionals, senior advocates and law faculty to enhance the quality and productivity of young advocates.

On this occasion, the High Court, in exercise of power of State Bar Council, issued enrolment certificates to the newly enrolled advocates of Jammu province.

Director State Judicial Academy Rajeev Gupta conducted the proceedings of the oath taking ceremony.

Training Programme on Cyber Law for advocates from Jammu and Samba

On May 12th, 2019, Jammu & Kashmir State Judicial Academy organised

a training programme on Cyber Law in which practising advocates from the district Jammu & Samba participated. Hon'ble Mr. Justice Sanjeev Kumar, Judge High Court of Jammu & Kashmir inaugurated the training programme. In his address Justice Sanjeev Kumar exhorted the advocates to constantly engage in the learning activities to sharpen the skills for professional excellence. He said that Cyber Law is the emerging field and is going to play a very important component of justice delivery system. As such, it is incumbent on all the lawyers to update knowledge to keep pace with the changing legal scenario. Justice Sanjeev Kumar 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. He said that a serious challenge is posed by the unscrupulous persons, threatening the economic and social order of the country. Having knowledge of laws relating to information and computer technology and the security regime connected with it shall be of immense help for proper safeguard against the ill effects of the technology.

On the initiative of the Governing Committee of State Judicial Academy, renowned expert on Cyber Law Dr. A. Nagarathna, Associate Professor National Law School of India University, Bangluru, and Coordinator, Advanced Centre on Research, Development & training in Cyber Law & Forensics and Dr. Savita Nayyar, Assistant Professor, Department of Law, University of Jammu conducted the programme. Dr. Nagarathna has already conducted various training programmes in India and abroad on the subject. Dr. Savita has been teaching Cyber Law to the students since few years. Issues concerning all the spheres of Cyber Law which include electronic evidence, cyber crimes and cyber forensics were touched upon and the participants got to know about the wide sphere and intricacies of the Cyber Law during the programme.

Dr. Savita Nayyar dealt with salient aspects of Indian Cyber Law enacted as Information Technology Act, 2000 alongwith Rules framed thereunder, and cyber crimes relating to women. Dr. A. Nagarathna dealt with different aspects of Cyber Law and electronic evidence from the perspective of their applicability to the judicial proceedings in the courts of law, investigating agencies and prosecuting wings. She also elaborated upon the brighter and darker side of the internet. She highlighted the upcoming challenges and opportunities with which the courts of law, investigating agencies and the prosecution shall be confronted with in near future. The speakers also discussed whole gamut of case law concerning important issues coming up before the courts of law.

Participants in the programme interacted with the experts and posed various questions on the topic. They felt satisfied having been updated in their knowledge of law on the subject and requested the Judicial Academy to organise regular programmes of current importance.

OATH CEREMONY

On 20th May, 2019, Jammu and Kashmir State Judicial Academy organized Oath ceremony for newly enrolled Advocates of Kashmir and Ladakh Provinces at J&K State Judicial Academy complex, Mominabad Srinagar. The oath was administered by Hon'ble Mr Justice Ali Mohammad Magrey, that was followed by lecture on the "Professional Ethics and Conduct" delivered by Justice Magrey.

Justice Ali Mohammad Magrey, Chairman, J&K State Judicial Academy along with Mr. Abdul Rashid Malik, Principle District & Sessions Judge, Srinagar welcomed newly enrolled advocates to the profession of law and in his address to the advocates Justice Magrey deliberated on the sanctity of the oath ceremony and of professional ethics and conduct for the Advocates. Addressing the Advocates, Justice Magrey said, Legal education does not stop on admission to the Bar but it is a continuous education. Law is a profession that demands constant learning. New laws are being passed and existing laws are amended, that needs constant updation of knowledge. Success in the profession depends to a large extent on what you are going to learn through practice, research and interaction with colleagues and Judges rather than on what you already know. Compared to the years gone by, Justice Magrey told the Advocates that most of you are now entering the profession with more education and technological skills. Some of you have post graduate degrees. Some of you are professionals in your own right in other fields. We hope that these extra competencies and capabilities would assist you in coping with the fast changing legal landscape.

Justice Magrey stressed upon the newly enrolled Advocates that character is vital in all professions and all walks of life, and in the legal profession particularly, observing honesty by the lawyer is a matter of the first importance. The most worthy and effective advertisement possible for a young lawyer, is the establishment of a well merited reputation for professional capacity and fidelity to trust. The term ethics is something, which all of us inherently possess. The standards of professional ethics as are applicable to members of the legal profession, we call that Legal Ethics. In the dealings in and outside the Court, Advocate should always bear in mind that every member of the Bar is a trustee of the honour and prestige of the profession which he is duty bound to uphold in letter and spirit.

The function concluded with vote of thanks by Rajeev Gupta, Director, J&K State Judicial Academy.

One Day Refresher Training Programme on "Grant of Maintenance under Section 488 CrPC and its execution"

On May 26, Jammu and Kashmir State Judicial Academy organised a Refresher Training Programme on "Grant of Maintenance under Section 488 CrPC and its execution", at Jammu for Judicial Magistrates of 2017 and 2018 batches. Objective of the programme was to update the knowledge and strengthen the requisite skills in dealing with maintenance matters by the Magistrates expeditiously and effectively. Mr. D.K. Kapoor, former District & Sessions Judge and Member State Consumer Commission, and Ms. Bala Jyoti, Registrar Rules, High Court of J&K were the resource persons in the training programme.

Ms. Bala Jyoti presented the overview of the maintenance matters under the scheme of Code of Criminal Procedure and spoke on various legal aspects requisite to be noticed while considering grant of maintenance to the deprived wife, children and parents. She dealt with latest legal propositions laid down by the Supreme Court and various High Courts on the subject. She also addressed the jurisdictional issues and provisions of maintenance under other legislations. She emphasised the need for

active involvement of the Magistrates in arriving at mediated settlement of all family disputes, especially in maintenance matters.

Mr. D.K. Kapoor apprised the Magistrates about the need for expeditious disposal of the maintenance matters and told the participants that the objective of the beneficial legislation gets defeated by delay in considering grant of maintenance. The purpose of the legislation on maintenance is to avoid destitution and vagrancy for want of maintenance, and the needy in these circumstances cannot be asked to wait for long. He also apprised the participants that it is a societal concern to provide complete and effective justice to the deprived persons entitled to maintenance either under personal law or statutory enactments, and to compel the person under social and moral obligation to pay maintenance. This is meant to give meaning to the concept of equality of all citizens under the Constitutional scheme.

In the interactive sessions, the participants were asked to perform various simulation activities, case study and make presentations on practical aspects of the maintenance matters.

Rajeev Gupta, Director, State Judicial Academy conducted the programme. He appreciated and thanked the resource persons and the participants for having wonderful discussion on the legal aspects and academic discourse on the subject.

JUDICIAL OFFICER'S COLUMN

Legal Ethics and Professional Standards in the Lawyers' Profession

The legal profession is full of great epics and stories of great men who have given their blood and sweat for upliftment of the legal profession. Legal profession in our State also has also been enriched by such legal luminaries who are considered to be stalwarts and have taken the legal profession to great heights. However, we cannot live in the past and pat our backs in having a golden history in the legal profession. Now we are seeing a gradual degradation and falling standards of the legal profession, in that there is a general complaint about conduct and behavior of the lawyers in and outside the Court. Principles of ethics and behavior and the duties enshrined under the Advocates Act are being observed in breach. It should concern us all and we should all come together to arrest this tendency. There were great times when a good number of citizens would visit and sit in the Courts just to observe and learn decorum and discipline. This cannot be true today, as we hardly notice those high standards of conduct and behavior in the Court by the stakeholders in the judicial system.

Hon'ble Supreme Court has some time before acknowledged the falling standards of certain members of the Bar and cautioned about it in **R.K. Anand v. Registrar, Delhi High Court, (2009)8 SCC 106**. It observed as follows:

"331. The other important issue thrown up by this case and that causes us both grave concern and dismay is the decline of ethical and professional standards among lawyers. The conduct of the two appellants (one convicted of committing criminal contempt of court and the other found guilty of misconduct as Special Public Prosecutor), both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation.

The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels. We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two or three decades ago. Leaving aside the many kinds of unethical practices indulged in by a section of lawyers we find that even some highly successful lawyers seem to live by their own rules of conduct. x x x x x

333. We express our concern on the falling professional norms among the lawyers with considerable pain because we strongly feel that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for the administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a Bar that enjoys the unqualified trust and confidence of the people, that shares the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people. x x x x x x

335. Here we must also observe that the Bar Council of India and the Bar Councils of the different States cannot escape their responsibility in this regard. Indeed the Bar Council(s) have very positively taken up a number of important issues concerning the administration of justice in the country. It has consistently fought to safeguard the interests of lawyers and it has done a lot of good work for their welfare. But on the issue of maintaining high professional standards and enforcing discipline among lawyers its performance hardly matches its achievements in other areas. It has not shown much concern even to see that lawyers should observe the statutory norms prescribed by the Council itself. We hope and trust that the Council will at least now sit up and pay proper attention to the restoration of the high professional standards among lawyers worthy of their position in the judicial system and in the society."

Similarly, it is also worthwhile to recall the observations of Hon'ble Supreme Court in **Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting, In re, (1995) 3 SCC 619**, thus:

"20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity,

deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practice the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more."

In ***Bar Council of Maharashtra* v. *M.V. Dabholkar*, (1976)2 SCC 291**, it was observed :

"15. Now to the legal issue bearing on canons of professional conduct. The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional lifestyle. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallised into rigid rules but felt by the collective conscience of the practitioners as right.

These observations of the Apex Court should make us restless and should prompt us to look back for inspiration and look forward for corrective measures. If we all work for the betterment of legal profession we shall be able to bring back the lost glory. The high standards of legal profession can be put in place by the concerted efforts of all of us.

Mr. Ritesh Dubey
One Man Forest Authority, Srinagar

Report of Trainee Munsiffs on Court Attachments

2018 Batch of Trainee Munsiffs was placed on Court attachments as per the approved calendar of the Induction Training programme, with effect from 6th of May 2019 to 25th May 2019. The trainee officers were exposed to the real court atmosphere and to get insight into the working of the courts. This phase of training programme was really useful to relate the academic learning in the Judicial Academy with the practical aspects. It was a great learning experience for all the officers. This experience will act as launching pad, having gained simulation practice sitting with the judges of the courts and seeing the court working on real time basis. The trainee officers are enriched in experience after the court attachments and in this regard they have the following observations to be shared:-

1. Presentation of New Cases:

A) Challan (cases on Police Report)

Whenever a new challan is

presented in the Courts, it was observed that Courts insist upon the presence of the accused along with the challan where as it has been held by the Constitutional Courts that the presence of the accused is not necessary at the time of the presentation of the challan. The Court has first to go through the entire Challan and satisfy itself that the prima facie the case is fit for judicial scrutiny and then to issue process against the accused. (Reference Section 190 read with Section 204 CrPC).

B) Private Complaint

It was observed that on presentation of the complaint and after recording the statements of the Complainant and the witnesses, if any, the Court applies its judicial mind and decides whether to issue the process or not. (Discussed in detail below point 2(b)).

C) Civil Cases:

It has been learned and observed that on presentation of the Plaint the Court has to go through the entire Plaint and satisfy itself that the Court has the jurisdiction to entertain the suit and the plaint discloses the cause of action so as to avoid false and frivolous litigation which consumes the precious time of the Court. It was also observed and learned that the Court should not readily interfere into the matters of public importance more particularly when the matter is hit by Section 56(d) of Specific Relief Act. The Plaints are not supported by the mandatory affidavits and the list of the documents as provided by the amendment in CPC in December 2018.

2(a) Cognizance on Police report:

It was observed that on presentation of the Challan the Court is required to follow the procedure provided under Section 190 r/w Chapter XVII CrPC which starts with Section 204 CrPC. Therefore, it is mandatory to issue the process against the accused after recording the satisfaction that the case is fit for issuance of the process under Section 204 CrPC. However, in case the accused is produced before the Court at the time of presentation of the Challan, the Court may not issue the process to the accused but Court has to record its satisfaction that the case is fit to proceed ahead.

2(b) Procedure in Private Complaints:

It has been recently held by Hon'ble High Court of J & K in a case titled Nasreena Bano v. State & ors., D.O.D: 10.05.2019 that whenever any private Complaint is presented, the Court has to follow the below procedure irrespective of the nomenclature of the Complaint:-

a. It may refuse to entertain the application and take cognizance, if the facts do not disclose the commission of any offence.

b. It may take Cognizance and proceed under Chapter XVI to examine the complainant on oath, reduce the substance of his examination into writing and decide either to issue process for compelling the attendance of the accused or for reasons to be recorded, postpone the same and hold an inquiry into the case either itself or direct the inquiry or investigation to be made by the Subordinate Magistrate or by a police office or by any other person it thinks fit. The scope of the inquiry would be limited to ascertaining the truth or falsehood of the complaint.

c. Instead of taking cognizance for proceeding under chapter XVI, Magistrate may if the application contains the information disclosing cognizable offence and complies with pre requisites as laid in the case of Priyanka Srivasthva direct the registration of FIR.

2(c) Interim Relief in Civil cases:

It has been observed that after the

Court has scrutinized the Plaint and has satisfied itself that the Court has jurisdiction to entertain the matter, the Court may proceed to take up the application for Interim Injunction. The Courts may not readily grant the ad-interim relief unless the Court is satisfied that the plaintiff has a prima facie case and balance of convenience tilting in his favour and that irreparable loss would be caused to the plaintiff in case interim relief is not granted. Then Court must stress the plaintiff to follow the procedure as provided under O 39 R 3 (a & b).

3 (a) Revocation of Cognizance Order:

It has been observed that there are cases where the Court has taken the Cognizance and the accused moves application for the revocation of the cognizance order. There are certain conflicting judgments on the issue, that has created some uncertainty regarding the correct procedure.

The issue whether the Cognizance order can be recalled by the trial Court was first addressed by Hon'ble Supreme Court in case titled **K.M Mathews v. State of Kerala** (1992). It was held that the Court which issued process under Section 204 CrPC can recall the same. The same question was referred to the larger bench in a case of **Nilamani Routary v. Bennett Coleman & Co ltd.** (1998 (8) SCC 594). Since the matter was settled outside the Court, the question was not decided. The Law laid down in **Mathews case** came up Hon'ble Supreme Court in a case titled **Adalat Prasad v. Rooplal Jindal**, D.O.D 25.08.2004, wherein it was held that once the process is issued it cannot be recalled. The only remedy available to the aggrieved person is to approach Higher Court under Section 482 CrPC (561-A of J&K CrPC). Judgments passed in the cases **Krishna Kumar varriar v. Shareshop** (2010) and **Bhushan Kumar (2013)** case are *per incuriam* in the light of the fact that the said judgments could not have overturned the decision in **Adalat Prasad v. Rooplal Jindal,** which is still the good law.

3 (b). Restoration of the Complaint:

It has been observed that there are applications filed for the restoration of the complaint dismissed in default. The correct position of law is that once the Complaint is dismissed in default (Section 247 CrPC), it results in the acquittal of the accused, against which only appeal can be preferred. The complaint once dismissed cannot be restored by the trial Court.

4. Writing Orders and Judgments:

It was learned that every order must be supported by reasons. It has been held by the Hon'ble Supreme Court and our own High Court in various pronouncements that the order without reasons is nullity. Judgment must contain the concise statement of facts, the point/ points for determination, decision on the point/points and the reasons for the decision.

Trainee officers got opportunity to write the interim orders under the supervision of the respective Presiding Officers.

5. Interaction with the Litigants:

It has been observed that the litigants want to be heard and they are satisfied when the judicial officer hear them. Also it was observed that in some matters participation of the litigant in deliberations is necessary so as to ascertain the truth. It may also help in settling the matter effectively & amicably.