



SJA e-NEWSLETTER

Official Newsletter of Jammu & Kashmir State Judicial Academy
(For internal circulation only)

Volume 2

Monthly

May 2019

Patron-in-Chief

Hon'ble Ms. Justice
Gita Mittal
Chief Justice

Governing Committee

Hon'ble Shri Justice
Ali Mohammad Magrey
Chairman

Hon'ble Shri Justice
Dhiraj Singh Thakur

Hon'ble Shri Justice
Tashi Rabstan

Hon'ble Shri Justice
Sanjeev Kumar
Members

Contents

From Editor's Desk	1
Legal Jottings.....	2
Activities of the Academy	15
Judicial Officers' Column.....	16

Editor
Rajeev Gupta
Director

From the Editor's Desk

Efficient Court Management System can play a significant role in decreasing the pendency of cases in the courts. The courts are being managed by the same set of individuals, employing same set of manual processes which have been in vogue since ages. Time is now opportune to adopt new techniques and technology for court management and to train the existing staff in use of the modern technology. The process of modernization has since been started with adoption of e-Courts Mission Mode Project in the year 2007. Still lot remains to be achieved. There has been lot of progress made in case management system with gradual upgradation of Case Information System (CIS) 1.0 to CIS 3.0, and lately now CIS 3.1. Across India there are many High Court jurisdictions where CIS 3.1 is being used successfully. Main objective of CIS 3.1 is to make a shift from manual court processes to automated processes, that will substantially reduce the dependence on already aged manual processes which largely depend upon the individual efforts of the court staff. CIS 3.1 is intended to enhance the efficiency of the court staff and also to speed up Justice delivery system. This swiftness of court processes is sure to overcome the burden of backlog and thereby to enhance the excellence of judicial system.

Capturing accurate data at every step, commencing from filing of litigation in a civil court and registration of FIR in criminal case, would be of immense importance to ensure seamless working of the court processes. Data captured at various stages of the cases coming up before the courts, can be analyzed for working out various parameters which in turn shall be helpful for prioritizing the cases on bunch or individual basis.

It is hoped that we all, the judicial officers and the court staff, would give due attention to modernization of the court processes.

LEGAL JOTTINGS

“(...) those who forget history are condemned to repeat it. It is out of the tragic experience of the past that we can fashion our present in a rational and reasonable manner and view our future with wisdom and care. Awareness in proper light is a first step towards that realization.”

Sabyasachi Mukharju, J. in Ramesh v. Union of India, 1988 1 SCC 668, para 20

Criminal

Criminal Appeal Nos. 680-681 of 2009 Pattu Rajan v. The State of Tamil Nadu Decided on March 29, 2019

Hon'ble Supreme Court held that it is worth recalling that while it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that such proof should be perfect, and someone who is guilty cannot get away with impunity only because the truth may develop some infirmity when projected through human processes. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Justice cannot be made sterile by exaggerated adherence to the rule of proof, inasmuch as the benefit of doubt must always be reasonable and not fanciful.

While referring the law laid in T.T. Antony v. State of Kerala, (2001) 6 SCC 181, that the registration of a second FIR (which is not a counter case) is violative of Article 21 of the Constitution, Hon'ble Supreme Court reiterated the law laid in the case of Awadesh Kumar Jha v. State of Bihar, (2016) 3 SCC 8, that the fresh offence cannot be investigated as part of the pending case, and should instead be investigated afresh in case a fresh offence is committed during the course of the earlier investigation, which is distinct from the offence being investigated, and further investigation, as envisaged under Sub-section 8 of Section 173 of the Cr.P.C, connotes investigation of the case in continuation of an earlier investigation with respect to which the chargesheet has already been filed.

Hon'ble Court also reiterated that

the Judge while deciding matters resting on circumstantial evidence should always tread cautiously so as to not allow conjectures or suspicion, however strong, to take the place of proof. But if the alleged circumstances are conclusively proved before the Court by leading cogent and reliable evidence, the Court need not look any further before affirming the guilt of the accused. Hon'ble Court also referred the oft-quoted phrase: “Men may lie, but circumstances do not”.

It is further held that the probative value accorded to DNA evidence, like all other opinion evidence, also varies from case to case, depending on facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. Though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, yet we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party.

Also, the High Court was held justified in observing that a superimposition test cannot be taken as a conclusive one for the identification of a dead body, because by itself it may not conclusively establish identification. However, the High Court was held to be right in accepting the expert testimony on this aspect since in the instant case, the superimposition test was merely one piece of evidence relied upon by the prosecution to corroborate the evidence of

PWs 1 and 2 in order to strengthen its case. And the contention that the non-conducting of a DNA test and the reliance on evidence regarding identification through superimposition was improper, was rejected.

It has been established through a catena of judgments that the doctrine of last seen, if proved, shifts the burden of proof onto the accused, placing on him the onus to explain how the incident occurred, and what happened to the victim who was last seen with him. Failure on part of the accused to furnish any explanation in this regard, or furnishing false explanation would give rise to a strong presumption against him, and in favour of his guilt, and would provide an additional link in the chain of circumstances.

Criminal Appeal No. 483 of 2019
Ripudaman Singh v. Balkrishna
Decided on March 13, 2019

Hon'ble Supreme Court held that though it is well settled that an agreement to sell does not create any interest in immovable property, it nonetheless constitutes a legally enforceable contract between the parties to it. A payment which is made in pursuance of such an agreement is hence a payment made in pursuance of a duly enforceable debt or liability for the purposes of Section 138 of Negotiable Instruments Act.

Criminal Appeal No. 509 of 2019
Sugreev Kumar v. State of Punjab and Ors.
Decided on March 15, 2019

Hon'ble Supreme Court held that it remains trite that the provisions contained in Section 319 CrPC are to achieve the objective that the real culprit should not get away unpunished, and that the Court is empowered by virtue of these provisions, to proceed against any person not shown as an accused, if it appears from evidence that such person has committed any offence for which, he could be tried together with the other accused persons. However, it being a discretionary power and an extraordinary one, is to be exercised sparingly and only when cogent evidence is available. The prime facie opinion which is to be formed for exercise of this power requires stronger

evidence than mere probability of complicity of a person. The test to be applied is the one which is more than a prime facie case as examined at the time of framing charge but not of satisfaction to the extent that the evidence, if goes uncontroverted, would lead to the conviction of the accused.

Hon'ble Court quoted the following from Hardeep Singh v. State of Punjab : (2014) 3 5 SCC 92:

"12. Section 319 Code of Criminal Procedure springs out of the doctrine *judex damnatur cum nocens absoluitur* (judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Code of Criminal Procedure.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC?

19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get him absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

Criminal Appeal No. 578 of 2019
National Investigation Agency v. Zahoor Ahmad Shah Watali
Decided on April 02, 2019

Hon'ble Supreme Court held that the issue of admissibility and credibility of the material and evidence

presented by the investigating officer would be a matter of trial, and the sufficiency or insufficiency of the evidence cannot be the basis to answer the prayer for grant of bail. At the stage of bail, it is not necessary to weigh the material. The necessity is to only form an opinion on the basis of the material before it on broad probabilities.

In this case, the issue involved related to the bail under the Unlawful Activities (Prevention) Act, 1967, which contains a provision in the form of Section 43 D which provides the accused shall not be released on bail if the Court is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

Hon'ble Court also restated the settled legal position about matters to be considered for deciding an application for bail, as under:

- whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- nature and gravity of the charge;
- severity of the punishment in the event of conviction;
- danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused;
- likelihood of the offence being repeated;
- reasonable apprehension of the witnesses being tampered with; and
- danger, of course, of justice being thwarted by grant of bail.

Criminal appeal No. 2122 of 2010
Manoj Kumar v. The State of Uttarakhand
Decided on April 05, 2019

The extra-judicial confession of the accused was held to have found independent reliable corroboration from the circumstances of present case. Also, the accused was held to have failed to provide any explanation as to how he had incurred the injuries on his face.

It has also been held that there existed no ground to question the veracity of the witnesses or to raise a ground of false implication, in the absence of any existing enmity between the accused and the witnesses.

Criminal Appeal 579 of 2019
Devendra Prasad Singh v. State of Bihar & Anr.

Decided on April 02, 2019

Hon'ble Supreme Court held that, having regard to the nature of the allegations made by the complainant against respondent No. 2 who was the Police Officer (SHO) at the relevant time, no prior sanction to prosecute the said respondent under Section 197 of the Cr.P.C. was required for filing such complaint. It cannot be contended that respondent No. 2 committed the alleged offences while acting in discharge of his official duties or while purporting to act in discharge of his official duties so as to attract the rigor of Section 197 of the Cr.P.C. In order to attract the rigor of Section 197 of the Cr.P.C., it is necessary that the offence alleged against a Government Officer must have some nexus or/and relation with the discharge of his official duties as a Government Officer.

Criminal Appeal No.71 of 2012
Rupali Devi v. State of Uttar Pradesh and others

Decided on April 09, 2019

Hon'ble Supreme Court has held that that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of the Indian Penal Code.

Hon'ble Court also observed that the adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would amount to commission of cruelty within the meaning of Section 498-A at the parental home. The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 Cr.P.C.

**Criminal Appeal Nos. 694-695 of 2011
Sampat Babso Kale and another v. The
State of Maharashtra
Decided on April 09, 2019**

With regard to the powers of an appellate court in an appeal against acquittal, Hon'ble Supreme Court held that the law is well established that the presumption of innocence which is attached to every accused person gets strengthened when such an accused is acquitted by the trial court, and the High Court should not lightly interfere with the decision of the trial court which has recorded the evidence and observed the demeanor of witnesses.

Hon'ble Court reiterated that a dying declaration is an extremely important piece of evidence, and the Court can convict the accused only on the basis of a dying declaration where it is satisfied that the dying declaration is truthful, voluntary and not a result of any extraneous influence. However, while noting the circumstances that the non-examination of the neighbours who were important witnesses leads to no corroboration of the dying declaration, the best witnesses would have been the neighbours who reached the spot immediately after the occurrence, the Hon'ble Court held that the trial court finding that the prosecution had failed to prove its case beyond reasonable doubt could not be said to be perverse.

Hon'ble Court also noted in this case that the endorsement made by the doctor that the victim was in a fit state of mind to make the statement has been made not before the statement but after the statement was recorded whereas normally that should be the other way round.

**Criminal Appeal No. 629 of 2019
Anurag Soni v. State of Chhattisgarh
Decided on April 09, 2019**

Hon'ble Supreme Court held that if it is proved that the accused who gave the promise to the prosecutrix, to marry, did not have any intention to marry, from the inception, and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can

be said to be consent obtained on a misconception of fact as per section 90 IPC. And in such a case, such a consent would not excuse the offender. Such an offender can be said to have committed the rape as defined under Section 375 of the IPC, and can be convicted for the offence under section 376 of the IPC.

Hon'ble Court also held that merely because the accused had married with another lady and/or even the prosecutrix has subsequently married, is no ground not to convict the accused for the offence punishable under Section 376 of the IPC. The accused must face the consequences of the crime committed by him.

**Criminal Appeal No. 614 of 2019
Ramswaroop v. The State of Madhya
Pradesh and another
Decided on April 08, 2019**

Hon'ble Supreme Court held that the law is well-settled that in case a final report is filed under Section 173 (2) Cr.P.C, stating that no offence is made out against the accused, any of the below mentioned courses can be adopted by the Magistrate, and that the judicial discretion to be used by the Magistrate at such stage has to fall in either of the said three categories:

(a) He may accept the report which was filed by the police in which case the proceedings would stand closed.

(b) He may not accept the report and may take cognizance in the matter on the basis of such final report which was presented by the police.

(c) If he is not satisfied by the investigation so undertaken by the police, he may direct further investigation in the matter.

Hon'ble Supreme Court held the order whereby the magistrate had directed the police to file charge-sheet, as wholly unsustainable.

**Review Petition (Criminal) No. 301 of
2008
Accused 'X' v. State of Maharashtra
Decided on April 12, 2019**

Hon'ble Supreme Court held that there is no bar on the pre-sentencing

hearing taking place on the same day as the pre-conviction hearing, as long as the spirit and purpose of Section 235(2) is met, inasmuch as the accused is afforded a real and effective opportunity to plead his case with respect to sentencing, whether simply by way of oral submissions, or by also bringing pertinent material on record.

Hon'ble Court referred *Vasanta Sampat Dupare v. State of Maharashtra*, (2017) 6 SCC 631 wherein it was laid that the mere non-conduct of the pre-sentence hearing on a separate date would not per se vitiate the trial if the accused has been afforded sufficient time to place relevant material on record.

Hon'ble Court also observed that the notion of death penalty and the sufferance it brings along, causes incapacitation and is idealized to invoke a sense of deterrence. If the accused is not able to understand the impact and purpose of his execution, because of his disability, then the *raison d'être* for the execution itself collapses.

While holding the mental disorder to be a ground for non-imposition of death sentence, the Hon'ble Court held that this ground needs to be utilized only in extreme cases of mental illness considering the element of marginal retribution which survives. The Court cautioned against utilization of this dicta as a ruse to escape the gallows by pleading such defense even if such ailment is not of grave severity.

Hon'ble Court held that there appeared to be no set disorders/disabilities for evaluating the 'severe mental illness', however a 'test of severity' can be a guiding factor for recognizing those mental illnesses which qualify for an exemption. Therefore, the test envisaged predicates that the offender needs to have a severe mental illness or disability, which simply means that a medical professional would objectively consider the illness to be most serious so that he cannot understand or comprehend the nature and purpose behind the imposition of such punishment. These disorders generally include schizophrenia, other serious psychotic disorders, and dissociative disorders -with schizophrenia.

**Criminal Appeal Nos.1466-1467 of 2008
Ashok Kumar Mehra & Anr. v. The State of Punjab ETC.**

Decided on April 15, 2019

Hon'ble Supreme Court reiterated the law that the claim of juvenility can be raised at any stage before any Court by an accused, including the Supreme Court, and even after the final disposal of a case, in terms of Section 7A of the 2000 Act.

**Criminal Appeal No. 687 of 2019
Bikash Ranjan Rout v. State through the Secretary (Home), Government of NCT of Delhi, New Delhi**

Decided on April 16, 2019

Hon'ble Supreme Court held that, after the investigation is concluded and the report is forwarded by the police to the Magistrate under Section 173(2)(i) of the CrPC, the Magistrate may proceed as under:

- (1) accept the report and take cognizance of the offence and issue process, or
- (2) may disagree with the report and drop the proceedings, or
- (3) may direct further investigation under Section 156(3), and require the police to make a further report.

If the Magistrate disagrees with the report and drops the proceedings, the informant is required to be given an opportunity to submit the protest application and thereafter, after giving an opportunity to the informant, the Magistrate may take a further decision whether to drop the proceedings against the accused or not. If the Magistrate accepts the objections, he may issue process and/or even frame the charges against the accused. If he is not satisfied with the investigation on considering the report forwarded by the police under Section 173(2) (i) of the CrPC, the Magistrate may direct further investigation and require the police to make a further report. However, all the aforesaid is required to be done at the pre-cognizance stage. Once the Magistrate takes the cognizance and, considering the materials on record submitted along with the report forwarded by the police under Section 173(2) (i) of the CrPC, Magistrate discharges the accused, thereafter, it will not be open for the

Magistrate to suo moto order for further investigation. Such an order after discharging the accused can be said to be made at the post-cognizance stage. There is a distinction and/or difference between the pre-cognizance stage and post-cognizance stage, and the powers to be exercised by the Magistrate for further investigation at the pre-cognizance stage and post-cognizance stage. The power to order further investigation which may be available to the Magistrate at the pre-cognizance stage may not be available to the Magistrate at the post-cognizance stage, more particularly, when the accused is discharged by him. If the Magistrate is not satisfied with the investigation carried out by the investigating officer and the report submitted by the investigating officer under Section 173(2)(i) of the CrPC, It is always open/permissible for the Magistrate to direct the investigating agency for further investigation, and may postpone even the framing of the charge and/or taking any final decision on the report at that stage. Once the order of discharge is passed, thereafter the Magistrate has no jurisdiction to suo moto direct the investigating officer for further investigation.

However, considering the provisions of Section 173(8) of the CrPC, it is always open for the investigating agency to file an application for further investigation and thereafter to submit the fresh report, and the Court may, on the application submitted by the investigating agency, permit further investigation.

**Criminal Appeal No(s). 607-608 /2019
Vijay Gopala Lohar v. Pandurang
Ramchandra Ghorpade and another
Decided on April 05, 2019**

Hon'ble Supreme Court held that there was no dispute regarding the proposition that the notice issued under Section 138 of the NI Act has to be only for the cheque amount, and not for any other amount more than the cheque amount. In the judgments referred {Suman Sethi vs. Ajay K. Churwal & Anr. (2000) 2 SCC 380, K.R. Indira vs. Dr. G. Adinarayana (2003) 8 SCC 301 and Rahul Builders vs. Arihant

Fertilizers & Chemicals & Anr.(2008) 2 SCC 321}, the notice issued under Section 138 of the NI Act referred to loan amounts which were much higher than the cheque amounts. Whereas, in the instant case, the loan amount and the cheque amount was the same i.e., Rs.50,000/-. Therefore, the above mentioned judgments cited by the learned counsel for the appellant were held not applicable to this case.

**Criminal Appeal No. 719 of 2019
Kumar Ghimirey v. The State of Sikkim
Decided on April 22, 2019**

While noting proviso to section 386 (c) (iii) Cr.p.c along with other provisions, Hon'ble Supreme Court reiterated that the sentence could be enhanced by the appellate Court only after giving a notice of enhancement.

**Criminal Appeal No. 714 of 2019
Dipakbhai Jagdishchandra Patel v. State of
Gujarat and another
Decided on April 24, 2019**

Hon'ble Supreme Court held as under:

"39. Therefore, the combined effect of these provisions can be summarized as follows:

Unless a person is accused of an offence, he cannot claim the protection of Article 20(3) of the Constitution of India.

40. Such a person, viz., person who is named in the FIR, and therefore, the accused in the eyes of law, can indeed be questioned and the statement is taken by the Police Officer. A confession, which is made to a Police Officer, would be inadmissible having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act would also be inadmissible. A confession unless it fulfills the test laid down in Pakala Narayana Swami (supra) and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 of the Cr.PC. Therefore, even if a statement contains admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 of the Cr.PC.

41. Bar under Section 162 Cr.PC, no doubt, operates in regard to the statement made to a Police Officer in between two points of time, viz., from the beginning of the investigation till the termination of the same. In a case where statement containing not a confession but admission, which is otherwise relevant and which is made before the investigation commences, may be admissible. We need not, however, say anything more.

Hon'ble supreme also Court reiterated that the Court does not act as a mere post office, at the stage of framing the charge. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial, and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

CRMC No. 576/2015

Mohd. Riaz v. Zubir Ahmed and others

Decided on April 26, 2019

High Court of J&K

The instant petition filed under Section 561-A CrPC seeks quashment of complaint filed by respondent no. 1 under Section 161, 167, 467, 468 & 471 before JMIC, Thanamandi as well as quashment of order

dated 5/11/2015, by virtue of which process was issued against the petitioner. It has been alleged in the complaint that accused no. 3 in conspiracy with accused no. 1, 2, 4 & 6 has illegally got mutation attested from the accused no. 1 and committed forgery.

The petitioner averred in the petition that a civil suit regarding land under dispute was pending between the parties before Sub-Judge, Rajouri, wherein the complainant was also a party. In that suit, compromise was effected between the parties and accordingly, decree was passed.

The Hon'ble High Court relied upon the judgements of the Hon'ble Supreme Court in case titled Indian Oil Corporation v. NEPC India Ltd., AIR 2006 SC 2780 and G. Sagar Suri v. State of UP, 2000 Cri. L.J. 824 and held that dispute is of civil nature and ingredients of Section 166, 167, 467, 468 and 471 RPC are not made out. Court observed that if the matter which is essentially of a civil nature, has been given a cloak of a criminal offence, the Magistrate should be very careful in issuance of process.

CRMC No. 174/2011

Amit Sharma v. Monika Sharma

Decided on April 26, 2019

High Court of J&K

Petition is filed under Section 561-A for quashing of criminal proceedings initiated against the petitioner under section 498-A CrPC, which is related to torture to a woman by her husband or by relatives of her husband. The Hon'ble High Court observed, quoting the following judgement of the Hon'ble Supreme Court; B.S. Joshi & ors v. State of Haryana, AIR 2003 SC 1386-

"Section 498-A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498-A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent power by the High Court would not be proper as it would prevent woman from

settling earlier.”

G.V. Rao v. L.H.V. Prasad & ors. (2000) 3 SCC 693:-

“There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case.”

CRMC No. 72/2018

Lalit Kumar and others v. State of J&K and others

Decided on April 12, 2019

High Court of J&K

Through the instant petition filed under Section 561A CrPc, petitioner seeks quashment of FIR No. 38/2012 registered with Police Station Basohli and Criminal Challan No. 71/2015 titled State v. Hans Raj & ors. for offenses under Sections 341/323/554/506 RPC pending in the court of CJM, Kathua. Among various grounds it is stated that the learned JMIC, Mahanpur has taken cognizance of case without going through the limitation period as provided under Section 538-B of CrPC.

The Hon’ble High Court of J&K dismissed the petition on the ground that petitioners cannot take advantage of their own wrongs. The challan may have been produced after expiry of limitation as provided in Section 538-B but it is also a fact that all the accused were not arrested as they avoided arrest by concealing themselves from the date of occurrence till challan was produced. This period of absence of accused persons has to be excluded.

CRR No. 19/2019

Liaqat Ali v. Naseem Akhter

Decided on April 12, 2019

High Court of J&K

Instant Revision Petition has been filed against the order of interim maintenance in an application for maintenance under Section 488 CrPC passed by learned Sub-Judge (JMIC) Nowshera. Trial Court has granted interim maintenance in favour of the applicant till final disposal of the application. On the ground that the applicant has established that there is a Prima-facia case for making such order and that the applicant is still to be treated as wife till final disposal on merits. Hon’ble High Court upheld the order passed by trial court and dismissed the petition being devoid of any merits.

CRA No. 42/2016

Rajinder Singh v. State of J&K

Decided on April 12, 2019

High Court of J&K

The Instant Criminal Appeal has been filed by the appellant against judgement of 3rd Additional Session Judge, Jammu in FIR No. 160/13 titled State v. Rajinder Singh under Section 376 RPC by which appellant has been convicted and sentenced to rigorous imprisonment for 10 years and fine.

The Hon’ble High Court of J&K set aside the order of conviction of trial court after relying on various judgements of Hon’ble Supreme Court. The Hon’ble High Court has held that from the entire circumstances, it cannot be said that the sexual intercourse was without consent and act seems to be consensual in nature. It is also not the case that the consent has been given by the prosecution believing the accused’s promise to marry her. The testimony of the prosecutrix reveals that no doubt the two were in relationship, but the question of marriage apparently had not been deliberated upon by any of the two. After the sexual contact, some talk about marriage had cropped up between the two. Thus, it can’t be said that the consent for sexual intercourse had been given by the prosecution under some misconception of marriage.

CRMC No. 143/2016

Sahil Khajuria and ors. Vs. Sham Lal Gupta

Decided on April 26, 2019

Instant petition filed under Section 561-A CrPC, seeks quashment of criminal complaint and the order of taking cognizance by the learned Magistrate and issuance of process as bad in law and on facts.

Hon'ble High Court held that - Trial Court erred in opining that Magistrate is absolutely bound by an order of interlocutory character passed by itself deeming it as Judgement under Section 369 J&K CrPC and hence has no right to pass a different order from one passed

earlier by it, and unless this order is set aside by superior court in an appropriate order. Section 362 of Central CrPC which is almost parimateria to Section 369 of State CrPC is different to the extent that where Section 362 of central CrPC provides that a Criminal Court shall not alter or review its judgement or final order disposing of a case; Section 369 of State CrPC is to the same effect except that in J&K CrPC it is with respect to Judgement. It is, therefore, held that principle applicable to judgment under Section 369 JK CrPC doesn't apply to interlocutory order.



“Human dignity is an integral part of the Constitution. Reflections of dignity are found in the guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21).”

Dr D.Y. Chandrachud, J. in K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, para 108

CIVIL

**High Court of J&K
Civil Appeal No. 3339 of 2019
Raj Narain v. Union of India and others
Decided on April 01, 2019**

Hon'ble Supreme Court reiterated the law laid in Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board and Anr. 1996 (11) SCC 603 that an employee against whom criminal proceedings are initiated would stand on a different footing in comparison to an employee facing a departmental inquiry. The employee involved in a crime has disabled himself from rendering his services on account of his incarceration in jail. And subsequent acquittal by an Appellate Court would not entitle him to claim back wages. In the case of a departmental inquiry, the delinquent employee would be entitled to claim back wages as he was unlawfully kept away from duty by the employer.

Hon'ble Court also held that there is no difference between initiation of the criminal proceedings by the department vis-a-vis a criminal case lodged by the police, for the purpose of back wages, unless there is a finding that the initiation of the criminal proceedings was mala fide or with vexatious

intent.

**Civil Appeal No. 12238 of 2018
Pioneer Urban Land & Infrastructure Ltd.
v. Govindan Raghavan
Decided on April 02, 2019**

Hon'ble Supreme Court reiterated that the inordinate delay in handing over the possession of the flat clearly amounts to deficiency of service, flat Purchaser was justified in terminating the Apartment Buyer's Agreement, and that the Purchaser was legally entitled to seek refund of the money deposited by him along with appropriate compensation.

A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The incorporation of one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling.

**Civil Appeal Nos. 3382-3383 of 2019
Hammad Ahmed v. Abdul Majeed and
others
Decided on April 3, 2019**

Hon'ble Supreme Court reiterated that the rule of primogeniture is not a rule applicable to the Muslims as per the Personal Law as held in Faqrudin v. Tajuddin (2008) 8 SCC 12 case also.

Hon'ble Court also held that the grant of mandatory injunction is not prohibited even in Samir Narain Bhojwani v. Arora Properties and Investments and Another 2018 (10) Scale 33. It has held that unless clear and prima facie material justifies a finding that status quo has been altered by one of the parties the order in mandatory injunction can be given.

Hon'ble Court also referred Deoraj vs. State of Maharashtra and Others (2004) 4 SCC 697, wherein it is held as under:-

"12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases."

Hon'ble Court also held that the well-known principle of interpretation of document is that one line cannot be taken out of context, and it is the cumulative reading of entire document which would lead to one conclusion or the other.

Civil Appeal No. 3803 of 2019
Chairman and Managing Director, The Fertilizers v. General Secretary FACT Employees And Chemicals Tranvancore Ltd. & Anr. Association & Ors.
Decided on April 11, 2019

Hon'ble Supreme Court held that no judicial forum, at the instance of any party

to the Lis, had jurisdiction to try the issues which had been decided already, again on merits. It was barred for being tried again by virtue of principles of res judicata contained in Section 11 of the Code, which has also application to the labour/industrial proceedings.

Civil Appeal No 11086 of 2018
Dr R.S. Grewal & Ors v. Chander Parkash Soni & Anr
Decided on April 16, 2019

Hon'ble Supreme Court held that the life estate granted to the beneficiary in this case enabled her to create a tenancy, and receive the rent from the tenants on the property, and she fulfilled the description of a 'landlord' under Section 2(c) of the East Punjab Urban Rent Restriction Act 1949. The respondent who was covered by the expression 'tenant' under section 2(i) of the East Punjab Urban Rent Restriction Act 1949 acquired the character of a statutory tenant and was protected under it. The statutory protection afforded to the tenant did not cease to exist upon the death of life interest holder. And a suit for possession on the basis that the tenant was a trespasser after the death of said life interest holder was not maintainable. And the remedy of the appellants was to pursue eviction proceedings on the grounds contemplated by the East Punjab Urban Rent Restriction Act 1949.

While dealing with the submission that a life interest is personal to the person who possesses it, and the creation of a tenancy which will enure beyond her life amounts to a transfer of the life interest, Hon'ble Court observed that the reason why the tenant is entitled to occupy the premises beyond the life time of the landlord who created the tenancy is simply as a result of a statutory enactment, in this case, the East Punjab Rent Restriction Act 1949. It is the intervention of a legislative mandate which endures to the benefit of the tenant. Once this has taken place, it was not open to the civil court to entertain a suit for possession founded on the hypothesis that the tenant is a trespasser.

Civil Appeal Nos. 3912 of 2019

Bharat Watch Company thr. its partner v. National Insurance Co. Ltd. Thr. Regional Manager
Decided on April 12, 2019

Hon'ble Supreme Court distinguished the present case from the earlier case titled United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal, (2004) 8 SCC 644, wherein it was held that the claim could not be maintained, where the loss or damage was caused without forcible and violent entry to and/or exit from the premises, *and held* in this case that the NCDRC had missed the concurrent findings of both the District Forum and the SCDRC that the terms of exclusion were not made known to the insured, and if those conditions were not made known to the insured, there was no occasion for the NCDRC to render a decision on the effect of such an exclusion.

In this case, there was no sign of forcible entry for the purpose of commission of theft, and a consumer complaint had been filed on repudiation of claim by the insurer on account of absence of force or violence as a condition in the contract of insurance stipulated that the burglary and/or housebreaking' would mean theft involving entry to or exit from the premises by forcible and violent means or following assault or violence or threat to the insured, his family members or employees.

Civil Appeal No(s). 3409-3410 of 2019
Nutan Gautam v. Prakash Gautam
Decided on APRIL 5, 2019

Hon'ble Supreme Court held the impugned order whereby the wife had been directed to elect one forum from which she wanted to get the maintenance was not in conformity with the law. The said direction was held liable to be set aside.

Hon'ble Court also held that the child in this case could not be compelled to join a particular school, and that, in the interest and welfare of the child, he should be allowed to continue his study at his earlier school.

Civil Appeal Nos.3448-3449 of 2019
Kushuma Devi v. Sheopati Devi (D) & Ors.
Decided on April 08, 2019

Hon'ble Supreme Court reiterated that the Court had consistently laid down that every judicial or/and quasi-judicial order passed by the Court/Tribunal/ Authority concerned, which decided the lis between the parties, must be supported with the reasons in support of its conclusion. The parties to the lis and so also the appellate/revisionary Court while examining the correctness of the order are entitled to know as to on which basis, a particular conclusion is arrived at in the order. In the absence of any discussion, the reasons and the findings on the submissions urged, it is not possible to know as to what led the Court/Tribunal/Authority for reaching to such conclusion.

OWP No. 1565/2018
S. Joginder Singh v. Bank of Baroda & ors
Decided on April 16, 2019
High Court of J&K

By this writ petition, appellant has assailed the order dated 22th January 2018 passed by the court of 2nd Additional District Judge, Jammu, rejecting the application by the respondents under section 17 of SARFAESI Act. In the proceedings before the trial court the petitioner had challenged the action of the Bank in issuing notice for taking possession of the property secured with Bank in lieu of financial assistance obtained by the petitioner. It was contended that the Bank had not issued demand notice before issuing notice of taking over possession of the secured assets. Trial court had held that demand notice was already issued in the year 2010 and the Bank could act upon the demand notice even after seven years for the unpaid amount and the interest accrued. Petitioner was directed to be given notice only of the latest outstanding, which he had to repay within two weeks. On failure, the Bank was free to proceed in terms of section 13(4) of the SARFAESI Act.

The Hon'ble High Court held that order of the trial court to the extent that it takes away remedy to make application under section 17(A) of SARFAESI Act to petitioner, is set aside. The petitioner has the statutory remedy under section 17(A) and a further right of appeal before High Court in terms of section 18(B). Interim order of stay

regarding the taking over of possession of property of petitioner shall continue for a period of two weeks.

OWP No. 323/2008

Bank of Baroda v. Jammu & Kashmir State Industrial Corporation & ors.

Decided on April 16, 2019

High Court of J&K

Relying on the Hon'ble Supreme Court judgment in "Union of India & ors v. SICOM Ltd & another, (2009) 2 SCC 121", and on the basis of Hon'ble Madras High Court Judgment in "The Director (Personal), Neyveli v. R. Senathipathi, AIR 2007 Mad 118" and "UTI Bank v. Dy. Commissioner, Central Excise, Chennai, AIR 2007 Mad 117", Hon'ble High Court laid down that the claim of the secured creditor i.e. Petitioner-Bank has to be settled first and all other creditors i.e. unsecured creditors have to wait until the claim of the petitioner bank is satisfied. Thus, the secured creditors have precedence over unsecured creditors in case of payment of due amount.

OWP No. 71/2017

Chander Udhey Singh & ors v. Sarika & ors.

Decided on April 16, 2019

High Court of J&K

In this case the petitioners had challenged the order passed by District Judge by virtue of which order passed by the Deputy Commissioner was stayed. The Deputy Commissioner had stayed the construction of a Banquet Hall that was being constructed unauthorisedly as there was violation of Section 31 Agrarian Reforms Act.

The Hon'ble High Court appreciated the fact that the Construction was on Banjar-Kadeem land and there was no violation of Section 31 of the Agrarian Reforms Act as the same has been deleted since 1997. Therefore, the circular dated 19/06/16 passed by Deputy Commissioner has been compiled with which says that there should be no violation of the provisions under the Agrarians Reforms Act, Land Revenue Act and Land Alienation Act.

MA No. 92/2017

New India Assurance Company Ltd. v. Mahesh Kumar & ors.

Decided on April 16, 2019

High Court of J&K

The Hon'ble High Court of J&K placing reliance on the below mentioned Supreme Court Judgements has been pleased to modify the Award passed by the Motor Accident Claim Tribunal. The deceased in the case was 25 years old and unmarried at the time of accident. His parents, brother and unmarried sister were dependants and sought Rs. 51,25,000/- as compensation.

The Hon'ble High Court relied upon the following judgements:-

1. National Insurance Company Ltd v/s Pranay Sithi & others, 2017(16) SCC 680, laying down the principle of law that: In case the deceased was self employed and 25 years of age, the claimant would be entitled to addition of 40% income towards future prospects of the deceased was taken.
2. M/s Royal Sundaram Alliance Insurance Cooperation Ltd v/s Mandala Yadagari Goud & others, laying down the principle that it is the age of the deceased which has to be taken into account and not the age of the dependents for applying the multiplier.
3. Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhro Ram & ors., laying down the principle that loss of consortium includes filial consortium i.e. on the loss of child to the parents @ Rs. 40,000 each to the parents.

After considering the factual and legal position the award was modified to the extent of, unmarried sister entitled to compensation of Rs 2 lac, father of deceased is entitled to a sum of Rs. 40,000 and respondent no. 2 mother of deceased is entitled to Rs. 8,90,600/- along with 7.5% interest from the date of filing of the petition.

MA No. 234/2017

New India Assurance Company Ltd. v. Ajay Kumar & ors.

Decided on April 16, 2019

High Court of J&K

The appellant was aggrieved of the award made by the Motor Accident Claims tribunal, Jammu and challenged the same on the ground that the bills have not been

proved and the award doesn't justify such huge amount of compensation without my evidence. The appellant had also raised objection as to the validity of driving license of the on the ground that the driver was authorized to drive only light Motor Vehicle and not Goods Vehicle. With regard to license, the Hon'ble High Court relied upon the judgement of Hon'ble Supreme Court in "Mukund Dewangan v. Oriental Insurance Co. Ltd." (2017) 14 SCC, 663, wherein it has been held that a driver is required to hold a license with respect to class of vehicle and not type of vehicle. Held that tribunal was justified in holding that the driver of the offending vehicle had a valid license.

With regard to bills, the Hon'ble Court held that mere stamps of private hospital don't prove the authenticity of bills. As per the legal requirement, these bills must be proved. Therefore, no reliance can be placed on these bills.

However, the Court took into consideration the fact that injury has been suffered by the claimant and awarded a consolidated amount of Rs. 15000/- as medical expenses. Amount awarded for attendants also reduced from Rs. 16000/- to Rs. 10000/-.

OWP No. 578/2019

Pritam Singh v. Chairman, Tehsil Legal Services Committee, Basohli and anr.

Decided on April 26, 2019

High Court of J&K

In this petition quashment of order dated 09.03.2019 passed by Chairman, Tehsil Legal Services Committee directing petitioner to pay Rs. 14,000/- per month to his wife, is sought. The Hon'ble Court held that bench of Lok Adalat is not required to pass detailed reasoned order and can pass award as per the statutory provisions. It is not absolutely necessary to take signature of a party on the award when agreement is signed by it and is supported by its statement. Furthermore, the Code of Criminal Procedure also authorizes court to pass maintenance from the date of application without giving any special reasons.

OWP No. 2637/2018

Nazir Hussain Khan v. Khalid Hussain Khan

Decided on April 26, 2019

High Court of J&K

The instant petition has been filed by the petitioner seeking setting aside of order passed by Sub-Judge, Poonch by virtue of which application of the petitioner for impleading him as party defendant in a suit filed by the respondent against the State has been dismissed. The litigation between the petitioner and the respondent is pending before the Deputy Commissioner (District Collector) Poonch. Also the Civil suit before the Sub-Judge, Poonch for permanent prohibitory injunction against the State without impleading the petitioner as a party is also pending.

The Hon'ble High Court on the basis of law laid down in case titled "Laxmikanta Kar v. Surendra Parul and others, 2014 (36) RCR (civil) 762" and "Mahant Rameshwer Chela Chimani Ram v. State of Rajasthan and others, 2015 (4) W.L.N. 305" held that the court has power or discretion to add/implead any person or persons as party or parties for enabling the court to effectually and completely adjudicate upon the questions involved in suit. Hence in present case to decide the main issue effectually the court allowed the petitioned to be impleaded as a proper party.

CFA No. 32/2018

Shagufta Jan & Anr. v. Naseema Akhter & ors.

Decided on April 5, 2019

High Court of J&K

Hon'ble High Court upheld the order of Principal District Judge Anantnag in respect of debts and securities of the deceased Abdul Rashid Shah; wherein the court has granted succession certificate in favour of respondent no. 1 & 5 who are alleged by the appellant to be divorcee of the deceased and adopted daughter respectively. Challenge is on the ground that divorcee and adopted child cannot claim inheritance in terms of Muslim Personal Law.

Held that Principal District Judge has relied upon order of interim maintenance

passed by Magistrate in favour of respondent No. 1, which was not challenged by the deceased during his life time, material on record and statements recorded. Respondent no. 1 being widow of the deceased is entitled to claim share from the debts. Proceedings in granting Succession Certificate are only enquiry, and the person claiming right in the debts and securities left behind by the deceased can prefer separate civil action.

MA No. 13/2018

Jamsheed ul Nisa v. Umer Iqbal Vaida

Decided on April 05, 2019

High Court of J&K

Learned Additional District Judge, Srinagar had declined grant of interim assistance in favour of the appellant in terms of order passed on 28/04/2018 leading to this appeal. The Hon'ble High Court held that power to be exercised under Order 39 CPC is discretionary in nature and court before whom lis is pending is to examine the respective contentions of the parties and see the necessity of passing interim order. Discretion cannot be faulted by the Court in exercise of powers as an appellate court. The appellate court will not interfere in the discretion of court of 1st instance and substitute its own view unless discretion exercised by the trial court is arbitrary, capricious or perverse.

Reliance is placed on Supreme Court judgements - Wander Ltd & Anr v. Antox India P. Ltd. 1990 Supp(1) SCC 727 and Skyline Education Institute(India) P. Ltd v. S.L. Vaswani, 2010 (42) PTC 217(SC).

Activities of the Academy

3-days Training Programme on 'Sensitizing Judges on Family Court Matters'

J&K SJA organized 3 days training programme on 'Sensitizing Judges on Family Court Matters' on 6th, 7th & 8th of April, 2019 at Conference Hall, District Court, Srinagar. The programme was inaugurated by Hon'ble Mr Justice Ali Mohammad Magrey & Hon'ble Mr Justice Tashi Rabstan. Valedictory address was made by Hon'ble

the Chief Justice Ms Justice Gita Mittal. Ms. Justice Manju Goel, Former Judge of Delhi High Court, Hon'ble Ms. Justice Roshan Dalvi, Former Judge of Bombay High Court, Ms. Aruna Farswani, Principal Judge Family Court, Pune Maharashtra, Ms. Swati Chauhan, Principal Judge, Family Court, Maharashtra and Mr. Dharmesh Sharma, Principal Judge, Family Court, Delhi, Ms. Neelofar Akhter, Advocate were the resource persons.

Detailed report on the training programme prepared by trainee munsiffs of 2018 batch is being published under Judicial Officers Column.

Special Cancer Awareness Programme

Jammu and Kashmir State Judicial Academy in collaboration with LBN Radiations of Hope, A Cancer Care Foundation, today organized a Cancer Awareness Programme for the judicial officers of Jammu Province to discuss all important issues related to Cancer awareness. Cancer awareness is need of the present time for the society to understand the growing burden of the disease and lack of awareness among common people. Judiciary plays very important role in enforcement of laws pertaining to the State, and in a position to impact dissemination of knowledge on the important issues concerning the society at large. This was first of its kind initiative in India to organise a program to sensitize judicial officers regarding various cancer types and the root causes for contracting the disease. Programme started with welcome note by Mr Rajeev Gupta, Director, Jammu and Kashmir State Judicial Academy. He outlined the basic need for organising such programmes in a situation where cancer has become a major public health problem.

Dr Deepak Abrol, Assistant Professor in Radiation Oncology, GMC, Kathua and secretary, North Zone Association of Radiation Oncologists of India talked about facts and myths related to cancer. He also stressed about demystifying cancer and busting myths to reduce cancer related morbidity and mortality. He stressed that awareness about cancer and early detection are the major milestones in overcoming the problems which the disease can cause with

passing time.

Dr Paras Khanna, Consultant, Surgical Oncologist in SMVDNH, Jammu talked about Breast cancer and Prostate cancer. He also talked about risk factors, symptomatology, screening with diagnosis and treatment of two tumour types.

Dr Abhishek Shankar, Assistant Professor in Preventive Oncology at AIIMS, Delhi talked about community based cancer prevention and screening. He started with cancer epidemiology in India, government programmes in cancer control, risk factors, symptomatology, screening with diagnosis and treatment of Head and Lung cancers. He also discussed about socio-cultural determinants of cancer with challenges in awareness, screening, diagnosis and treatment.

Dr Neeraj Jain, Consultant, Radiation Oncology in SGRD Amritsar Medical College talked about Cervical cancer risk factors, symptomatology, screening with diagnosis and treatment. He also emphasised HPV vaccine and its role in cervical cancer prevention.

This deliberation was followed by screening of 'Pink Chain' – A docu-drama on Breast cancer. This docu-drama helped the audience to understand cancer better and they all felt connected to this subject with more convincing attitude.

This was followed by interactive session in which questions and queries were answered by panel of experts. This programme concluded with vote of thanks and concluding remarks by Mr Ajay Gandotra, Trustee LBNROH, Jammu.

Judicial Officers' Column

Training Programme on 'Sensitizing Judges on Family Court Matters' held at I&K State Judicial Academy at Srinagar, on 6th, 7th & 8th April, 2019.

Having already organised a Training Programme on "Sensitizing Judges on Family Court Matters" at Jammu, and having received very positive feedback from the participating judicial officers, similar programme was organised by the State Judicial Academy at Srinagar. At Jammu the programme was for two days, however at Srinagar it spanned over three days. The programme was inaugurated by Hon'ble Mr. Justice Ali Mohammad Magrey, Chairman Governing Committee, State Judicial Academy and Hon'ble Mr. Justice Tashi Rabstan, Chairman High Court Committee on Family Court Matters.

In the inaugural session, Hon'ble Mr. Justice Ali Mohammad Magrey and Hon'ble Mr. Justice Tashi Rabstan in their addresses highlighted the historical perspective of establishing Family Courts, need for organising such training programme and the kind of sensitization needed for dealing with the family matters. In the same session, Ms. Justice Manju Goel, Former Judge of Delhi High Court gave the overview of the programme structure and Ms. Justice

Roshan Dalvi, Former Judge of Bombay High Court dealt with the gender perspective.

In the working & technical sessions of the training programme it was bifurcated into various themes and topics for discussion, which shall be dealt as under:

On Day 1 i.e. 6th April

There were mainly three working sessions. The topics covered under Session 1 were – 'Gender Perspectives Relevant to Family Matters', 'Marriage & Divorce under Islamic Law & Role of Family Courts' and 'Working of Family Courts'.

On Gender Perspective - Hon'ble Ms. Justice Roshan Dalvi was the resource person. This session was activity based wherein she discussed how certain issues which appear either to be Gender neutral or trivial or ignorable, are in reality Gender Biased. For eg- Tranfer Policy of Maharashtra Government wherein it was laid down that Government servant will not be posted at the place of his/her parental residence as well as of in-laws. This provision which seems to be Gender Neutral, actually creates more hindrance for the women as in view of prevalent practice in the families she has to leave her paternal home and reside in her matrimonial home.

After discussing various issues, the resource person deliberated about the Gender Sensitization and concluded that we are humans first irrespective of our gender. Hence both the genders should be treated equally.

Topic covered under Session 2 was deliberated by Ms. Neelofar Akhter, Advocate practising in family matters at High Court of Bombay jurisdiction. She discussed Marriage and Divorce issues under Islamic Law.

She highlighted as to how Islamic Laws are more women friendly than any other codified laws, but are usually misconceived, misrepresented, concealed & kept in dormancy so that domination of Male sustains in the society. As far as Marriage is concerned-Muslim Marriage is a contract where 'Ijb' is offer and 'Qubool' is acceptance and 'Meher' is the consideration. In Muslim marriage, there has to be acceptance and that too voluntary and expressed by spoken words of the wife. Hence better rights and privileges are given to women before contracting marriage.

Also, with regard to the concept of Polygamy; she iterated that there have to be few conditions which includes - acceptance of 2nd marriage by first wife and that the husband should be able to do justice in all the aspects to all the wives. Only if he could fulfil these conditions, he can enter into 2nd, 3rd or 4th marriage.

On the similar grounds, she stated that 2nd marriage cannot be contracted if husband fails to fulfil these two conditions and such would be a void marriage. As far as rights of Muslim women with respect to her dower and right to property is concerned; she highlighted that Muslim women is entitled to inherit property from 8 sources.

Dower whether (Mehr-i-Mowajjal) or Mehr-i-Mujjal is her absolute right and the conditions & qualification of Dower are mentioned in Quran & Hadith.

Divorce Law in Muslim Laws are also based on equality where women have right of 'khula'. Also there is right of delegated divorce i.e. 'Talaq-i-Tafweez' where women can have right to divorce as pre-nuptial agreement. Also 'Mubarrat' is provided

where women and men can seek divorce by mutual consent.

There is a provision of khilmat-ul-sahiya whereby a minor can either repudiate or continue his/her marriage after attaining majority. This is again a very progressive provision in Muslim Law. Hence Quran and Hadith lay down a very comprehensive nicely juxtaposed principles relating to marriage and divorce. She emphasized that we just need to decipher correct interpretation and apply it accordingly to elevate the position of women in our society.

On First Day, 3rd working session was on 'Workings of Family Court' conducted by Ms. Swati Chauhan, Principal Judge, Family Court, Nanded Maharashtra and Mr. Dharmesh Sharma, Principal Judge, Family Court, Delhi.

In this session, the resource persons emphasised how marriage as an institution has become subject of great judicial scrutiny. The need for having Family Court was first emphasised by Late Smt. Durgabai Deshmukh. She discussed the subject with some judges of the Supreme Court & legal experts and finally the Family Court Act, 1984 lead to establishment of Family Courts in the country. However, in the State of J&K, the Family Courts Act was enacted in the year 2018. The resource persons made an endeavour to sensitize Judges about the Role of Family Court Judge and the need for Innovative & out-of-box approaches in these matters.

The resource persons laid emphasis on the Aims & objects of the Family Courts Act which seek to promote conciliation and secure speedy settlement of disputes in marriages & other Family matters.

On Day 2 i.e. 7th April

There were three sessions on day 2. 1st session was on 'Child Custody' and the resource person who addressed the topic was Ms. Aruna Farswani, Principal Judge Family Court, Pune Maharashtra. She highlighted that the concept of Child rights were derived from United Nations Convention on Rights of the Child (UNCRC). UNCRC is a human right treaty which sets out the civil, political, economic, social, health & cultural rights of children. It defines the child as any human

being under the age of 18. Further she emphasised that the custody of child is of various types. The custody of child can be given to either of the parent and other one can be granted visitation rights. She also sensitized in that in order to ensure the welfare of the child, concept of video conferencing on those days, when child is with one parent can be introduced. A discussion was held between the participants and resource person as to what includes in the welfare of the child. The session concluded with the note that in granting custody, the welfare of the child is the paramount consideration and victory of the child rights must be the ultimate goal.

In another session on Child Custody the participants were divided in 4 groups and a problem related to child custody was given to all the groups to deliberate on the issue as to whom the custody of child had to be given. Justice Manju Goel and Justice Roshan Dalvi were the resource persons in this session. The main purpose of this discussion was as to what factors are to be considered by the court in order to give custody to either of the parent and ultimately it was concluded that welfare of child must always prevail over the alleged right of the parents to have custody of the child.

In 3rd Session, the topic was 'Protection of Women against Domestic Violence' in which the resource persons were Ms. Aruna Farswani and Mr. Dharmesh Sharma. This session was mostly activity based and a questionnaire prepared by the resource persons was distributed among the participants. The questionnaire covered all the facets of the Domestic Violence Act and the participants deliberated upon the issues highlighted in it. Then there was a presentation on Domestic Violence Act by Mr. Dharmesh Sharma and he deliberated that this Act was enacted in order to provide effective protection of women rights who are victims of violence. Act is comprehensive in nature and provides various rights i.e. custody order, residence order, monetary order and protection order etc.

On Day 3 i.e. 8th April

Matrimonial Mediation: This session was addressed by Justice Manju Goel. It talks

about amicable settlement which could be both positive and negative. The positive settlement leads to reconciliation between the parties, while in negative settlement the separation of parties is amicably done. The resource person deliberated that as a family court Judge when one is going for reconciliation, 'out of box' approach must be there and one should try to make all the efforts to preserve the family. For this the best way, she told, is that the child can be used as a bridge between the disputant parties. In matrimonial mediation active participation of the judge must be there. Also the emphasis was that each and every case has different facts and based upon that, an appropriate approach must be adopted by the court to arrive at a just and proper decision. There must be cases where parties are not ready to reconcile and where a women is exploited to such an extent that there is harm, physical or mental, then the court should advise the parties accordingly. In such like matters, no forcible reconciliation/settlement must be done and parties can be guided to separate amicably.

2nd Session was on maintenance where the resource persons distributed six decided pronouncements of Hon'ble Supreme Court and High Courts on maintenance matters. The participants deliberated on the issues covered in the pronouncements. The cases which were discussed covered all the areas and situations where maintenance can be granted to the applicant in matters under Sec. 125 CrPC (corresponding to Sec. 488 of State CrPC) and DV Act. After the presentation, the session was summed up by Justice Manju Goel and Ms. Swati Chauhan and sensitized the participants as to what principles should be kept into considerations while granting maintenance.

The sensitization programme was concluded on the valedictory address by Hon'ble the Chief Justice, Ms. Justice Gita Mittal. The Chief Justice said that it is a great privilege that the resource persons who were training the participants during 3 days programme, are highly acclaimed and respected all over India, having specialised in the subject. It is matter of satisfaction that they have provided such a tremendous broad

based experience and learning in the matter of working of family courts and emphasised that idea behind family courts should be to provide legal help not just only to the persons who are in matrimonial relationship but also to whole family, and highlighted that if there is peace in family, there will be peace in larger community.

This programme has given an insight into the working of the Family Courts and the sensitization need to handle the family court matters. It would prove to be immensely beneficial for the participating judicial officers.

(Contributed by Trainee Munsiffs of 2018 batch)

Necessity of driver as party in Accident Claim Case

Generally a question is raised as to non-joiner of necessary party, in that it is argued that driver of the offending driver is a necessary party in a Motor Accident Claim Case. In this regard it is important to notice that chapter XII of the Motor Vehicles Act 1988 (for short 'the Act') deals with Claims Tribunal, and a conjoint reading of sections from 165 to 174 coupled with the rules framed under section 176 of the Act goes on to show that while the sub-section (1) of section 166 specifies the persons who can file the petitions for compensation, none of the provisions explicitly provide as to who should be the respondent/s in such claim petition/s. Sub-section (2) of Section 149 and section 168 of the Act provide for giving notice of the application/petition to the insurer before holding an inquiry into the claim and making the award. There is no specific requirement that notice should be given to the driver. All that the first part of Sub-section (1) of section 168 contemplates is that if the driver is made a party, he should also be given notice and second part of the sub-section (supra) requires the claims tribunal to specify the amount which shall be paid by the insurer or owner or driver of the vehicle. It does not follow, therefore, that the driver should be a party to the claim petition. The effect of second part of sub-section (1) of section 168 is that if insurer, owner and driver are parties, then the tribunal shall specify the

amount that should be paid by each of the parties (i.e. by insurer or owner or driver) or by any or all of them. If driver is not a party nothing could be awarded against him. Nothing in Section 168 of the Act can, therefore, be read as requiring that driver should compulsorily be made a party to the claim proceedings. Adverting to the rules, i.e. the J&K Motor Vehicles Rules, 1991, framed by the Govt. of J&K in pursuance of section 176 of the Motor Vehicles Act, it is noticed that as per rule 310 (1), an application for compensation arising out of an accident of the nature specified under the Act is to be made in the Form Comp. A, a perusal whereof reveals that the said Form also does not require the claimants to furnish the name and address of the driver. Rule 316 of the J&K Motor Vehicles Rules, which requires for notice to the parties involved, provides that if the application/petition for claim is not dismissed then the claim tribunal shall send to the owner or the driver of the vehicle or both involved in the accident and its insurer a copy of the application, together with the notice of the date on it will dispose of the application, and may call upon the parties to produce on that date any evidence they wish to tender. This rule again makes it clear that the claimant is not required to make both the owner and the driver as a party, but he has the option of proceedings against the owner or driver or both. That being so, it needs no emphasis to observe, as already noticed, that neither any provision in the Motor Vehicles Act nor the rules framed there under provide that the driver of the offending vehicle is to be necessarily arraigned as a party to the petition.

On this subject there is a ruling handed down by an Hon'ble Division Bench of the High Court of Karnataka, in 'Patel Roadways and another v. Manish Chhotalal Thakkar and Ors,' as reported in 2001 ACJ 180. It is profitable to reproduce what has been observed by the Hon'ble Court in paragraph no. 20 of the ruling, as under:

"20. The position that clearly emerges is as follows: (a) Neither the Motor Vehicles Act nor the rules there under require the driver to be impleaded as a party to the claim petition; (b) Under Law of Torts, the

owner and driver of the motor vehicle being joint tortfeasors, who are jointly and severally liable for the negligence of the driver, the claimant can sue either the owner or the driver or both. But, whether driver is impleaded or not, a owner (master) can be made vicariously liable for the acts of his driver (servant), only by proving negligence on the part of the driver (servant). (c) Therefore, a claim petition can be maintained against the owner and insurer of the vehicle causing the accident, without impleading the driver. However, proving the negligence of the driver is a condition precedent to make the owner vicariously liable for the act of the driver. (d) But where the driver is not impleaded as a party, no decree or award can be made against him. A driver can be held liable personally only when he is impleaded as a party and notice of the proceedings is issued to him."

Taking into account this view of the matter, there can be no question of non-maintainability of the claim petition on account of non-joinder of the driver of the offending vehicle as a party.

*(Contributed by Mr. Jatinder Singh Jamwal,
Presiding Officer,
Motor Accident Claims Tribunal, Jammu)*

Case Study on the Hindi Movie "Ek Ruka Hua Faisala"

As part of Induction training programme, the trainee officers were shown an old Hindi movie namely "Ek Ruka Hua Faisla" as case study on appreciation of evidence. This movie is a classical case study which gives lots of inputs on appreciation of evidence in a criminal trial.

The movie opens with instructions to the jury to brain storm to arrive at the conclusion as to guilt or innocence of the accused who had faced trials for murder of his father. Twelve characters shown in the movie comprising jury present an interesting insight into different aspects which play important role in decision making. Although the jury system has been done away with, all these twelve characters are relatable to the role of a judge in appreciation of evidence that assimilates the role of jury.

First character, as is described in the setting of the scene as per the sitting arrangement, is a well meaning person, being a good listener, respectful and man of good behaviour. However, initially he is shown to be inactive participant and ployable on strong suggestions. Subsequently though, on good reasoning from other characters and as per need of the situation, he becomes active participant.

Second Character in the movie is shown to be full of personal misconceived notions, stubborn and short tempered. His personal prejudices would make him try to dominate all others for pushing through his hardened opinion. He aggressively campaigns for holding the accused guilty. Personal experience of bad treatment of this character by his own son had hardened his prejudice against young boys. Incidentally the accused in this movie also is a young boy and the character in the movie relates his personal prejudices with the accused.

Third character in the movie is a decent gentleman with urban outlook. He talks sense and his expressions are based on logic and real facts of the case. He showed rationality and trait of a good listener. He would persuade others not to indulge in irrelevant issues and to stick to the logic. This character however was overawed by the initial analysis of incomplete facts, indicating guilt of the accused.

Fourth character in the movie is quite humble and a good listener. He respects others' opinion while maintaining his personal opinion. He is always ready to except the other opinion which appears to be logical. He however uses his personal experience in confirming his opinion on some issue involved in the matter.

Fifth character in the movie is a passive person making no substantial contribution to the whole discussions. He would not base his opinion on logic. He would also raise his voice when logical discussion by any group member would be shot-down by not so well meaning characters.

Sixth character in the movie is depicted as an indolent person having least interest in logical discussions. He is shown to be in hurry to take decision and to wind up the case. He

had to go to see a latest movie, which appeared to him to be more productive interest. This character is also depicted as a non serious person, cracking unnecessary jokes and making fun of others. He would stick to his decision, closing all the faculties of logic & reason.

Seventh character in the movie shows lot of patience, discipline and practical outlook. He is open to criticism of his opinion, challenged on the basis of logic & reason. He himself tries to see all the aspects of the case and the evidence given by the witnesses through the prism of logic & reason. Initially except for him, all other characters had formed an opinion as to guilt of the accused. This character however prompts all the members of the jury to see and check every fact of the case with logic and reason. He also presents good listening and communication skills. He demonstrates thorough neutrality of approach before final decision would be taken. Ultimately his quest for testing all the facts on the touchstone of logic and reason lead other characters to change their initial opinion and to take a correct decision.

Eighth character in the movie also shows patience and is ready to listen to all suggestions. He is shown to have some bias on some issues. However, he is good observer of the things, which leads other members of the jury to appreciate the facts which had gone unnoticed.

Character number nine in the movie is an arrogant and an abusive person. He is quite impatient and is shown to be having lots of personal prejudices and bias towards socially & economically backward class of society. He is not amenable to exploration and analysis of the entire evidence. His mind was not open to any suggestion. He showed utter disruptive behaviour and making mockery of justice delivery system.

Tenth character in the movie is a man of ordinary intellect, however reluctantly he opens up to logical suggestions. He needs constant prompt to see reason and logic. He is not well versed in deeper analysis of the evidence and bases his opinion only on superficial assessment of the facts.

Eleventh character in the movie is shown to be totally in disconnect and having

least interest in logical conclusion of the case. He is seen most of the time to be indulging in trivial matters and waiting only for others to take decision. He was only interested to side with the decision taken by the majority.

The last character in the movie is also a well meaning person and shows qualities of a good leader. He is always shown to be in control of the situation and leads orderly discussions and gives opportunity to all the members of the jury to present their points of view. Even in a situation where the things start worsening, he gets back control of the situation & brings back order in the discussions. He accepts reason & logic to be the basis for arriving at a decision. He demonstrates quite a democratic sense in giving opportunity to all.

The different characters in the movie present various shades of a judge's personality and different aspects involved in the decision making process. It is highlighted that in decision making process bias and personal prejudices should not play any role. Logic & reason should be the sole basis for arriving at a decision. Analysing all the facts, even appearing to be trivial on the initial look must not be ignored. Every fact presented before the court must be seen in the proper prospective. Calmness of mind, patience, receptiveness, unbiased approach and mind free from personal prejudices are the hallmark of a good judge and these traits play a vital role in appreciation of evidence and thereby to arrive at a good decision.

(Contributed by Trainee Munsiffs of 2018 batch)

