



SJA NEWSLETTER

Monthly Newsletter published by the
Jammu & Kashmir State Judicial Academy

Volume - I, Issue 11

November, 2008

Topic of the Month

Chief Patron

Hon'ble Mr. Justice
Nissar Ahmad Kakru
Acting Chief Justice

Judge-In-Charge

Hon'ble Mr. Justice
Hakim Imtiyaz Hussain

Editor

Gh. Mohi-ud-Din Dar
Director SJA

Contents

Topic of the Month.....	1
Academy News.....	2
News & Views.....	3
Case Comments.....	5

SUBSCRIPTION RATES

Single Copy : Rs. 20.00
Annual : Rs. 240.00

(Payment only through D.D. in favour of the
Jammu & Kashmir State Judicial Academy)

The Editor

SJA Newsletter
Jammu & Kashmir
State Judicial Academy
Janipur, Jammu-180001
Ph: Jammu: 0191-2530871
Srinagar: 0194-2472078
Fax: Jammu: 0191-2530783
Srinagar: 0194-2472078
E-mail: jkja@jk.nic.in

Compiled, Composed & Layout by :
Pankaj Kumar Gupta
Deputy Registrar

“Democracy may be defined as the dwelling place which man has built for the spirit of liberty. Democracy has wider moral implications than mere majoritarianism. Democratic polity must have the architecture of an inclusive society. Democracy involves hardship and unceasing responsibility of every citizen without whose participation and contribution there can be no democracy in any meaningful sense.

Pluralist societies are the result of irreversible movements of History. Pluralism is not a mere transient vestige of a historical condition but a permanent feature of the public culture of modern democracies. India, in particular, is such a typical pluralist society - a model of unity in the mosaic of diversities. Law is perhaps the great integrating force and respects for law and its institutions the only assurance that can hold a pluralist nation together. The function of Law and the choice of legal policies in pluralist society are by far the most fascinating challenges to our civilization. These challenges appeal to the immutable values of a high social order. Man's capacity for a human law and human justice is put to its ultimate test. The question is whether civilizations on earth have the moral maturity to accept the human person as the unit and measure of all things.

As the Supreme Court said quoting Dr. Ambedkar in the Constituent Assembly. “.....Fraternity means a sense of common brotherhood of all Indians. In a country like ours with so many disruptive forces of regionalism, linguism and communalism, it is necessary to emphasize and re-emphasize that the unity and integrity of India can be preserved only by a spirit of brotherhood. India has one common citizenship and every citizen should feel that he is Indian first irrespective of other basis.

It is this spirit of brotherhood that the Preamble refers to and its awareness and practice so very essential today”.

Excerpts from lecture delivered by Hon'ble Shri Justice M.N. Venkatachaliah, former Chief Justice of India on 23-04-2008 at New Delhi on “Constitutional underpinnings of a Concordial Society”, [2008 AIR Jour(8) 113].

ACADEMY NEWS

Training Programme held in the month of November, 2008

One day workshop on “Bail : Law and Practice” was organized on 15th of November, 2008 at Jammu by the State Judicial Academy. The resource persons were S/Shri Harbans Lal, former Senior District & Sessions Judge, Bushan Lal Saraf, former Senior District & Sessions Judge, Bansilal Bhat, Spl. Judge (Anti-corruption) Jammu and Baldev Singh, Director, Prosecution, Jammu.



Proceedings during the Workshop

Shri Harbans Lal addressed the participants on the subject and talked about the general principles regarding law of bail. He, while addressing the participants apprised them of some difficulties which he experienced during his active judicial career and also told them as to how he was successful in overcoming these difficulties. Shri Harbans Lal told the participants that in fact Article 21 of the Constitution guarantees the right to liberty and the officers while dealing with the bail matter should not lose sight of this provision of the Constitution.

well. While dealing with the topic of bail in non-bailable offences, Shri Saraf told the participating officers that although bail is generally refused in offences entailing life imprisonment and death penalty but in these offences also bail is granted in some circumstances as provided in law and also some times on compassionate grounds such as if a close relation of



Proceedings during the Workshop

an accused dies, bail can be granted, although for some specific period of time.

Shri Bansilal Bhat dealt with topic of denial of bail in bailable offences and gave the circumstances when bail can not be granted in bailable offences. He told the participating officers that although bail can be claimed as a matter of right in bailable offences yet if the accused violate any condition regarding grant of bail, he can be refused the concession of bail although offence alleged to have committed by him is bailable.



Proceedings during the Workshop

Shri Bushan Lal Saraf while interacting with the officers told them that although bail cannot be claimed as a matter of right in non-bailable offences but it is very rarely refused in non-bailable offences as

Shri Baldev Singh, Director Prosecution, Jammu while interacting with the participating officers told them about the difficulties which the prosecution faces in resisting the application for grant of bail. According to him, it sometime happens due to non-cooperative approach on the part of the investigating officers and some time because of the operation of law such as the operation of provisions of Section 167 of Code of Criminal Procedure.

The participating officers freely interacted with the Resource persons and sought clarification of several aspects regarding the law of bail and also the ways and means as to how those difficulties are to be surmounted. After the conclusion of the workshop participating officers felt satisfied about the usefulness of the programme in their day to day official working.

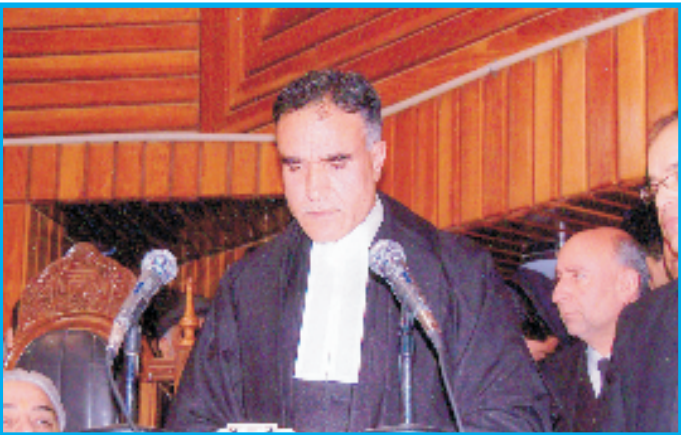
Two Additional Judges of the High Court of Jammu & Kashmir appointed

S/Shri Muzaffar Hussain Attar and Vinod Kumar Gupta, Judges designate took over as Additional Judges of the High Court of Jammu & Kashmir. Oath ceremony, in this behalf, was held in the High Court of Jammu and Kashmir at Srinagar on 5th of November, 2008 at 3:30 P.M. Oath of office was administered by Hon'ble Shri Justice Nissar Ahmad Kakru, Acting Chief Justice of High Court of Jammu and Kashmir.



Hon'ble Shri Justice Nissar Ahmad Kakru,
Acting Chief Justice while administering Oath
to newly appointed Additional Judges

The oath taking ceremony was attended among others by the sitting & former Judges of the High Court, Judicial Officers of the District Judiciary, Srinagar and officers of the High Court.



Shri Muzaffar Hussain Attar,
Judge-designate while take Oath

With the appointment of Hon'ble Shri Justice Muzaffar Hussain Attar and Hon'ble Shri Justice Vinod Kumar Gupta as Additional Judges of the Court, strength of Hon'ble Judges in the High Court

of Jammu and Kashmir was increased to eleven as against the sanctioned strength of fourteen Judges.

Hon'ble Shri Justice Muzaffar Hussain Attar, born on 30.01.1955, Graduated from Kashmir University in 1975. Passed Law from Aligarh Muslim University in 1977. Registered as pleader in the year 1977, as vakil in 1981 and thereafter enrolled as advocate in the year 1985. Was appointed as Additional Advocate General from 1997 to 2002. Appointed as Special Public Prosecutor in various cases of disproportionate assets.

Hon'ble Shri Justice Vinod Kumar Gupta, born on 18.01.1950, Graduated in 1969 from Jammu and Kashmir University and passed Law from Delhi



Shri Vinod Kumar Gupta,
Judge-designate while taking Oath

University in the year 1972. He was practicing as an Advocate in Jammu and Kashmir High Court and Subordinate Courts in Jammu. He passed KCS (Judicial) Examination in the year 1977 and was appointed as Munsiff on 27.01.1978. He was promoted as Sub-Judge in August 1985 and District and Sessions Judge in August 1997. As District Judge served as Principal and District Sessions Judge Jammu, Principal Secretary to Hon'ble Chief Justice and Registrar General of Jammu and Kashmir High Court. Also worked as Chairman cum Judicial Member of J&K Sales Tax Appellate Tribunal. Before elevation worked as Judicial member in J & K State Special Tribunal.

Lok Adalat

In the months of September 2008, 686 cases were settled in the Lok Adalats held in different parts of the State of Jammu & Kashmir. Out of these, 51 cases were settled at pre-litigation stage. Compensation to the tune of Rs 57.50 lacs was awarded in Motor Accident Claim cases during the month. These Lok Adalats were organized by different District Legal Services Authorities / Tehsil

Legal Services Committees of the State. Beside this 50 eligible persons were given free legal aid during the month.

Insurance firm slammed for discriminating against woman

Parents of a married woman can depend on their daughter for financial and emotional support, a city court said on Tuesday while rejecting an insurance firm's plea of paying a lesser amount as compensation because the deceased in question was a married woman.

“A woman has to be treated equally with men whether in life or in death,” said Motor Accident Claim Tribunal Judge Swarana Kanta Sharma, awarding Rs 13 lakh relief to parents of a 23-year-old woman crushed by a Blueline Bus two years ago.

The court further observed that such discrimination between men and women victims while fixing compensation in accident cases would negate the efforts made for “equality and empowerment of women in India”.

“Passing any discriminatory order in case of a male or female death will necessarily negate and defeat everything that the society, the courts and other authorities have done for equality and empowerment of women in India,” the court said. The judge said that it was her duty to pass such an order which would strengthen the belief of every woman that she was equal to men not just on papers but in reality too.

The National Insurance Company Ltd (NICAL) had contended that there was no question of financial dependency of parents on deceased Rekha Goel, who was a B.Com final student and earning Rs 9,500 per month, as she would have got married in a couple of years.

“It would be equally wrong to presume that if a woman is married then there is an absolute ban of any kind to extend financial and emotional support to her parental family over which her male counterpart has an absolute right,” the court said.

(HT/20.08.2008)

SC acquits man accused of murder 30 years ago

More than 30 years after a man was arrested for allegedly committing a murder, the Supreme Court has acquitted him due to lack of evidence and inconsistent statements by the eye-witnesses.

The apex court took the view that non-examination of the investigating officer and the doctor who performed the autopsy of the victim would be

justification enough for discarding the prosecution's claim and gave the benefit of the doubt to the accused.

The apex court upheld the Kirandeo Prasad's acquittal ordered by the Patna High Court which had reversed a session court's decision to sentence him to life imprisonment. The murder which occurred on the “holi festival” on March 25, 1978, was alleged to have been carried out with the help of a gun and other lethal weapons in Bihar's Nalanda district.

A bench of Justices Arijit Pasayat and Mukundakam Sharma also concurred with the view of the High Court that there were inaccuracies in the statements made by the eyewitnesses and the failure of the prosecution to examine the investigating officer and the autopsy doctor.

In this case, Prasad along with others accomplices allegedly murdered Sukhu Mahton, which according to one version was a sequel to the failure of the deceased to attend a “Satyanarayana Swamy vrath” held at the house of the accused.

(HT/31.10.2008)

For Promotion, Merit matters more than Seniority : SC

Pitching strongly in favour of the meritorious, the Supreme Court has ruled that for promotional posts to be filled on “merit alone” basis, seniority of an aspirant is of no avail as the number of years of service loses its weight completely in the face of merit.

This means, if two government servants holding the same post — one junior and the other senior — aspiring for promotion through the “merit only” channel to the next rank having one vacancy, then the junior could be promoted if he is found more meritorious than the senior.

The ruling came in a case pertaining to the Uttar Pradesh Power Corporation Ltd (UPPCL) which was accused by one Ayodhya Prasad Mishra that though he secured more marks in the examination conducted by the departmental promotion committee and placed in the Executive Engineer-I category, he was not promoted to the post of Superintending Engineer, which went to a senior despite the latter having secured less marks and placed in the Executive Engineer-II category.

Dismissing UPPCL's appeal against an Allahabad High Court order, a Bench comprising Justices C K Thakker and L S Panta said: “There is no doubt in our mind that if any executive engineer who has been placed in category-I and is available for the promotional post of superintending engineer, no

executive engineer who is included in category-II can be considered for such promotion even if the latter is senior.”

Justice Thakker said it was well settled that Article 14 of the Constitution, which guaranteed right to equality, prohibited a person or a class of persons from being singled out from others similarly situated or circumstanced for discrimination.

(TOI/17.09.2008)

Court grants divorce to man ‘deprived’ of marital bliss

The Supreme Court has granted divorce to a man whose wife had deprived him of marital bliss, on account of her obsession for career.

Upholding a Delhi High Court verdict, a bench of Justices C.K. Thakker and D.K. Jain held the wife’s ambition to excel in her profession while ignoring her matrimonial obligations amounted to mental cruelty, one of the grounds for divorce under the Hindu Marriage Act, 1985.

The Bench opined the woman preferred her career to marriage after perusing letters she wrote to her husband. Her decision to get two pregnancies terminated without the husband’s consent also went against the woman.

The court rejected her pleadings to overrule the high court judgment and while quoting some of the letters added: “She further said the husband should not bring (up) her marital status preventing her from pursuing her career in the name of marriages. She clarified she did not want to close her avenues in life at least at that stage. She expressly stated she did not believe in Indian social value system and she was very happy in the foreign country.”

The SC verdict brought an end to a more than two-decade-old love marriage of the couple who knew each other since childhood.

At the time of marriage, the woman worked with the department of biochemistry in AIIMS and was also pursuing her PhD. Before the husband approached a Delhi trial court for divorce in 1996, the wife had already expressed her desire to pursue her career. She reportedly got two abortions done and later while on a fellowship to America and chose to live separately.

In his plea for divorce, the husband placed several letters written by the wife in which she had admitted to be “very much interested in her career” and “that she was independent since 1979 and was keen to live an independent life.”

On the basis of the wife’s letters, one of which

also talked of separation, the court granted divorce to the man.

The wife’s attempt to prove the allegations wrong failed as the high court upheld the lower court’s order. Her last effort too proved futile after the Supreme Court’s judgment.

(HT/12.11.2008)

CASE COMMENTS

Rajasthan S.R.T.C. & Ors. v. Mohar Singh AIR 2008 SC 2553

Very often the Judicial Officers have been found debating on the issue of jurisdiction of the court in service matters. The Apex Court in the aforesaid judgment has made things eloquently clear.

It has been held that Civil Court may have a limited jurisdiction in service matters but it cannot be said to have no jurisdiction at all to entertain a suit. It may not be entitled to sit in appeal over the order passed in the disciplinary proceedings or on the quantum of punishment imposed. It may not in a given case direct reinstatement in service having regard to Section 14(1)(b) of the Specific Relief Act, 1963 but it is trite law that where the right is claimed by the plaintiff in terms of common law or under a statute other than the one which created a new right for the first time and when a forum has also been created for enforcing the said right, the Civil Court shall also have jurisdiction to entertain a suit where the plaintiff claim benefit of a fundamental right as adumbrated under Article 14 of the Constitution of India or mandatory provisions of statute or statutory rules governing the terms and conditions of service. Thus, if a right is claimed under the Industrial Disputes Act or the sister laws, the jurisdiction of the Civil Court would be barred, but if not such right is claimed, civil court will have jurisdiction.

On the basis of the principle laid down by the Apex court following are the broad guiding considerations :-

- a) If a right, not pre-existing in common law, is created by a statute and that statute itself has provided a machinery for the enforcement of the right, both the right and the remedy having been created by that statute, a finality is intended. The civil court’s jurisdiction is impliedly barred.
- b) If however, a right pre-existing in common law, is recognized by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the civil court’s jurisdiction, then both the common law remedy and the statutory

remedy might become concurrent remedies, leaving open an element of election to the persons entitled to sue in the civil court or in the statutory tribunal.

(*M.K. Sharma*)
Electricity Magistrate, Jammu

Himanshu Singh v. State of M.P. & Ors.
AIR 2008 SC 1943

Role of Judges in criminal trials - The adjudication of criminal matters forms an essential and basic component of justice delivery system and it is the outcome of these trials that a common man, whose innocence is either eclipsed or whose unruly behavior has eclipsed harmonious existence of society, looks up to it as the last and importantly credible source of ironing out the wrinkles of immorality and unjust from the face of democratic state. This no doubt puts a heavy task on the shoulders of those who bear out and render enforceable opinions. But a person who is invested with such important and surely divine task must act in its purest form of commitment and faith that is attributed with it. It is there that a clear distinction would be made and a person holding the chair would elevate from the status of being mere a presiding officer to the recognition of being a judge in true spirit.

The role of Supreme Court toward guiding the subordinate judges has always been reformative and indispensable and the matter I want to highlight also finds its source from the Hon'ble Supreme Court, AIR 2008 SC 1943.

The contents of this transfer petition are not necessary to be mentioned here when we compare it to what the Apex Court has laid down while observing the nature of the case and its circumstance. The Apex court observes thus :

"It has to be unmistakably understood that a trial which is primarily aimed at ascertaining truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind, viz whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning Nelsons eye to the needs of the society at large and victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society".

The second aspect of the judgment corresponds to the facts that true spirit should be imbibed before a decision is made by a judge. Held,

If a criminal court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators. The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the code and section 165 of Evidence Act confer a vast and wide power on presiding officers of court to elicit all necessary materials by playing an active role in the evidence collecting process. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary where the court has reason to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls on dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system and the courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

(*Mohammad Shafi Khan*)
Pr. District and Sessions Judge
Anantnag

M/S Eastern Equipment and Sales Ltd.

v.

Ing. Yash Kumar Khanna
AIR 2008 SC 2360

Additional evidence to be adduced in an appeal is embodied under order 41 Rule 27 of CPC, this Rule provides the conditionals for production of additional evidence whether oral or documentary in certain conditions:

a) That the trial court has refused to admit the

evidence which ought to have been admitted;

- b) That the evidence was not available with the party notwithstanding the exercise of due diligence; and
- c) That the appellate court requires additional evidence so, as to enable it to pronounce the judgment.

Hon'ble Apex Court has discussed the oral evidence to be allowed in appeals in several of its judgments reported as *Natha Singh v. Financial Commissioner Taxation Punjab* AIR 1976 SC 1053, in this judgment it was observed that discretion given to the appellate court to receive and admit an additional evidence under order 41 Rule 27 is not an arbitrary one but is a judicial one circumscribed by the limitations specified in that provision.

In another authority reported as AIR 2001 SC 134, it was observed by Hon'ble Supreme Court on the basis of earlier judgment that permission to adduce the additional evidence under Order 41 Rule 27 is permissible to be granted by the appellate court, principle to be observed ordinarily is that the appellate court should not travel outside the record of the lower court and cannot take evidence on appeal but an important point is to be kept in mind that in case the additional evidence is of such nature which enables the court to pronounce the judgment or for any other substantial cause the court must allow the additional evidence to be taken, the expression to 'enable it to pronounce the judgment' contemplates a situation when the appellate court finds itself unable to pronounce the judgment owing to a lacuna or defect in the evidence as it stands, the ability to pronounce a judgment is to be understood as the ability to pronounce a judgment satisfactory to the mind of court delivering it.

Similar point came before the Hon'ble Supreme Court for consideration in a case *Basayya I. Mathud v. Rudrayya S. Mathad* reported as AIR 2008 SC 1108 wherein it was observed that "the finding of the High Court was based on documents which was produced at the time of argument and as such High Court did not follow the conditions laid down under Order 41 Rule 27 CPC and the order was liable to be set aside in other words it was observed that if court feels that additional evidence is necessary for pronouncement of the judgment in that situation court can allow the plea for adducing additional evidence."

Again a duty was cast upon the courts to weigh the exigency of any case judiciously and in case the additional evidence is of such nature which enable the court to pronounce such judgment it must be allowed, it is very apt to note how appellate court could come to conclusion that additional evidence is

necessary enabling the court in pronouncing the judgment in appeal unless the appeal is heard. This controversy has been set at rest by a recent judgment of Hon'ble Supreme Court reported as AIR 2008 SC 2360 which read thus:-

"if court decides the application prior to hearing of an appeal same is not proper. Therefore, the appellate court was directed to decide the pending appeal along with the application under order 41 Rule 27 CPC on merit".

In the backdrop of above observation it is only during the final hearing of an appeal when court can express its opinion whether the additional evidence to be adduced is necessary for just decision of the appeal as such the appeal and the application under order 41 Rule 27 CPC has to be taken and decided simultaneously.

(Mohammad Nazir Fida)
Principal District and Sessions Judge
Ganderbal

State of M.P. v. S.S. Johari & Ors.
AIR 2000 SC 665

Sections 227 and 228 of Cr. PC (Central Code) which correspond to section 268 and 269 of the Cr. PC of the state lay down the procedure to be followed to discharge or charge of the accused in trial before the court of the sessions. Basic principles of the law laid down in said provisions is *para materia* the same as applicable to trials by Magistrates of warrant cases instituted on police report. Section 227 provides that the judge on complying with the formalities as stated therein shall, if he finds that there are not sufficient grounds for trial, record the reasons and discharge him. The test laid down in the section to justify order of discharge of accused is obviously negative. A discharge is permissible only when there are no sufficient grounds for trying the accused. However, the court is not required to appreciate the evidence and arrive at conclusion that the material produced are sufficient for convicting or not convicting the accused. In order to satisfy itself about the sufficiency of the material to charge or discharge the accused, the court can for limited purpose sift the evidence, but it is not required to marshal the same with a view to decide the reliability thereof.

In the instant case the accused were charged by the Sessions Court for offences punishable u/s 5(1) (d) and 5(2) of prevention of corruption Act, read with section 120 B of IPC and in the alternative for the

offence punishable u/s 13(1) (d) and section 13(2) of the Act, on the allegation that they entered into the criminal conspiracy with some local businessmen of Indore by misusing their posts, and also by using some forged documents that caused wrongful loss to the government. It was specifically alleged that though many of the items have not been purchased, amount was paid on bogus vouchers. It was pointed out that some medicines were purchased at Jabalpur on lesser prices, roughly at ½ rates.

In revision the High Court of Madhya Pradesh quashed the charges framed by the Sessions Court. In appeal the Apex Court while not agreeing with the approach adopted by the High Court quashed the order passed by the High Court. The Apex court made the observation as under:-

“In our view it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court it appears that instead of considering the prima facie case the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The Charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the particular offence. In such case there would be no sufficient ground for proceeding with the trial.”

The Court referred to its earlier judgment cited as AIR 1990 SC 1962 where it was held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The court may peruse the records for that limited purpose, but it is not required to marshal with a view to decide the reliability thereof.

The Apex court has further observed that the entire approach of the High Court appears to be as if the court was deciding the case as to whether the accused are guilty or not. It was done without considering the allegations of conspiracy relating to the charges under section 120 B. In most cases it is

only from the available circumstantial evidence an inference of conspiracy is to be drawn.

(Altaf Hussain)
Addl. District Judge
Bank Cases, Srinagar

Hardeep Singh v. State of Punjab **2008 Apex Criminal Reports 791**

For a Police Officer to be a complainant and the Investigating Officer in a case is not *per se* illegal.

In all those cases where a police officer makes out an FIR incorporating his name as informant therein and thereafter proceeds to investigate the same case, an argument is invariably raised in the courts that such a course is impermissible in law and the entire prosecution case is sought to be thrown on that ground.

Hon'ble Supreme Court in the above noted case observed in this context that there is no principle or binding authority to hold that the moment a competent police officer, on the basis of information received, makes out an FIR incorporating his name as informant in a case, he forfeits his right to investigate the same. Hon'ble Supreme Court further laid down the proposition that if at all such investigation could be assailed on the ground of bias or real likelihood of bias on the part of investigating officer, such question would depend on facts and circumstances of each case. It was further observed by Hon'ble Apex Court that no broad and unqualified proposition could be laid down that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair and biased.

The underlying import of the judgment therefore is that, question of bias varies from case to case; that bias has to be taken as defence and proved in due course and unless it is so done, the investigation by a complainant (police officer) has no inherent legal infirmity.

In the case in hand, the defence of the accused, inter alia was that investigation was conducted by a police officer who happened to be complainant also. Hon'ble Apex Court, however, rejected this defence of the accused as “nothing more than a got up story of his own whims and caprices”.

(Amarjeet Singh Langeh)
Munsiff, Ramban