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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@nic.in

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

Topic of the Month

"Law has to be interpreted according to the current societal standards. The law when enacted, in spite of the best effort and capacity of the legislators, cannot visualise all situations in future to which that law requires application. New situations develop and the law must be interpreted for the purpose of application to them, for finding solutions to the new problems. That is the area or field of judicial creativity which fills in the gap between the existing law and the law as it ought to be. If you have proper perception and proper values, those will influence your thought process and the exercise which you then perform in the form of judicial creativity would be tempered more by morality and ethics.

Complete justice or true justice must encompass within it morality and ethics. Mathematically stated : "abstract law plus morality or ethics is equal to justice". That is the task which we judges are required to perform in the course of administration of justice. This is the kind of role which the judiciary has to perform and by Judiciary I mean not merely judges but lawyers as well because it is together that we form the machinery for the administration of justice.

The interpretation of laws has to be purposive. This means the interrelation must subserve the object of the enactment of the law keeping in view the supreme law, the Constitution. Every law has to accord with the Constitution, otherwise it suffers the defect of invalidity or unconstitutionality and, therefore, even while construing statute law, one must always bear in mind the provisions of the Constitution, the constitutional goals and the constitutional purpose which is sought to be achieved.

('Taken from R.C. Ghiya Memorial Lecture delivered by Hon'ble Shri Justice J.S. Verma, Former Chief Justice, Supreme Court of India, on 28-06-1997.)

SOME RECENT SUPREME COURT JUDGMENTS OF PUBLIC IMPORTANCE

(Delivered in July - September 2009)

1. On 7th August, 2009 a two Judges Bench in Bavesh Jayanti Lakhani v. State of Maharashtra and Ors. (Crl. A.No. 1452 of 2009) held that "the Municipal Laws of a country reign supreme in matters of Extradition".

"A fundamental Right of citizen whenever infringed, the High Courts having regard to their extraordinary power under Article 226 of the Constitution of India as also keeping in view that access to justice is a human right would not turn him away only because a Red Corner Notice was issued", said the Bench.

The Bench furthermore held that "if a violation of any order passed by a civil court is made the ground for issuance of a Red Corner Notice, indisputably, the court will enquire as to whether the same has undergone the tests laid down under Section 13 and 44-A of the Code of Civil Procedure".

2. On 7th August, 2009 a two Judges Bench in Malay Kumar Ganguly v. Dr. Sukumar Mukherjee and Ors. (Crl. A. Nos. 1191-1194 of 2005 held that "Medical negligence cannot be attributed for not rendering a facility which was not available". The Bench however said thast "if hospitals knowingly fail to provide some amenities that are fundamental for the patients, it would certainly amount to medical malpractice".

3. On 290th August, 2009, a two Judges Bench in Shipra Sengupta v. Mridul Sengupta and Ors. (C.A. No. 809 of 2002) held that "the amount in any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee".

4. On 20th August, 2009, a two Judges Bench in Anil Vasudev Salgaonkar v. Naresh Kushali Shganonkar (C.A. No. 5679 of 2009) held that "all those facts which are essential to clothe the election petitioner with a complete cause of action are "material facts" which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the Representation of the People Act, 1951".

5. On 24th August, 2009, a two Judges Bench in Chairman cum Managing Director Coal India Limited and Anr. **v.** Mukul Kumar Choudhuri & Ors. (C.A. Nos. 5762-5763 of 2009) dealt with "the doctrine of proportionality", a well recognized concept of judicial review in Indian Jurisprudence.

"What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review", said the Bench.

6. On 27th August, 2009, a three Judges Bench in 'The State of Maharashtra & Anr. V. M/s Super Max International Pvt. Ltd. & Ors. (C.A. No. 5835 of 2009) held that "in an appeal or revision preferred by a tenant against an order or decree of an eviction passed under the Rent Act, it is open to the appellate or the revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent". However, "in fixing the amount subject to payment of which the execution of the order/decree is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount", the Bench said.

7. On 18th September, 2009, a two Judges Bench in Jagdish v. State of M.P. (Crl. A. No. 338 of 2007) held that it would "be open to a condemned prisoner, who has been under a sentence of death over a long period of time, for reasons not attributable to him, to contend that the death sentence should be commuted to one of life".

The Bench said that "the power of the President and the Governor to grant pardon etc under Article 72 and 161 of our Constitution though couched in imperative terms, has nevertheless to be exercised on the advice of the executive authority. In this background, it is the Government which, in effect, exercise that power. The condemned prisoner and his suffering relatives have, therefore, a very pertinent right in insisting that a decision in the matter be taken within a reasonable time, failing which the power should be exercised in favour of the prisoner".

ACADEMY NEWS

One day refresher course on the topics 'Import of Sections 164 and 164-A Cr.P.C' and 'Procedure and Importance of Statement under Section 342 Cr.P.C' was conducted in the State Judicial Academy at Jammu on 15th November, 2009. Shri Janak Raj Kotwal, Spl Judge, Anti-corruption was the Resource person for the topic 'Sections 164 and 164-A Cr.P.C, whereas Shri Bansi Lal Bhat, Principal District & Sessions Judge, Jammu was the resource person for the topic 'Procedure and Importance of Statement under Section 342 Cr.P.C'.

Refresher course in session

While interacting with the participants Shri Janak Raj Kotwal emphasized the fact that while recording a confessional statement under Section 164 Cr.P.C, the Presiding Officer has to satisfy himself as to whether the statement is being given voluntarily by the person making confession or the same is as a

Refresher course in session

result of threat, inducement or promise etc. Learned Resource person also told the participants about the distinction between confessional statement recorded under section 164 Cr.P.C and Statement of witnesses recorded under the same provision. Shri Kotwal also gave the background regarding the enactment of Section 164-A Cr.P.C and made it clear that it is to be done only when the offence alleged to have been committed entails punishment of seven years or more. Statement of all the witnesses are not required under this Section but only of the material witnesses and the concerned Investigating Officer who should not be below the rank of Sub-Inspector of Police has to get the statement recorded of the material witnesses during the investigation of the case. He also told the participants that if a witness resiles, during trial of the case, from the statement recorded under section 164-A Cr.P.C, he can be proceeded against for perjury after the conclusion of the trial.

Refresher course in session

Shri Bansi Lal Bhat, Principal District and Sessions Judge, Jammu while dealing with the topic 'Procedure and Importance of Statement under Section 342 Cr.P.C' told the participants that the statement of the accused under Section 342, after the conclusion of prosecution evidence, is mandatory to be recorded and the accused is to be confronted with all the incriminating circumstances appearing in the statement of the prosecution witnesses. Any lapse in this connection can vitiate the proceedings. He also told the participants that an accused cannot be compelled to appear as its own witness in defence but once he opts to do so then he is subjected to cross-examination by the prosecution. While dealing with the topic, Shri Bhat cited some important rulings of Hon'ble Apex Court and Hon'ble High Court of Jammu and Kashmir, wherein the importance, scope and the procedure for recording such statement has been discussed.

Programme was concluded on a very successful note and the participants got an opportunity to improve their knowledge on the subject.

LEGAL JOTTINGS

(Case No: Criminal Appeal No. 2120 of 2009)

Suman v. State of Rajasthan & anr.

Date of Decision : 13-11-2009.

Judge(s): Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice G.S. Singhvi.

Subject Index: Criminal Procedure Code, 1973 Section 319 power to proceed against other persons appearing to be guilty of offence, Indian Penal Code, 1860 Section 498-A. On the basis of complaint filed by the respondent No. 2 and statements recorded, the Investigating Officer filed chargesheet only against her in-laws but not against the appellant application filed by the respondent No. 2 for issuing process against the appellant. Judicial Magistrate & Session Judge directed the appellant be summoned through bailable warrant - appellant challenged the revisional order as police not filed chargesheet against her - held that a person who is named in the first information report or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or files charge-sheet or drops the case, can be proceeded against under Section 319 Cr.P.C. if from the evidence collected the Court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused. Whether the learned Judicial Magistrate was justified in taking cognizance against the appellant under Section 498-A IPC. Yes - statements of complainant's parents in corroboration with that of the complainant, clearly spelt out the role played by the appellant in demand of dowry, physical and mental harassment - no interference in the orders of the Courts below appeal dismissed.

(Case No: Criminal Appeal No. 2091 of 2009)

Amalendu Pal @ Jhantu v. State of West Bengal

Date of Decision : 11-11-2009.

Judge(s): Hon'ble Dr. Justice Mukundakam Sharma and Hon'ble Mr. Justice R.M. Lodha.

Subject Index: Indian Penal Code, 1860 Sections 306 and 498-A. Abetment of suicide and harassment upon the woman by her husband and his relatives appellant found to be involved in extra-marital relationship - trial Court convicted the appellant under Sections 306 and 498-A, IPC and sentenced to undergo rigorous imprisonment for three years and for eight years together with a fine of Rs. 1000/-. High Court confirmed the conviction/sentence orders of the trial Court - appeal no direct evidence showed that the appellant had by his acts instigated or provoked the deceased to commit suicide and has not done any act which could be said to have facilitated the commission of suicide by the deceased - cruelty meted out to the deceased by the accused was sufficiently proved from the evidence on record as the accused requested twice to the deceased for second marriage which she refused - set aside the conviction of the appellant under Section 306 but upheld the conviction under Section 498-A - appeal partly allowed.

(Case No: Criminal Appeal No. 1038 of 2008)

Gajula Surya Prakasarao v. State of Andhra Pradesh

Date of Decision : 10-11-2009.

Judge(s): Hon'ble Mr. Justice B. Sudershan Reddy and Hon'ble Mr. Justice J.M. Panchal.

Subject Index : Indian Penal Code, 1860 Section 302 and 307 murder and attempt to murder. Trial Court found the appellant guilty of the offences punishable under Sections 302 and 307 IPC as attacked the deceased with sharp edged weapon resulting in his death and also attempted to kill PW-3 by inflicting severe injuries on her body awarded sentence to suffer life imprisonment and R.I. of 7 years with fine of Rs. 1,000/-. High Court confirmed the orders of the trial Court appeal evidence of PW-3 completely at variance with what has been stated by her earlier improvements done in the statements of PWs 3 and 4 stage to stage which made their evidence doubtful no other acceptable evidence available on record based on which the appellant could be held guilty conviction/sentence orders against the appellant set aside appeal allowed with acquittal of appellant of the charges under Section 302 and 307 IPC.

(Case No: Criminal Appeal No. 2041 of 2009)

Rasiklal Dalpatram Thakkar v. State of Gujarat & ors.

Date of Decision : 6-11-2009.

Judge(s): Hon'ble Mr. Justice Altamas Kabir and Hon'ble Mr. Justice Cyriac Joseph.

Subject Index: Criminal Procedure Code, 1973 - Section 156 police officer's power to investigate cognizable cases. Appellant's Company took loan from Bank several irregularities discovered regarding the grant of loans to borrowers. Investigating Agency submitted a report that the allegations complained of had been committed within the territorial limits of the city of Mumbai and therefore, the investigation be transferred to the

Investigating Agency in Mumbai. Learned Magistrate rejected the Final Report of the Investigating Agency and directed to carry out further investigation into the allegation made on behalf of the Bank - High Court affirmed the order of the Chief Metropolitan Magistrate whether in regard to an order passed under Section 156(3) Cr.P.C. the police authorities can unilaterally decide not to conduct an investigation on the ground that they had no territorial jurisdiction to do so - No - not within the jurisdiction of the Investigating Agency to refrain itself from holding a proper and complete investigation merely upon arriving at a conclusion that the offences had been committed beyond its territorial jurisdiction - appeal dismissed.

(Case No: Criminal Appeal No. 230 of 2003)

Sau Panchashila Dada Meshram v. State of Maharashtra

Date of Decision : 17-11-2009.

Judge(s): Hon'ble Mr. Justice B. Sudershan Reddy and Hon'ble Mr. Justice J.M. Panchal.

Subject Index: Indian Penal Code, 1860 Section 304 Part-II read with 34 culpable homicide not amounting to murder read with common intention High Court, through its judgement, altered the conviction orders of Trial Court from Section 302 read with 34 to Section 304 Part II read with Section 34 against appellant and her husband for confining their child in bathroom for 14 days and caused her death by not providing food and water - imposed sentence of R.I. for 6 years - appeal - homicidal death of deceased child undisputed deceased died due to starvation proved by the testimony of Medical Officer child found dead in the bathroom established by the reliable and trustworthy testimony of PW-6 - appellant and her husband had definite knowledge that their act of confining deceased, in a bathroom would result into her starvation which was likely to cause her death - held, no interference to the well-reasoned orders of the High Court. Conviction of the appellant under Section 304, Part II read with Section 34 maintained and on the facts and circumstances of the case, sentence reduced to the period already undergone - appeal partly allowed.

NEWS AND VIEWS

A series of Lok Adalats were organised by Jammu & Kashmir State Legal Services Authority (SLSA) throughout the State from 26th of October, 2009 and culminated on 9th of November, 2009 coinciding with the National Legal Service Day. A total of 9933 cases were settled which comprised 551 cases relating to Motor Accidents Claims Tribunal (MACT), 315 Bank cases at pre-litigation stage, 206 Matrimonial cases, 5 Land Acquisition cases, 13 Consumer cases and 8582 petty criminal cases. Compensation of amount to the tune of Rs. 10.84 crores was awarded in the MACT cases.

Hon'ble dignitaries on the dais
on the concluding function of Mega Lok Adalat - 2009

The concluding function of this mega event was held on 17th of November, 2009 at Srinagar. Mr. Omar Abdullah, Hon'ble Chief Minister of J&K State was the Chief Guest, Hon'ble the Chief Justice Mr. Barin Ghosh presided over the function. Mr. Ali Mohammad Sagar, Hon'ble Minister for Law and Parliamentary Affairs was the Guest of Honour. In his welcome address, Hon'ble Mr. Justice Nisar Ahmad Kakru, Executive Chairman (SLSA), highlighted the difficulties being faced by the Legal Services Authorities because of inadequate infrastructure. His Lordship Mr. Kakru stressed upon the need for establishment of permanent Lok Adalats and full time Member Secretary for the SLSA. He called upon the Government functionaries to avail of the benefits of Lok Adalats.

Respected Audience on the concluding function
of Mega Lok Adalat - 2009 at SKICC, Srinagar

Hon'ble the Chief Justice in his presidential

address said that speedy justice contributes directly to the economic prosperity of the nation. He sought intervention of the Hon'ble Chief Minister and Hon'ble Law Minister, in making institution of Lok Adalats as one of the best in the country and also suggested setting up of Mobile Lok Adalats in the State.

Mr. Ali Mohammad Sagar, Hon'ble Minister for Law and Parliamentary Affairs lauded the role of Lok Adalats in settlement of disputes and assured that the Legal Services Authorities will be strengthened wherever necessary, even if it requires amendments in the present Act.

Mr. Omar Abdullah, Hon'ble Chief Minister of State said that institution of Lok Adalats takes care of the essence of famous adages "Justice delayed is justice denied" and "Justice should not only be done but should be seen to have been done" as the Lok Adalats provide for Quick Justice Delivery System in an amicable and cordial atmosphere. The Chief Minister said that the Government shall seriously put into practice the suggestion put forth by the Hon'ble Executive Chairman, SLSA and Hon'ble the Chief Justice. He assured that permanent offices of State Legal Services Authority shall be set up at Srinagar as well as in Jammu. The Hon'ble Chief Minister appreciated Hon'ble Mr. Justice Nisar Ahmad Kakru and His Lordship's team for successfully conducting and holding Mega Lok Adalats throughout the State.

Hon'ble Mr. Justice Virender Singh, Judge, High Court of J&K presented the vote of thanks on the occasion. Among others, the function was attended by present and past Hon'ble Judges of the High Court of J&K, Advisors to the Chief Minister, Pricipal Secretary to the Chief Minister, Judicial Officers, Vice Chancellor of Kashmir University, Chairman, J&K Bank, bureaucrats, police officers and law students.

Additional Judge of the High Court of Jammu & Kashmir appointed

Shri Ghulam Hasnain Masoodi, Principal District and Sessions Judge, Srinagar took over as Additional Judge of the High Court of Jammu and Kashmir at Jammu on 13th of November, 2009 at 4:30 P.M. Oath of office was administered by Hon'ble Shri Justice Barin Ghosh, Chief Justice of the High Court of Jammu and Kashmir.

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

With the appointment of Hon'ble Shri Justice Ghulam Hasnain Masoodi as Additional Judge of the High Court, strength of Hon'ble Judges in the High Court of Jammu and Kashmir has increased to ten as against the sanctioned strength of fourteen Judges.

Hon'ble the Chief Justice administering Oath to Shri Ghulam Hasnain Masoodi

Trial not a must if contempt committed in open court : SC

A person can be summarily punished for contempt of court if the alleged act of contempt is committed "in the face of the court" and is self-evident to prove the charge, the Supreme Court has ruled.

A three-judge bench headed by Justice Altmas Kabir said, in such cases the higher courts needn't follow the long-drawn procedure of statutory trial, which requires courts to hear the contemnor before punishing him/her.

The court gave this ruling while jailing four women from a Mumbai-based music school for hurling a slipper at Justice Arijit Pasayat (since retired) in March this year in the presence of several senior lawyers and litigants while the judge was holding court.

While justifying Justice Pasayat's instant order jailing the women, the bench disapproved of the stand of Justice A.K. Ganguly (who was sitting with Justice Pasayat when the incident happened) that no contemnor could be convicted without proper trial.

As Justice Ganguly differed with Justice Pasayat's decision of summarily punishing the women, the Chief Justice of India had referred it to a larger bench headed by Justice Kabir, which said: "Where an incident of the instant nature takes place within the presence and sight of the judges, the same amounts to contempt in the face of the Court and is required to be dealt with at the time of the incident itself."

Justifying such summary punishment in a contempt case, Justice Kabir's bench said: "This is

necessary for the dignity and majesty of the Courts to be maintained. When an object, such as a footwear, is thrown at the Presiding Officer in a court proceeding, the object is not to merely scandalise or humiliate the judge, but to scandalise the institution itself and thereby lower its dignity in the eyes of the public."

"The incident which took place in the courtroom presided over by Justice Pasayat was within the confines of the courtroom and was witnessed by a large number of people and the throwing of the footwear was also admitted by Sarita Parikh, who without expressing any regret for her conduct stood by what she had done and was supported by the other contemnors. In the light of such admission, the summary procedure followed by Justice Pasayat cannot be faulted," the three-judge bench said.

"Section 14 of the Contempt of Courts Act no doubt contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice," the three-judge bench said disagreeing with Justice Ganguly's view that principles of natural justice must be adhered.

(HT/02.11.2009)

CASE COMMENTS

Reeta Nag v. State of West Bengal & Ors.

(2009) 9 Supreme Court Cases 129

Presentation of Police Report in terms of Section 173 CrPC does not take away the power of investigating agency to further investigate into the case concerned and to present further report or reports after such further investigation. This power of further investigation is recognized by Section 173(8) CrPC However the question as to whether Section 173(8) CrPC authorises the Magistrate before whom such report is produced, to direct further investigation or reinvestigation of the case, has remained a debatable question for judicial scrutiny. Section 173(8) CrPC does not in clear terms provide jurisdictional competence to the Magistrate to direct further investigation or reinvestigation.

In a case titled Reeta Nag v. State of West Bengal and others, reported as (2009) 9 Supreme Court Cases 129, the Hon'ble Supreme Court has considered this question. The Hon'ble Supreme Court has negated the existence of such power, after the cognizance is taken by the Magistrate. Hon'ble Court considered various judicial pronouncements on the subject and held as under:

"What emerges from the abovementioned decisions of this Court is that once a charge-sheet is filed under Section 173(2) CrPC and either charge is framed or the accused are discharged, the Magistrate may, on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the investigating authorities permit further investigation under Section 173(8). The Magistrate cannot suo motu direct a further investigation under Section 173(8) CrPC or direct a reinvestigation into a case on account of the bar of Section 167(2) of the Code."

One of the important factors to be noted in this Judgment is that in the earlier judicial pronouncements of Hon'ble Supreme Court rendered in cases titled "Abhinandan Jha and ors. v. Dinesh Mishra", reported as AIR 1968 SC 117: 1967 (3) SCR 668; "Union Public Service Commission v. S. Papaiah and ors.", reported as 1997 (7) SCC 614; "Bhagwant Singh vs. Commissioner of Police and anr.", reported as 1985(2) SCC 537; "Hemant Dhasmana v. Central Bureau of Investigation and anr.", reported as AIR 2001 SC 2721: 2001(7) SCC 536, power of the Magistrate to direct further investigation, was held to be existing in terms of Section 156(3) CrPC, in cases where the Magistrate is not satisfied with the nature of investigation conducted by the investigating agency. As a matter of fact the Judgment titled "Union Public Service Commission v. S. Papaiah and ors.", reported as 1997 (7) SCC 614, has been discussed in the Judgment under discussion, however the Hon'ble Supreme Court has not expressed any opinion regarding its scope.

In the case of "Abhinandan Jha", the power of Magistrate to direct further investigation by exercising powers under Section 156(3) CrPC, was recognised for the first time. The said case also has been authoritatively quoted in subsequent Judgments.

With due regards to the aforesaid Judgments and with all humility it is observed that a fine line of distinction is reflected in the applicability of the Judgment under discussion and the Judgments rendered earlier. Whereas the earlier Judgments based on case of "Abhinandan Jha", no doubt recognise the power of Magistrate to direct further investigation in terms of Section 156(3) CrPC, the Judgment under discussion categorically rules out the existence of any such power of the Magistrate in terms of Section 173(8) CrPC after the cognisance has been taken by the Magistrate, in the matter.

(Rajeev Gupta)
Sub-Judge
State Judicial Academy

Fixity Packaging Industries Pvt. Ltd. & Ors.
v.
Udyen Jain (HUF)
(2009) 8 SCC 761

In Summary suits filed under Order 37 CPC, the defendant can defend the suit only after being permitted by the Court. Defendant is required to apply for leave to defend under Rule 3 (5) of the said order. The Court in appropriate cases where sufficient grounds exist, permit the defendant to defend the suit conditionally or unconditionally. Without there being 'facts as may be deemed sufficient to entitle him to defend', defendant cannot be permitted to defend the suit. First proviso to Rule 3 (5) makes it further clear that leave to defend shall not be refused where the Court is satisfied that either there is no substantial defence or the proposed defence is frivolous or vexatious.

In the above mentioned Judgment, the Hon'ble Supreme Court has considered a case where the trial Court had granted conditional leave to defend the suit only on the ground of 'mercy'; though the Court had observed that no sufficient ground was available to the defendant. It has been observed by the Hon'ble Supreme Court that leave to defend the suit should not be granted by way of 'mercy'. It has been further held that if conditional leave to defend the suit is granted, conditions imposed should not be unduly onerous thereby leaving the defendant unable to defend the action for all intent and purpose. The Hon'ble Court relied on authoritative pronouncement in an earlier Judgment on the subject, reported as "Sunil Enterprises v. SBI Commercial & International Bank Ltd., (1998) 5 SCC 354". The following observations of the said Judgment were quoted by the Hon'ble Court.

"4. (c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is, if the affidavit discloses that at the trial he may be able to establish a defence to the plaintiff's claim, the court may impose conditions at the time of granting leave to defend the conditions being as to time of trial or mode of trial but not as to payment into court or furnishing security."

(Vishesh Parihar)
Forest Magistrate
Srinagar

Prasad alias Hari Parshad Acharya
v.
State of Karnatka
AIR 2009 SC 1911

Just as blood is to veins in body, so are the reasons to a judgment and for life to flow in a judgment, reasons have to explain the judgment.

Hon'ble Supreme Court in the above cited case, has emphasized this aspect, by stating that reasons substitute subjectivity by objectivity, being the live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at.

As reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. "Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-order. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

The rationale being that it is salutary requirement of natural justice to spell out reasons for the order made, as reasons in other words "speaking order" introduce clarity to an order and another rationale being that affected party can know why the decision was pronounced against him.

Thus the judgments are expected to be self contained, so self contained that the finding of facts may be sustained upon a bare perusal of it.

The crux being, the failure to give reasons amounts to denial of justice.

(Deepak Sethi)
Chief Judicial Magistrate,
Kathua

Justice is itself the great standing policy of Civil Society; and any eminent departure from it, under any circumstances, lies under the suspicion of being no policy at all.

- Edmund Burke

Justice discards party, friendship, kindred, and is, therefore, always represented blind.

- Joseph Addison

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