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MESSAGE

I am delighted to write this message for the forthcoming issue of the monthly newsletter published by the State Judicial Academy. The publication of the newsletter commenced in January, 2008. It has been published regularly since then.

Continuous judicial education is now accepted as an essential component for achieving the vision of Constitutional justice. The State Judicial Academy is committed to the goal of providing continuous judicial education, imbibing in the Judicial officers required ethics and values, providing them with tools and techniques for delivering inexpensive, timely and speedy justice.

Few issues of the newsletter have been seen by me. I have found them informative, giving the latest developments of law and important decisions of the Apex Court and the High Court, which would be of interest and utility to the Judicial Officers. The dissemination of information and knowledge through the medium of the newsletter is a laudable objective. I wish it all the success.

Srinagar
23rd of September, 2008

(Manmohan Sarin)
Chief Justice

TOPIC OF THE MONTH

"Judicial Accountability in a rights democracy context does not mean political accountability to effectuate majority will or answerability to the majority. It mean the assurance to each individual that the process of determining his or her individual right is transparent, impartial and objective. To this end, Judges are required to be independent and untouched by partisan politics. The fact that Judges are unelected ensures this in some measure. A relatively short tenure of a Judge without the possibility of reappointment also has the advantage of disallowing entrenched personal philosophies to develop. In the interests of transparency, reasons in support of decisions have to be given, proceedings in court are open to the public including the press (unless it is necessary to protect an individual e.g. in cases of rape or child abuse) and all decisions are published. It may be that Judges cannot be removed because of a bad decision. But bad decisions are rectifiable by judicial processes like appeal if the decision is not of the Supreme Court. Decisions are also open to review, overruling by a larger Bench or what is now known as the curative petition and of course by enactment".

"In this unsettled political climate, it has been the judiciary which has provided continuity and protected democracy by protecting the Constitution. By giving the politically voiceless an opportunity of being heard, by acting as a buffer to protect the citizens and residents of India against State action or inaction, be it legislative or executive, it has in fact kept democratic principles alive. It has acted as a safety valve to the burgeoning discontent of the economically or socially disadvantaged irrespective of creed or ethnicity".

(Excerpts from the article by Justice Ruma Pal, Former Judge , Supreme Court of India on "The Role of the Judiciary in Contemporary India", [(2008)7 SCC(J) 9].

LEGAL JOTTINGS

Some recent Supreme Court Judgments

1. On 6th May, 2008, a two Judge Bench in National Insurance Co. Ltd. vs. Yellamma & Anr [C.A. No.3317 of 2008] held that "a contract of insurance like any other contract, is a contract between the insured and the insurer. The amount of premium is required to be paid as a consideration for arriving at a concluded contract. If the insurer insists that a cheque should be issued only by the insured and not by a third party, no exception thereto can be taken."

2. On 12th May, 2008, a two Judge Bench in Dev Dutt vs Union of India & Ors [C.A. No. 7631 of 2002] held that "fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Art**.** 14 of the Constitution requires such communication. Art**.** 14 will override all rules or government orders."

The Bench held that when the entry is communicated to the public servant, he "should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period." It further held that "the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar."

The Bench made it clear that "the above directions will not apply to military officers because the position for them is different", but "they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to Government servants)."

In the opinion of the Bench,"non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or other benefits. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution."

3. On 16th May, 2008, a two Judge Bench in United India Insurance Company Limited Vs. Manubhai Dharmasinhbhai Gajera & others [C.A. Nos.4113-4115 of 2008] examined the question as to whether renewal of a mediclaim policy on payment of the amount of premium would be automatic.

(Continue at page 8...)

NEWS AND VIEWS

A warm send off was given to Hon'ble Shri Justice K.S. Radhakrishnan, Chief Justice on His Lordships transfer to Gujarat High Court. On this occasion, a memento was presented to His Lordship, a group photograph with Hon'ble Judges was taken and a guard of honour was given to His Lordship.

Hon'ble Judges presenting memento to Hon'ble the Chief Justice

Hon'ble Shri Justice Nisar Ahmad Kakru presenting memento to Hon'ble the Chief Justice on behalf of Hon'ble Judges

A group photograph of Hon'ble Judges of the High Court with Hon'ble Shri Justice K.S. Radhakrishnan, Chief Justice on 29-08-2008

Hon'ble Judges while giving send off
to Hon'ble the Chief Justice

Hon'ble Judges while giving send off
to Hon'ble the Chief Justice

Hon'ble Chief Justice while taking guard of honour

Hon'ble Chief Justice while inspecting guards

Hon'ble Chief Justice & Judges in a get together

Hon'ble Judges with Hon'ble Chief Justice in a get together

Hon'ble Judges in a get together

Hon'ble Judges with Hon'ble Chief Justice in a get together

Hon'ble Shri Justice Manmohan Sarin takes over as the new Chief Justice of High Court of Jammu & Kashmir

Hon'ble Shri Justice Manmohan Sarin took over as the new Chief Justice of the High Court of Jammu and Kashmir. Oath ceremony in this behalf was held in the Raj Bhawan at Srinagar on 4th day of September, 2008 at 12:00 Noon. Oath of office was administered by His Excellency Shri N.N. Vohra, Governor of Jammu & Kashmir.

His Excellency the Governor administering Oath to Hon'ble Mr. Justice Manmohan Sarin as Chief Justice

The oath taking ceremony was attended among others by the former & sitting Hon'ble Judges of the High Court, the Advisors to Governor, several former Ministers and legislators and high rank senior judicial, civil and police officers including the Chief Secretary of the State.

Hon'ble Shri Justice Manmohan Sarin was born on 20.10.1946. Graduated from St. Stephens College, Delhi; did his L.L.B from Faculty of Law, University of Delhi; did his Post Graduate course in Industrial Law and Labour Relations from Indian Law Institute and worked as in-house Counsel of IBM, World Trade Corporation for 10 years. Practised as an Advocate in Supreme Court of India and High Court of Delhi from 1979 to 1995 and worked as Senior Panel Counsel for the Government of India for the years 1990 to 1995; elected as Vice President, Delhi Bar Association from 1990-91. Appointed Additional Judge of the Delhi High Court on 17.05.1995 and permanent Judge of that High Court on 06.12.1996.

People losing faith : Apex Court express concern over a case pending for 50 years

Expressing serious concern over long delay in disposal of cases, the Supreme Court has asked authorities to ensure speedy disposal if the people's faith in the judiciary is to remain.

"People in India are simply disgusted with this state of affairs and are fast losing faith in the judiciary because of the inordinate delay in disposal of cases," said a Bench consisting of Justices A.K. Mathur and Markandey Katju while deciding a suit relating to a land dispute pending for 50 years at various stages in different courts.

Quoting a passage from Charles Dickens' novel 'Bleak House' which had rolled on for decades, consuming litigants and lawyers like, the Bench said: "Jarndyce and Jarndyce drones on this scare crow of a suit has, in course of time, become so complicated, that no man alive knows what it means. The parties to it understand it least; innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in Jarndyce and Jarndyce, without knowing how or why; whole families have inherited legendry hatreds with the suit."

Was this not descriptive of the situation prevailing in India today?

The Bench was disposing of a civil appeal filed by Rajindera Singh (dead) through his legal representatives against an Allahabad High Court judgment. Initially Prem Mai and others filed the suit in 1957 and it was decreed in 1963. Then the matter went for first appeal, second appeal and finally the execution appeal was disposed of by the High Court in September 1999. The present civil appeal is directed against this order.

"Insofar as the present proceedings are concerned, we set aside the impugned judgment and order of the High Court and allow this appeal," the Bench said.

(Hindu/4.09.2008)

Supreme Court defines who's an idiot

'Idiot' is a grossly misused word and an oversimplified epithet, if one goes by the Supreme Court's brand new definition of the term. It is almost impossible for a person to qualify as an idiot, says the Court and therefore, few can expect to get a reprieve for an offence. To be legally accepted as an 'idiot', one has to be so dumb as to be unable to count till 20, list the days of the week, or fail to remember the names of one's parents, the Court said on Friday.

Under Section 84 of the Indian Penal Code, a person is not liable to be prosecuted if he is of unsound mind, or incapable of comprehending the

Hon'ble Shri Justice Manmohan Sarin takes over as Chief Justice of High Court of Jammu and Kashmir

GLIMPSES

Hon'ble the Chief Justice while taking Oath

His Excellency the Governor while giving greetings to Hon'ble the Chief Justice

Hon'ble Chief Justice while taking Guard of Honour at High Court complex, Srinagar

Hon'ble Chief Justice while inspecting Guards

Hon'ble Chief Justice writing on visiting book

Hon'ble Chief Justice while writing on visiting book

Hon'ble Chief Justice proceeding to High Court

Hon'ble Shri Justice Nisar Ahmad Kakru welcoming Hon'ble Chief Justice

GLIMPSES .....Continued....

Hon'ble Judges welcoming Hon'ble Chief Justice

Hon'ble ShriJustice Hakim Imtiyaz Hussain
welcoming Hon'ble Chief Justice

Hon'ble Shri Justice Mansoor Ahmad Mir
welcoming Hon'ble Chief Justice

Hon'ble Shri Justice J. P. Singh
welcoming Hon'ble Chief Justice

Hon'ble Shri Justice Mohammad Yaqoob Mir
welcoming Hon'ble Chief Justice

Hon'ble Shri Justice Sunil Hali
welcoming Hon'ble Chief Justice

nature of the criminal act and the fact that it is against the law. The Supreme Court identified just four kinds of people who could be classified mentally unsound — idiots, the very ill, lunatics and drunks.

"An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals: and those are said to be idiots who cannot count 20, or tell the days of the week or who do not know their fathers or mothers or the like," said the judgement by Justices Arijit Pasayat and M K Sharma. They added that it was for the accused to prove they were idiots or otherwise of unsound mind.

The court was dealing with a case from Madhya Pradesh where Hari Singh Gond murdered his grandfather-in-law and then claimed innocence on the grounds of idiocy. The Bench affirmed the lower court orders convicting Gond for the murder. If the investigating agency came across a history of insanity, it was duty-bound to subject the accused to a medical examination, the judges said. If a medical examination is not done "the benefit of doubt has to be given to the accused", the judges said.

The MP trial court had refused to accept the accused was mentally unsound even though eyewitnesses reported he behaved in an unusual fashion at the time. Friday's judgement differentiated between a defendant of unsound mind and mere absence of motive.

"Mere absence of motive for a crime cannot, in the absence of plea and proof of legal insanity, bring the case within Section 84," it said. "Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section 84," the SC added, affirming the earlier court orders convicting Gond for the murder.

(Hindu /31.08.2008)

Use traffic fine as relief, suggests HC

The Delhi High Court, which has initiated steps to evolve a scheme for paying compensation to accident victims on Tuesday sought to know whether the crores of rupees received as fine from traffic rule violators can be disbursed as "solatium".

Significantly, the court, which initially planned to compensate only victims of Blueline bus accidents, has brought under its purview those injured or killed by other vehicles like trucks and DTC buses too.

"Accidents are a serious problem in this city. There is a huge amount collected from challans. The police in Delhi work under the central government. Is there any way we can disburse this amount as compensation to victims", a Bench of Chief Justice A.P. Shah and Justice S. Muralidhar asked Additional Solicitor General P.P. Malhotra representing the centre.

Justice Shah also asked lawyer Mukta Gupta, who appeared for the Delhi Government whether it could set up a separate fund for paying compensation to accident victims if the challan amounts are meant for the central treasury. She said the fine amount collected annually ranges between Rs 70 and 80 crores.

"But suppose the amount is received by the Delhi Government why don't you make an amendment to allow excess amount to be paid to accident victims", the Bench said. The Centre and the State Government has been asked to take instructions by September 20.

Justice Shah made it clear that "the disbursed amount can always be replenished".

"As and when compensation is announced to a victim by the court, the deducted amount must go back to the fund. The arrangement should be like that".

Since November last year the High Court has been charging Rs one lakh from owners of buses involved in fatal accidents and Rs 50,000 from those which caused grievous injuries for the release of the vehicle as a "deterrent".

The total amount collected so far is Rs 80 lakh. It is this amount, lying in various magistrate courts where the owners apply for the release of the buses and is still being deposited, that the High Court initially planned to disburse as "interim" relief.

(HT/16.09. 2008)

....Contd. from page.. 2/-...

The Bench held that "renewal of a medi-claim policy subject to just exceptions should ordinarily be made. But the same does not mean that the renewal is automatic. Keeping in view the terms and conditions of the prospectus and the insurance policy, the parties are not required to go into all the formalities. The very fact that the policy contemplates terms for renewal, subject of course to payment of requisite premium, the same cannot be placed at par with a case of first contract."

Before parting with the case, the Bench observed that keeping in view the role played by the insurance companies, it is essential that the Insurance Regulatory Authority lays down clear guidelines by way of regulations or otherwise.

Jammu & Kashmir State Judicial Academy
Training Programme held in the month of September, 2008

In terms of the approved training calender for the year 2008, one day workshop on "Bails" Law and Practice" was conducted by the State Judicial Academy at Srinagar on 13th of September, 2008 in which 14 Judicial Officers of the rank of Sub-Judges and Munsiffs posted in different districts of Kashmir province participated.

Workshop was conducted in three sessions. The Ist session was addressed by Shri Hasnain Masoodi, Principal District & Sessions Judge, Srinagar. He at the very outset told the participants that bail to an accused is to be granted in the background of the principle that every accused is deemed to be innocent unless otherwise proved. He gave a detailed and scholarly discourse on the subject and discussed the practical difficulties which Magistrates face while dealing with the bail matters especially bail matters in sensitive cases i.e. Cases having far reaching consequences for the society at large.

Proceedings during the Workshop

In his discourse, he told the participants that as per provisions of Section 496 of Cr.P.C., an accused is entitled to bail as a matter of right when he is alleged to have committed bailable offence. In non-bailable offences, bail is generally a concession and this concession is not available for offences which entail death penalty or life imprisonment. However, if the accused happens to be a woman, a person under 16 years of age or a person who is physically infirm, bail may be granted in such cases.

Shri Masoodi further apprized the participants that a person is entitled to be released on bail if the investigating agency fails to complete the investigation within 60 days and do not file chargesheet in the court. In this connection, he referred to Section 167(2)(a) Cr.P.C. While enlightening the participants about the bail, he told them that there is no provision by virtue of which a Magistrate is under legal obligation to inform the prosecution or issue a prior notice about the moving of an application for grant of bail but in practice this is being done invariably and no bail matter is decided without giving prior notice and without giving ample opportunity to the prosecution to resist the same. Shri Masoodi, however, told the participants that when a bail matter regarding special offences such as under Section 153-A RPC is pending, in that eventuality, the Presiding Officer is under legal obligation to issue notice to the prosecution regarding pendency of the bail matter and has to provide ample opportunity to prosecution to oppose the grant of bail to the accused involved in special offences. He further told the participants that in case of bail matters pertaining to special offences, the accused can claim bail as a matter of right, if the investigation is not completed within two weeks.

Second session of the workshop was addressed by Prof. Afzal Qadiri, Faculty Member, Law Department, Kashmir University, Srinagar. He dealt with the topic as an academician and told the participants that it is the right to liberty as enshrined in the Article 21 of the Constitution of India which necessitates the release of accused on bail generally and the denial of bail can be only in such cases where the interest of the society at large demands to do so. He referred to different authoritative pronouncements of the Apex court wherein the Apex court has laid down guidelines for grant or otherwise of the bail matters.

Participants in the Workshop

Resource person for the third session was Mrs. Ghous-ul-Nisa Jeelani, Spl. Judge, Anti-corruption, Kashmir. She while interacting with the participants told them that while dealing with the bail matter, it is not the quantum of punishment alone which matters but the presiding officer of the court

has to see the over all circumstances, such as, the repercussion in the society at large for grant or other wise of bail to the accused. She also told the participants that although bail cannot be claimed as a matter of right in offences entailing death penalty or life imprisonment but in this category also bail can be granted to accused who happens to be a lady, a child or an infirm person. Mrs. Jeelani also told the participants in the workshop that in some offences which impinge upon the security of the State and the interest of weaker section of the society, bail is not ordinarily granted and in such matters, the presiding officer are duty bound to move very cautiously and keep in mind that any liberal attitude in such matter can prove disastrous for the society at large.

On the whole, Workshop concluded at a very successful note. All the participants were satisfied and claimed to have gained a lot while interacting with the resource persons.

CASE COMMENTS

Keya Mukherjee v. Magma Leasing Ltd. & Anr. AIR 2008 SC 1807

The object and purpose of examination of an accused under section 342 Cr.P.C is to enable the accused personally to explain any circumstances appearing in the evidence against him. It is therefore intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion.

In AIR 1969 SC 381 (Bibhuti Bhusan v. State of W.Bengal) Apex Court held that "the pleader can not represent the accused for the purpose of section 342 Cr.P.C. The answers of the accused u/s 342 Cr.P.C is intended to be substitute for the evidence which he can give as a witness under section 342-A Cr.P.C. The privilege and the duty of answering question under section 342 Cr.P.C can not be delegated to a pleader. The pleader may be permitted to represent the accused while the prosecution evidence is being taken. But at the close of the prosecution evidence the accused must be questioned and his pleader can not be examined in his place".

In 1993 AIR SC 2253, a two judges Bench in Usha K. Pillai has found that the examination of an accused personally can be dispensed with only in summons case. Their Lordships further held-authority supra, that "in a warrants case, even in cases where the court has dispensed with the personal attendance of the accused under section 205(1) or Section 317 of the Code, the court can not dispense with the examination of the accused under clause (b) of Section (b) 313 of the Code because such examination is mandatory."

But now the Apex Court has considered the revolutionary changes in the technology of communication and transmission taken place in the present set up and marked improvement in facilities of legal aid.

In AIR 2008 SC 1807, the Apex Court held that, "that a pragmatic and humanistic approach is warranted in regard to such special exigencies. The word "shall" in clause (b) to Section 313(1) of the Code is to be interpreted as obligatory on the court and it should be complied with when it is for the benefit of the accused. But if it works to his great prejudice and disadvantage the court should, in appropriate cases, e.g if the accused satisfies the court that he is unable to reach the venue of the court, except by bearing huge expenditure or that he is unable to travel the long journey due to physical incapacity or some such other hardship, relieve him of such hardship and at the same time adopt a measure to comply with the requirements in Section 313 of the Code in a substantial manner". (Section 313 Cr.P.C of Central Act corresponds with Section 342 Cr.P.C).

*(*Ghousia-ul-Nisa Jeelani*)*
Spl. Judge (Anti-corruption),
Kashmir

Madan Mohan Abbot v. State of Punjab AIR 2008 SC 1969

Supreme Court in this judgment has elaborated the interpretation of S.320 of Central CrPC which corresponds with S. 345 of J&K CrPC & has laid down the law that where the dispute is purely a personal one between two contesting parties & that it arises out of extensive business dealings between them & that there is absolutely no public policy involved in the nature of allegations made against the accused, no useful purpose will be served in continuing with the proceedings in the light of the compromise and the possibility of a conviction has to be ruled out.The court in such situation should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford & the time so saved can be utilized in deciding more effective & meaningful litigation.

The law laid down above is a step further in criminal cases to accept compromise between the parties even in non-compoundable offences provided the dispute between the parties is personal one, arises out of extensive business dealing between them and no public policy is involved in the nature of the

allegations made against the accused. This principle strengthen the truth, the Finest hour of the Justice is the hour of compromise when parties after burying the hatchet re-unite by a reasonable and just compromise .

(Jaffer Hussain Beg)
Deputy Registrar (Judl.)
High Court of J&K

Tara Chand v. State of J&K
Cr. Rev. No. 68 of 2007
D.O.D : 14-03-2008

Deferring statement of eye-witness - awaiting F.S.L. Report

A short question but which frequently arises during the trial of criminal cases. What is the procedure to be adopted when the defence seeks deferment of the examination of eye-witnesses on the ground that the report of Forensic Science Laboratory (F.S.L.) is awaited and in the absence of the F.S.L. report, defence cannot effectively cross-examine the eye-witnesses.

This question arose for consideration in the Hon'ble High Court of Jammu and Kashmir in Criminal Revision No. 68/2007 Titled 'Tara Chand V/s State of Jammu and Kashmir' decided by the Hon'ble High Court at Jammu vide judgment dated 14.03.2008.

In the trial court, the allegation against the accused was that he committed the murder of his wife by pouring kerosene oil on her and setting her ablaze . There were three eye-witnesses to the occurrence, out of them , two did not support the prosecution's case.

When the statement of the third eye-witness was to be recorded, defence made a request for deferring the statement of the said witness on the ground that the FSL report is awaited and in the absence of the F.S.L. report , effective cross-examination of the said witness cannot be conducted. The request of the defence was declined by the trial court.

In the criminal revision against the order of refusal by the trial court, the Hon'ble High Court held that the trial court is not to examine the eye-witness till the F.S.L. report is received and copy thereof given to the defence. The Hon'ble High Court , however, made it clear that the trial court could continue with the trial of the case for the purposes of recording the statements of other witnesses.

Thus, in view of the decision of the Hon'ble High Court , the proceedure to be adopted by the trial court would be to defer the statement of the eye-witnesses till receipt of the F.S.L. report but at the same time, while awaiting the receipt of the F.S.L report, there can be no impediment in recording the statements of witnesses other then the eye-witnesses.

(R. S. Jain)
Principal District and Sessions Judge,
Ramban

Bholu Ram v. State of Punjab & Anr.
S.L.P (Crl.) No. 39 of 2001
D.O.D : 29.08.2008

In Cr. Appeal No. 1366 of 2008, arising out of Spl. Leave Petition (Cr.) No. 39 of 2001 "Bholu Ram v/s State of Punjab & Anr." decided on 29.08.2008, the Hon'ble Supreme Court of India had an occasion to deliberate upon the following important questions of law:

(a) Can an accused in a case file an application under section 319 Cr.P.C to array a person as co-accused ? (b) Can the application be filed at belated stage? (c) Can a person who was dropped by the I.O in terms of section 169 Cr.P.C be also joined as a co-accused? (d) Can the process issued by the Magistrate be recalled? So far as the first three questions are concerned the Hon'ble Supreme Court of India took note of the following decisions rendered earlier on the points:

Joginder Singh & Anr. v. State of Punjab & Anr., (1979)1SCC 345, Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors., (1983) 1 SCC 1, Lok Ram v. Nihal Singh & Anr.,(2006) 10 SCC 192 and Shashikant Singh v. Tarkeshwar Singh & Anr., (2002) 5 SCC 738.

The following observations were made by the Hon'ble Court:

"21. Sometimes a Magistrate while hearing a case against one or more accused finds from the evidence that some person other than the accused before him is also involved in that very offence. It is only proper that a Magistrate should have power to summon by joining such person as an accused in the case. The primary object underlying Section 319 is that the whole case against all the accused should be tried and disposed of not only expeditiously but also simultaneously. Justice and convenience both require that cognizance against the newly added accused should be taken in the same case and in the same manner as against the original accused. The power must be regarded and conceded as incidental and

ancillary to the main power to take cognizance as part of normal process in the administration of criminal justice".

"22. It is also settled law that power under Section 319 can be exercised either on an application made to the Court or by the Court *suo motu*. It is in the discretion of the Court to take an action under the said section and the Court is expected to exercise the discretion judicially and judiciously having regard to the facts and circumstances of each case".

"25. We are unable to uphold the contentions. We have quoted Section 319 of the Code. It nowhere states that such an application can be filed by a person other than the accused. It also does not prescribe any time limit within which such application should be filed in the Court".

"40. In our opinion, therefore, the learned Magistrate had power and jurisdiction to entertain applications filed by the appellant-accused under Section 319 of the Code and to issue summons to respondent No. 2 by adding him as accused".

Therefore first three questions were answered in affirmative. Regarding the fourth point, the Hon'ble Supreme Court of India took note of the following cases on the subject:

K.M. Mathew v. State of Kerala & Anr., (1992) 1 SCC 217, Nilamani Routray v. Bennett Coleman & Co. Ltd., (1998) 8 SCC 594, Adalat Prasad v. Rooplal Jindal & Ors., (2004) 7 SCC 338, Subramaniam Sethuraman v. State of Maharashtra, (2004) 13SCC 321, N.K. Sharma v. Abhimanya, (2005) 13 SCC 213 and Everest Advertisement v. State Government of NCT of Delhi, (2007) 5 SCC.

It was observed as under:

"51. From the above discussion, it is clear and well settled that once an order is passed by a competent Court issuing summons or process, it cannot be recalled."

Therefore fourth question was answered in negative.

(Rajeev Gupta)
Chief Judicial Magistrate,
Leh

Anwar-ul-Haq v. Union of India & Ors.
AIR 2008 J&K 35

Passport Act - Section 5 and 6 : Whether the issuance or renewal of passport can be withheld indefinitely on account of CID or police verification. Hon'ble Shri Justice Y.P. Nargotra of J&K High Court has held in this case that the same can not be withheld and some adverse police verification report does not itself dis-entitle a citizen from the legal right to have a passport.

Hon'ble Court held that from the bare reading of the Section 5 of Passport Act, it would transpire that on receipt of the application the Passport Authority is empowered to make such inquiry which he may consider necessary before issuance of a passport. It is because of such power of making inquiry the Passport Officer is entitled to seek police verification report in regard to the antecedents of the person who has applied for the issuance of a passport. The purpose of such inquiry by the passport Authority is to enable himself to make up his mind as to whether the passport or travel documents should be issued or refused in the circumstances of each particular case. In any case the decision over the issue of a Passport or travel documents has to be taken by the passport authority alone and for taking such decision he may keep the intelligence report in view. Merely because the intelligence report received is adverse the Passport Authority cannot defer his own decision, on the issue of passport nor he can refuse the same without applying his mind to the facts stated in the report. Adverse Police Verification report per se does not dis-entitle a citizen from his legal right to have a passport. It is for the Passport Authority to take into consideration the facts/antecedents of the person who has applied for issuance of a passport, alleged by the intelligence agency in its report, for deciding whether passport should be issued or refused. He is not bound by the recommendations of the intelligence agency.

In a case where Police verification has been sought but the report has not been received, for how long the passport authority should wait for taking his decision. The answer to this is in clause 7 of Manual 2001 issued by the Government of India, Ministry of External affairs in which guidelines on the subject have been given.

Thus where complete police verification report has not been received within 30 days the Passport Authority is to take a decision by following instructions of Chief Passport Officer.

Therefore, in no case the Passport Officer can withhold consideration of the question of issuance of passport or travel documents indefinitely and same shall be true about the cases of renewal or re-issue of passports or travel documents.

(Gh. Mohi-ud-Din Dar)
Director
State Judicial Academy

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