SJA NEWSLETTER

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Topic of the Month

"For a Judge to make a decision without fear or fervour, his personality must be assisted by the asset of an independent nature. "Independence" does not refer merely to an independent attitude, but includes one's behaviour towards others, including family. In C. Ravichandran Iyer v. Justice A.M. Bhattacharjee, 1995 SCC(Cr.) 953, the concept of judicial independence was described in the following manner :

"23. To keep the stream of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behaviour..... They should be men of fighting faith with tough fiber not susceptible to any pressure, economic, political or of any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office-holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary.

An independent character is the bedrock of impartiality and the former forms a means to the latter. No Judge worthy of the seat he sits on would allow himself to be darkened by the cloud of prejudice that may loom above him, trying to influence his decision..... However, this does not imply that a Judge should be so aloof from social ripples that he becomes distant from the realities of society. Rather, independence implies caution, it implies restraint.

Independence from oneself is another facet of this asset, and perhaps the most challenging. A Judge often faces great pressure not only from society, but also from within himself. In such circumstances, it is imperative for a Judge to stand by his conscience and do what it says is right. To be concerned with how a decision would appear to the eyes of others would be quite damaging to the concerns of justice.....

A strong sense of independence goes a long way in cultivating the habit of "closed eyes and open ears" that is, blind towards the parties, but open ears to law. For a Judge, there should be no other power greater than that of the law, and it is this power which he must exercise at all times, sometimes standing alone in the midst of a great tempest of political or social fervour trying to make the Judge succumb this way or the other. Impartiality, I reiterate, like independence, does not imply that a Judge shuts himself from the winds of his own personality and assumes the demeanour of a machine. While coming to a decision, the Judge's individuality, character, interests and his overall persona all come to play and this is part of human nature. .....

(Taken from Shri Mahaveer Chand Bhandari Memorial Lecture, 2007 by Hon'ble Shri Justice K.G. Balakrishan, CJI.)

NEWS AND VIEWS

Hon'ble Justice Dr. Aftab Hussain Saikia takes over as the new Chief Justice of the High Court of Jammu & Kashmir

Hon'ble Justice Dr. Aftab Hussain Saikia took over as Chief Justice of the High Court of Jammu & Kashmir. Oath Ceremony, in this regard, was held at Raj Bhawan, Jammu on 13th day of April, 2010. Oath of office was administered by His Excellency Shri N.N. Vohra, Governor of the State of Jammu & Kashmir.

His Excellency the Governor administering Oath to Hon'ble Shri Justice Aftab Hussain Saikia as Chief Justice

The oath taking ceremony was attended among others by Hon'ble the Chief Minister and other cabinet Ministers, former & sitting Hon'ble Judges of the High Court, members of Bar, Judicial Officers of District Head Quarter, Jammu and senior Civil and Police Officers of the State.

His Excellency the Governor while greeting Hon'ble the Chief Justice

Hon'ble Shri Justice Aftab Hussain Saikia born on April 07, 1949 at village Dampur in the District of Kamrup. Obtained B.Sc with distinction from Cotton College, Guwahati in 1969. Obtained LL.B and LL.M from Gauhati University in the year 1974 and 1982 respectively. Enrolled as an Advocate with Bar Council of Assam, Nagaland, Meghalaya, Manipur, tripura, Mizoram and Arunachal Pradesh on 9.08.1974 and since then practised in Civil, Criminal, Constitutional, Service and allied matters for 26 years in the Gauhati High Court at Guwahati and other outlying Benches in the North East. Remained Government Advocate and Addl. Public Prosecutor, State of Assam in 1983-86 and also Addl. Central Government Standing Counsel in 1991-1994 in the Gauhati High Court. Was appointed as Permanent Judge of the Gauhati High Court on 15.11.2000. Elevated as Chief Justice, High Court of Sikkim on 7-03-2009. Awarded Ph.D in Law by the Gauhati University in Devember, 2009. Appointed as the Chief Justice of High Court of Jammu & Kashmir on April 13, 2010.

Over 29 lakh cases disposed of by Fast Track courts

Fast track courts have disposed off 29.08 lakh cases since their inception in 2000, the Rajya Sabha was informed Tuesday.

"According to information received from the State Governments/Registries of the High Courts, out of 35.85 lakh cases transferred to fast track courts since inception, 29.08 lakh cases have been disposed off, leaving 6.77 lakh cases pending for disposal", Law Minister M. Veerappa Moily said in a written reply.

He said there is a proposal for the continued central funding for fast track courts for one more year beyond 31st March, 2010.

(Indianlaw Portal/28.04.2010)

Poor facilities in lower courts slammed

Supreme Court Judge S.H. Kapadia, tipped to be the Chief Justice of India in May, lamented the pathetic infrastructure in the lower courts in various states.

Justice Kapadia made the remarks at the foundation stone-laying ceremony of a 12-acre Supreme Court annexe complex at the Pragati Maidan. The complex will include lawyers chambers, litigants' lounge, auditorium and library.

"We are lucky we (Supreme Court) are in Delhi and the funds are available to us from the centre", said Justice Kapadia, while lamenting the poor and pitiable infrastructure of the lower judiciary.

"The condition in lower courts is very bad. They don't even have fans in courts and water coolers for litigants and lawyers", he said.

State governments and the central government need to ensure proper funding for them, he said.

The foundation stone for the apex court annexe was laid by Chief Justice K.G. Balakrishnan.

The sprawling complex is to come up at a cost of Rs.550 crore on a plot which once housed the amusement park Appu Ghar.

(Indianlaw Portal/25.04.2010)

Failure to check ragging is negligence: Court

The Delhi High Court said that an educational institution's failure to check ragging amounts to negligence.

While ordering maintenance of decorum in such institutions, Justice G.S. Sistani said, "It has been held that failure to prevent ragging is to be construed as an act of negligence in maintaining discipline in educational institutions on the part of the management."

The court made the remark while dismissing a plea by two Kirorimal College students who were barred from appearing in the B.Sc final examination for their alleged involvement in a ragging incident.

"Failure on the part of the college authorities has been increasing in the incidents of ragging. Senior students have completely lost track of their role to welcome the new students and to help them familiarize with the college", added Justice Sistani.

He further said that ragging takes its toll on the students who either commit suicide or leave the educational institutes out of fear.

'There have been incidents where some students have committed suicide and others have left the educational institutions out of fear due to indiscipline of some of the senior students,' he added.

The court also accepted the arguments of Delhi University counsel who claimed that the incidents of ragging, particularly in hostel, often take an ugly turn in the life of many students who come to university from different states and backgrounds.

"Many students who face ragging at the hands of their seniors do not report the incidents to college authorities either due to fear or embarrassment and sometimes the college authorities fail to take the desired action", said Justice Sistani.

(Indianlaw Portal/20.04.2010)

ACADEMY NEWS

Shri Gh. Mohi-ud-din Dar, Director J&K State Judicial Academy attained superannuation on March 31, 2010. He served the Academy as Director for more than two and half years. Sh. Dar enjoyed lot of respect from all the Judicial Officers of J&K Judiciary as he has great qualities of head and heart. During his stint as Director, the Academy initiated many new projects for the benefit of State Judiciary.

Judicial Officer while presenting memento to Shri Gh. Mohi-ud-Din Dar

A group photograph with Judicial Officers

A warm send off was given to Shri Dar by the Judicial Officers at District Head Quarter, Jammu and staff of the Academy. On the occasion, the officers of District Judiciary presented a memento to Shri Dar and wished for his good health and long life.

LEGAL JOTTINGS

Legal briefs from Supreme Court

(Case No: Criminal Appeal No. 879 of 2007)

Daya Kishan versus State of Haryana

Date of Decision : 22-04-2010.

Coram: Hon'ble Mr. Justice J.M. Panchal and Hon'ble Mr. Justice Deepak Verma.

Subject Index: Indian Penal Code, 1860 Sections 302, 307 and 323 read with Section 149 - conviction and sentence under - the PWs and the injured informant stated that the deceased had died because of shot fired at him by the accused Pohla from his gun - the testimony of the doctor and the post-mortem report proved beyond pale of doubt that the deceased died a homicidal death - the appellant argued that the act of accused Pohla of firing a shot at the deceased was his individual act and therefore, he could not have been fastened with the liability under Section 302 read with Section 149 IPC for the death of the deceased - the record does not indicate that any altercation had taken place between Krishan, who is son of the appellant, and deceased when accused Krishan had gone to the shop of injured Sanjay for purchasing certain articles - no evidence adduced by the prosecution to establish that common object of the unlawful assembly was to do away with the deceased or cause any injury to him and also nothing produced on record to establish that the appellant knew that Pohla would cause fatal injuries to the deceased - Held that the prosecution failed to led the evidence to establish nexus between the common object and the offence committed - conviction of the appellant under Section 302 read with Section 149, IPC set aside, while conviction under other sections confirmed - appeal partly allowed.

(Case No: Civil Appeal No. 4623 of 2005)

S.R. Srinavasa & others versus S. Padmavathamma

Date of Decision: 22-04-2010.

Coram: Hon'ble Mr. Justice V.S. Sirpurkar and Hon'ble Mr. Justice Surinder Singh Nijjar.

Subject Index: Hindu Succession Act, 1956 - Section 15(2) - suit filed under, for declaration of the title and possession of the suit property - Defendant No.1 being the sole beneficiary under the Will claims that the plaintiffs cannot claim to 'inherit' the property on the basis of intestate succession after the death of the absolute owner, the plaintiffs (sisters) demanded the possession of the house which the first defendant refused to hand over the trial Court dismissed the suit filed by the plaintiffs. However, the first appellate Court declared that the legal representatives of the plaintiffs are the owners of the suit property and they are entitled for possession of the suit schedule property - High Court while restoring the orders of the trial Court held that since the children of the first wife would be entitled to succeed to the estate, the appellants (plaintiffs) have no right to seek the relief of title by succession - appeal - whether the Will executed by Puttathayamma has been proved to be duly executed and the same was genuine - neither the attesting witnesses nor the Sub-Registrar were examined - the genuineness or legality of the Will had not been admitted either in the plaint or in the evidence of PW-1 - the First Appellate Court on analysis of the entire evidence had clearly recorded cogent reasons to conclude that the execution of the Will is surrounded by suspicious circumstances - impugned orders of the High Court set-aside and of the first appellate Court restored - appeal allowed.

(Case No: SLP (Civil) No(s). 8525 of 2010)

Vishnu & others versus Jaya

Date of Decision: 20-04-2010.

Coram: Hon'ble Mr. Justice Aftab Alam and Hon'ble Mr. Justice T.S. Thakur.

Subject Index: Guardian and Wards Act, 1890 - sections 7 and 9 - application under for custody of the children - the petitioner and the respondent were separated by a decree of divorce - the District Judge rejected the respondent's petition and left the two children in the custody of their father. However, the High Court reversed the order of the District Judge and directed that the custody of the two children be given to the respondent wife - appeal - both the children were living with their father continuously for the past seven years and they clearly stated that they want to live with their father and they do not want to go with their mother - Court viewed that if the children are forcibly taken away from their father and handed over to the mother, it will only traumatize them, thus allowed the respondent with her right to access and visitation rights to her two children as per the schedule.

(Case No: Writ Petition(C) No(s).14 of 2008)

General Insurance Council & others versus State of Andhra Pradesh & others

Date of Decision: 19-04-2010.

Coram: Hon'ble Mr. Justice P. Sathasivam and Hon'ble Mr. Justice Deepak Verma.

Subject Index: Constitution of India, 1950 - Article 32 - petition under - for issuing further directions so that national waste with regard to the seized vehicles involved in commission of various offences may not become junk and their road worthiness be maintained -Cr.PC. 1973 Sections 451 & 457, Motor Vehicle Act, 1988 with Central Motor Vehicle Rules, 1989 section 158(6) & Rule 159 - Court directed that all the State Governments / Union Territories / Director Generals of Police shall

ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division / Commissioner of Police of the concerned cities / Superintendent of Police of the concerned district - petition disposed of.

(Case No: Civil Appeal No. 8699 of 2002)

M/s Dilawari Exporters versus M/s Alitalia Cargo & others

Date of Decision: 16-04-2010.

Coram: Hon'ble Mr. Justice D.K. Jain and Hon'ble Mr. Justice T.S. Thakur.

Subject Index: Consumer Protection Act, 1986 - Section 2(1)(g) - deficiency in service - appellant obtained an export order from New York, USA for supply of ready made garments and handicrafts the appellant handed over the consignment to respondent No.3 for onward dispatch to New York. Since the consignment did not reach New York by the stipulated date, the importer cancelled the order and claimed damages from the appellant - appellant filed complaint alleging deficiency in service on the part of the respondents, in particular by respondent No.1 - the National Commission dismissed the complaint on the ground that there was no privity of contract between the appellant and respondent No.1 - appeal - can it be said that respondent No.3 had an express or implied authority to act on behalf of respondent No.1 as their agent Held -Yes - as per the document "Air Waybill", Court observed that respondent No.3 was, acting in dual capacity - one as a Shipper on behalf of the appellant and the other as an agent of respondent No.1. Held that the respondent No.1 was bound by the acts of their agent, viz. respondent No.3, with all its results - impugned order set aside and matter remitted back to the Commission for fresh adjudication of the claim.

Case No: Criminal Appeal No. 913 of 2010 and connected matters.

S. Khushboo versus Kanniammal & Anr.

Date of Decision : 28-04-2010.

Judge(s): Hon'ble Mr. Justice K.G. Balakrishnan, Chief Justice, Hon'ble Mr. Justice Deepak Verma and Hon'ble Dr. Justice B.S. Chauhan.

Subject Index: Indian Penal Code, 1860 Sections 499, 500 and 505 - defamation and statement conducing to public mischief - some remarks made by the appellant in an interview to a leading news magazine and she expressed her opinion about the increasing incidence of pre-marital sex, especially in the context of live-in relationships and called for the societal acceptance of the same - several criminal complaints filed against the appellant - the appellant approached the High Court to seek quashment - rejected by the High Court - appeal - whether the appellant's remarks could reasonably amount to offence of defamation as defined under Section 499 IPC. Held - No - the statement of the appellant has been made in the context of a survey which has touched on numerous aspects relating to the sexual habits of people in big cities - Court observed that the references to sex cannot be considered obscene in the legal sense without examining the context of the reference. Further held that there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual. Complaints filed against the appellant do not support or even draw a prima facie case for any of the statutory offences as alleged - criminal proceedings quashed.

Case No: Cr. Appeal No. 479 of 2009

Santhosh Moolya & Anr. versus State of Karnataka

Date of Decision : 26-04-2010.

Judge(s): Hon'ble Mr. Justice P. Sathasivam and Hon'ble Mr. Justice R.M. Lodha.

Subject Index: Indian Penal Code, 1860 Sections 376 and 506 read with Section 34 - commission of rape, criminal intimidation with common intention - conviction and sentence under - the victims were sisters and both of them explained how they suffered at the hands of the accused. Prosecutrix explained that they know both the accused since they were also doing quarry work under their employer - delay of 42 days in lodging the complaint to the police were properly explained by the victims and the other witnesses. The plea that no marks of injuries were found either on the person of the accused or the person of the prosecutrix does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. Court found the oral testimony of the victims PWs 1 and 2 to be cogent, reliable, convincing and trustworthy - Held no interference in the conviction orders of the trial Court as affirmed by the High Court.

Legal briefs from High Court of J&K

1. Motor Vehicles Act, 1988 - Section 149 - Even when it is proved that Driver was not holding a valid driving licence, insurer cannot avoid its liability

towards the insured, unless it is shown and established that not having such valid licence was so fundamental that the same has been found to have contributed to the cause of the accident. [Tashi Rigzin v. Stanzin Jigmed & Ors. 2009 JKJ(HC) (Supp.) 394]

2. Right of Prior Purchase Act - Sections 14 (a) / 14 (b)- Sections apply only to the sale of an undivided share in the joint property. Where a person himself has sold part of the property, he cannot claim himself to be a co-sharer in the property comprised in a Khewat. [Shahzada Bashir Qari & Ors.v. Lala Sheikh & Ors, 2009 JKJ(HC) (Supp.) 481]

3. Criminal Procedure Code - Bail - The considerations which normally weigh with the court in the matter of granting bail in non-bailable offences basically related to the nature and seriousness of the offence; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of the witnesses being tempered with and the larger interest of the public or the state and some other similar factors which may be relevant in the facts and circumstances of the case. [Nazir Ahmed Wani & Ors. v. State & Ors., 2010 JKJ(HC) (1) 14]

4. Code of Civil Procedure - Order 38 Rule 5 - Order of attachment before judgment would not apply to such property which already stands disposed of before issuance of order of attachment. [Sutlej Industries Ltd. v. Shirdhiya Synthetics Pvt. Ltd., 2010 JKJ(HC) (1) 21]

5. Workmen Compensation Act - Validity of-driving licence may not be a requirement under the Act but all the same, it may be a requirement under the agreement the Insurance Company and the employer. In that event compensation can be recovered from the employer and not from the Insurer. [Zoona & Ors. v. Gh. Hassan Khandey & Ors., 2010 JKJ(HC) (1) 363].

6. Workmen Compensation Act, 1923 - Section 2(1) (n) - A Porter who dies while doing fencing repairs in Line of Control falls within the definition of "Workman". [Union of India & Ors. v. State & Anr. 2010 JKJ(HC) (1) 424].

7. Sentencing - While determining the requisite Sentence for the act committed by Accused, the cry of the Society and the victim, for justice for the wrong done to the victim, is necessarily required to be kept in view. [Mir Hussain v. State of J&K & Ors., 2010 JKJ(HC) (1) 579].

8. Code of Criminal Procedure - Section 369 - Section 369 precludes the Court from altering or reviewing the judgment or order passed when signed by it, except to correct the clerical errors. [Sheikh Mohd. Amin v. Rifat Farooq Reshi, 2010 JKJ(HC) (1) 606].

9. Forest Act, 1987 - Section 26 - when resorted to, results in consequences, which are penal in nature. This provision is thus to be construed strictly. [Reyaz Ahmed Rah v. Divisional Forest Officer & Ors. 2010 JKJ(HC) (1) 610]

10. Environmental (Protection) Act, 1986 - Sections 3 & 5 - Industrialists cannot escape their liability to set-up industrial units in accordance with requirement and other requisite conditions which are necessary to be complied with before setting up such an industrial unit so that the hazardous substances are not emitted from the units beyond the prescribed standards. [Mangu Ram & Ors. v. State & Ors. 2010 JKJ(HC) (1) 647].

CASE COMMENTS

Manisha Tyagi v. Deepak Kumar
AIR 2010 SC 1042

In the cases of dissolution of marriage set up on the ground of cruelty on the part of spouse, the cruelty need not bean act of physical violence, it can be mental ill-treatment. It is difficult to get the evidence of mental cruelty since hardly there can be any witness to that. Usually the circumstances relating to the conduct of such spouse gives clue about the mental cruelty. However the conduct in question should not be as normal wear and tear of life, it should be grossly beyond the accepted norms of marital behavior.

The Hon'ble Supreme Court, in the above mentioned case, has summed up the principle of law relating to the standard of proof required to prove the cruelty. The observations of the Hon'ble Court are noted as under:

"24. It would be sufficient to show that the conduct of one of the spouse is so abnormal and below the accepted norm that the other spouse could not reasonably be expected to put with it. The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that it would be harmful or injurious to continue the cohabitation with the other spouse. Therefore to establish cruelty it is not necessary that physical violence should be used. However continued ill-treatment, cessation of marital inter-course, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty."

(Sanjeev Kumar Bhagat)
Additional District Judge
(Matrimonial Cases) Jammu

Vikram Singh & Ors. V. State of Punjab
AIR 2010 SC 1007

Appreciation of evidence in the Criminal Cases involving the presence of eye witnesses depends on the testimony and the credibility of such witnesses, whereas in the cases where there are no eye witnesses, whole lot depends on the chain of circumstantial evidence leading, in unambiguous terms, to the guilt of the accused. However, in both kind of cases prosecution has to prove the guilt of accused beyond reasonable doubts.

In the case under discussion, the Hon'ble Supreme Court has reiterated the principle of law that the chain of circumstances against accused must lead to the guilt of accused before the court, and nothing else. It is profitable to quote the observations of the Hon'ble Court.

"20. ....while it is undoubtedly for the prosecution to prove its case beyond doubt but the standard to be applied for evaluating the evidence in a case of circumstantial evidence vis-a-vis an eye witness account would vary and a slightly different yardstick for assessment has to be applied. It is for this reason that the courts have repeatedly emphasized that the chain of circumstances against an accused in a case of circumstantial evidence must be directed only towards his guilt and admit of no other hypothesis, whereas in the case of the evidence of an eye witness a chain of circumstances is not required and one good eye witness is sufficient to record a conviction."

(Ajay Kumar Gupta)
Sub-Judge (Small Causes)
Srinagar

Tameeshwar Viashnav v. Ramvishal Gupta
AIR 2010 SC 1209

In the above mentioned judgment rendered by the Hon'ble Supreme Court, it has been observed that once a notice is received by the drawer of cheque, the holder of cheque cannot maintain complaint for dishonor of cheque based on the subsequent notice. Cause of action for filing complaint would arise only on the basis of receipt of first notice. The Hon'ble Court has also clarified the legal position emanating from earlier judgments on the subject. The observations relevant to the subject are as under :

"15. On careful scrutiny of the decision in S.L. Construction's case (Supra), it would appear that the facts on the basis of which the said decision was rendered, were different from a case of mere presentation and dishonor of the cheque after issuance of notice under the proviso to section 138 of the Act. While the decision in Sadanandan Bhadran's case (Supra), clearly spells out that a cheque may be presented several times within the period of its validity, the cause of action for a complaint under section 138 of the Act arises but once, with the issuance of notice after dishonor of the cheque and the receipt thereof by the drawer. The same view has been reiterated in Prem Chand Vijay Kumar's case (Supra). The only distinguishing feature of the decision in S.L. Construction's case (Supra) is that of three notices issued, the first two never reached the addressee. It is only after the third notice was received that the cause of action arose for filing the complaint. In effect, the cause of action for filing the complaint in the said case did not arise with the issuance of the first two notices since the same were never received by the addressee."

(Ritesh K. Dubey)
Sub-Judge Leave Reserve, Jammu

Darshan Singh v. State of Punjab
AIR 2010 SC 1209

The Hon'ble Supreme Court, in the aforementioned judgment, has considered the effect of various judgments rendered earlier on the right of private defence and has summarized the principles of law on the subject. The observations of Hon'ble Court are given below:

"58. The following principles emerge on scrutiny of the following judgments:

(i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self creation.

(iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.

(v) It is unrealistic to expect a person under

assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of right of private defence beyond reasonable doubt.

(ix) The Indian Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened."

(Sunit Gupta)
Excise Magistrate, Jammu

P. Vijayan v. State of Kerala & Ors.
2010 Cr.LJ 1427 (SC)

Framing of charge is an important function of the trial court, which forms the foundation for the trial. The scheme of things in the criminal procedure makes it a significant function rather than being a mere formality. Court is required to consider the material produced by the prosecution, to see if there is sufficient ground to proceed against accused. In some cases, where there are two views possible, the court's job becomes more delicate.

The Hon'ble Supreme Court of India, in the above mentioned judgment, has considered the subject of framing of charge and has explained the principle of law in the following manner :

"10. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts. At the stage of Section 227, the judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of evidence recorded by the police or the documents produced before the court which *ex facie* disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

(Jatinder Singh Jamwal)
City Judge, Srinagar

Shiv Kumar v. Hukum Chand & Anr.
(1999)7 SCC 467

From the scheme of the code of criminal procedue, the legislative intention is manifestly clear that prosecution must be fair and dispassionate presentation of facts of a criminal case for the determination of the court.

Hon'ble Supreme Court has in this case ruled that it is for the protection of accused in Sessions trials that provision is made to have the case against him prosecuted only by a public prosecutor and not by a private counsel engaged by any aggrieved party. Fairness to the accused who faces prosecution was held to be *raison d'etre* of the legislative insistence on that score. Hon'ble Supreme Court further observed that since it is the duty of a public prosecutor not to show a thirst to reach the case in the conviction of the accused somehow or the other, irrespective of the true facts involved in the case, therefore the expected attitude of the public prosecutor must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial, the public prosecutor has the responsibility to winch it to the fore and not to settle it.

Hon'ble Supreme Court has further observed *inter alia* that it may "degenerate in to a legalized mans for wreaking private vengeance" and caustioned that if role of public prosecutor is allowed to shrink, the trial would become a combat between the party and accused.....The role of counsel. (if at all engaged by private party), during prosecution, is to work under the directions of public prosecutor and the only other liberty which a private counsel can possibly exercise is to submit written arguments after the closure of evidence in the trial, that too with the permission of the court.

(Amarjeet Singh Langeh)
Munsiff, Ramban

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