SJA NEWSLETTER

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Topic of the Month

"Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the Court as well as to other co-ordinate branches of the State, the executive and the legislature. There must be mutual respect, when these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.

The Judge's Bench is a seat of power. Not only do judges have power to make binding decision, their decisions legitimate the use of power by other officials. The judges have the absolute and unchallengeable control of the Court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of Counsel, parties or witnesses. We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct."

[*Justice K. Jagannatha Shetty in 'A.M. Mathur versus Pramod Kumar Gupta', (1990) 2 SCC 533 at 539*].

ACADEMY NEWS

Judicial Academy is initiating a new feature on regular basis, starting with this Issue. Feature titled "Legal Mind - Teaser" will include a fact / law situations, somewhat tricky in nature, and judicial officers will be asked to suggest solutions thereof. Such responses, worth publishing, shall be published in subsequent Issues with or without the names of officers as per their choice. This will not only add to the knowledge of officers but also urge them to make a little research on Reasoning for such issues.

First feature is being published elsewhere in this Issue. Judicial Officers may also send such fact / law situation which they might have come across and they find it interesting and tricky.

NEWS AND VIEWS

Assess value of homemaker services properly : SC

Holding that the valuation of the income of homemaker as one-third of the income of the earning spouse is not rational while computing compensation in cases of motor accident claims, the Supreme Court has asked Parliament to revisit the provisions to value the services of homemakers properly.

A Bench of Justice G.S. Singhvi and Justice A.K. Ganguli, in separate but concurring judgments, expressed anguish that despite a clear constitutional mandate from Article 15 (1) to eschew discrimination on grounds of sex there was a distinct gender bias against women, in its implementation, and various social welfare legislation and judicial pronouncements.

The time has come for Parliament to have a rethink on properly assessing the value of homemakers' and householders' work and suitably amending the provisions of the Motor Vehicles Act and other related laws for giving compensation when the victim is women and homemakers. Amendments to matrimonial laws may also be made in order to give effect to the mandate of Article 15 (1) of the Constitution," the Bench said.

In the instant case, appellant Arun Kumar's wife Renu Agrawal died, aged 39, in a road accident at Pachkora in Uttar Pradesh. The motor accident claims tribunal awarded Rs. 2.50 lakh in compensation, and the Allahabad High Court confirmed this order by dismissing the appeal. The present appeal is directed against this judgment.

Justice Singhvi said: "It is highly unfair, unjust and inappropriate to compute the compensation payable to the dependants of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee, and no evidence or data can possibly be produced for estimating the value of such services."

The court allowed the appeal and enhanced the compensation to Rs. 6 lakh with a 6 per cent interest from the date of filing of the petition till the date of payment, which should be made in three months. The court also awarded the appellant Rs. 50,000 in costs.

(The Hindu/ 24-07- 2010)

High Court to fast-track cases filed by senior citizens

Chief Justice of the Madras High Court M.Y. Eqbal has said all senior citizens whose cases are pending in the High Court in respect of all categories may directly approach the Registrar (Judicial) and furnish the details regarding pendency of the cases. This would enable the court to take up the cases on a priority basis.

In a press note, Registrar-General S. Vimala said senior citizens may also drop the details of the pending cases in the box meant for them kept in front of the office of the Registrar-General.

(The Hindu/ 30-07-2010)

Allow dowry cases to be settled outside court: SC to Govt.

The Supreme Court has sought an amendment in the Indian Penal Code to make dowry harassment a "compoundable offence" — which would allow willing families to settle their problems outside court. The Supreme Court made the request, to be placed before Union Law Minister Veerappa Moily, in a unique manner, through a judicial order.

The amendment would relieve the courts from the "burden" of hearing dowry cases in which warring families are happy to settle, but the penal code does not allow them to do so, the Supreme Court said in a July 30 judicial order released on August 4.

If the court's "opinion" actually transforms into an amendment in the IPC, dowry harassment would become an offence which can be settled by affected parties, without permission of a court of law, possibly by means of paying some money to the victim and her family.

Dowry harassment (Section 498A of the IPC) is currently a non-bailable, non-compoundable (complaint once registered cannot be withdrawn) offence under the IPC, which attracts imprisonment

up to three years. As per court records, conviction rate in dowry harassment cases is hardly two per cent.

An early settlement between the accused and the victim in a dowry case could even lead to a reconcilement, a Bench of Justices Markandeya Katju and T.S. Thakur observed. Dowry harassment is one of several offences featured in the IPC, the court feels, that needs a re-think. "Offences punishable under Section 498-A (dowry harassment) and Section 326 (causing grievous hurt) of the IPC are currently non-compoundable. Some such offences can be made compoundable by introducing a suitable amendment in the statute (IPC)."

(Indian Express/05-08-2010)

Be wary of ordering DNA to settle paternity : SC

The Supreme Court has asked courts to be extremely careful in ordering a DNA examination to determine paternity, as sometimes such scientific tests may bastardise an innocent child even though its mother and her spouse were living together at the time of conception.

The court, while ascertaining the paternity of the child when there is a dispute, must be reluctant to use such scientific tools which would invade privacy. Such invasion might not only be prejudicial to the rights of the parties but might also have a devastating effect on the child, said a Bench of Justices Aftab Alam and R.M. Lodha.

Writing the judgment, Justice Lodha said: "When there is an apparent conflict between the right to privacy of a person not to submit himself to forcible medical examination and the duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether, for a just decision in the matter, DNA is eminently needed."

The Bench said: "DNA in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made. The court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; the pros and cons of such an order and the test of 'eminent need' whether it is not possible for the court to reach the truth without use of such test."

Citing earlier decisions, the Bench said courts could not order a blood test as a matter of course, and such prayers could not be granted for a roving enquiry. There must be a strong prima facie case and the court must carefully examine the consequence of ordering the blood test.

(The Hindu /08-08-2010)

LEGAL JOTTINGS

Legal briefs from Supreme Court

(Case No: Cr. Appeals No. 1377 & 1378 of 2010)

Srinivas Gundluri & Ors v. M/s Sepco Electric Power Construction Corporation & Ors.

Date of Decision: 30-07-2010.

Judge(s): Hon'ble Mr. Justice P. Sathasivam and Hon'ble Mr. Justice Anil R. Dave.

Subject Index: Criminal Procedure Code, 1973 - section 156(3) - order for investigation - the respondent-corporation was engaged in erection of power plant & awarded constructional work to the appellants. A cheque towards payment of 50% advance was issued, however, the respondent cancelled the work order on the ground that the company has failed to mobilize requisite manpower, machinery and equipment by that date but diverted the amount for some other purpose than the one as agreed, hence demanded refund of advance money and filed a criminal complaint - the Chief Judicial Magistrate allowed the application and forwarded the original complaint along with documents to the concerned Station House Officer (SHO) directing him to register FIR, after due enquiry, and to submit a charge sheet after investigation - the appellants filed petition for quashing the order - the Learned Single Judge held that the Magistrate passed an order after perusing the complaint which discloses commission of cognizable offence and has not committed any illegality by directing the police to register FIR. The Division Bench also dismissed writ appeal and permitted the Magistrate to proceed in accordance with law - appeal - observed by the Hon'ble Court - the Magistrate perused the complaint without examining the merits of the claim that there is sufficient ground for proceeding or not, directed the police officer concerned for investigation under Section 156 (3) of the Code. Instead of taking cognizance of the offence, the learned Magistrate has merely allowed the application and sent the same for investigation under Section 156(3) - held that the Magistrate has not committed any illegality in directing the police for investigation and the challenge by the appellants at this stage is pre-mature appeal dismissed.

(Case No: Cr. Appeal No(s). 1645 of 2009)

Dasrath v. State of M.P.

Date of Decision: 29-07-2010.

Judge(s): Hon'ble Mr. Justice V.S. Sirpurkar and Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Indian Penal Code, 1860 sections 304B and 201 - punishment for dowry death and intentionally causing destruction of evidence

conviction and sentence under - the appellant's wife died under suspicious circumstance of burning - the trial court and the appellate court recorded that the deceased died an un-natural death because of burning within seven years of her marriage and concluded that she was subjected to cruelty and harassment by her husband and/or relatives in connection with the demand for dowry and that she was subjected to cruelty soon before her death - appeal - the report of the chemical analyzer showed that the kerosene residues were found from the clothes of the deceased which were seized during the investigation, therefore, held that the death was caused because of the burns and not in the normal circumstances. Even after her death, the accused persons did not inform either the police or even the relatives. Instead they hurriedly conducted the funeral thereby causing destruction of evidence conviction confirmed - appeal dismissed.

(Case No: Cr. Appeal No(s). 763 of 2008)

Satpal Singh v. State of Haryana

Date of Decision : 28-07-2010.

Judge(s): Hon'ble Mr. Justice P. Sathasivam and Hon'ble Dr. Justice B.S. Chauhan.

Subject Index: Indian Penal Code, 1860 section 376 - punishment of rape - conviction and sentence for the commission of the offence under - FIR lodged after about 4 months of the date of incident PW-2/Doctor examined the prosecutrix and stated that as the alleged rape had taken place long ago, therefore, there was no possibility to prove the alleged act of rape by way of medical report. However, she opined that possibility of rape could not be ruled out - ample evidence on record to show that the Panchayat had intervened on the next day of the incident and it pressurised the complainant to compromise the case and settle it outside the Court - Hon'ble Supreme Court viewed that there was resistance by the prosecutrix and thus, it cannot be held that she had voluntarily participated in the sexual act. Further held - no enmity between the two families, and, therefore, no reason for the prosecutrix and her family to enrope the appellant falsely - appeal dismissed.

(Case No: Civil Appeal Nos. 5875 of 2005)

Bhagmal & Ors. v. Kunwar Lal & Ors.

Date of Decision: 27-07-2010.

Judge(s): Hon'ble Mr. Justice V.S. Sirpurkar and Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Civil Procedure Code, 1908 Order IX Rule 13 - application under - praying for condonation of delay - suit for declaration of title, possession and permanent injunction in respect of the house - the appellants/defendants pleaded that since it was the understanding between the parties that the respondent No. 1/plaintiff would withdraw the suit or get it dismissed, they did not attend the further proceedings, which the respondent No. 1/plaintiff continued surreptitiously and hence they did not even know about the ex-parte order and the decree passed against them - the trial court dismissed the application as barred by time - the appellate court allowed the application filed by the appellants/ defendants & directed the Trial Court to decide the case on merits, however, the High Court restored the order of the trial court & held that the appellate Court had exceeded its jurisdiction in allowing the application without condoning the delay - appeal - the question of delay was completely interlinked with the merits of the matter and the appellants clearly pleaded that they came to know about the decree when they were served with the execution notice. This was also a valid explanation of the delay - held that the appellants/defendants, when ultimately came to know about the decree, had moved the application within 30 days, therefore, the application was within time - impugned judgement of the appellate court restored - appeal allowed.

(Case No: Civil Appeal No(s). 6000 of 2010)

M/s. Afcons Infrastructure Ltd. & Anr. v. M/s. Cherian Varkey Constn. Co. Pvt. Ltd. & Ors.

Date of Decision: 26-07-2010.

Judge(s): Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice J.M. Panchal.

Subject Index: Civil Procedure Code, 1908 section 89 and Order 10 Rule 1A - whether the said section empowers the court to refer the parties to a suit to arbitration without the consent of both parties - the second respondent entrusted the work of construction of certain bridges and roads to the appellants under an agreement. The appellants sub-contracted a part of the said work to the first respondent under an agreement however, the agreement between the appellants and the first respondent did not contain any provision for reference of the disputes to arbitration - dispute arose - the first respondent filed an application under section 89 of the Code before the trial court praying that the court may formulate the terms of settlement and refer the matter to arbitration which was allowed by the trial court. The High Court confirmed the order of the trial court & held that section 89 permitted the court, in appropriate cases, to refer even unwilling parties to arbitration - appeal - a court has no power, authority or jurisdiction to refer unwilling parties to arbitration u/sec. 89, if there is no arbitration agreement, therefore, where there is no pre-existing arbitration agreement between the parties, the consent of all the parties to the suit will be necessary, for referring the subject matter of the suit to arbitration under section

89 of the Code - impugned order of the trial court as affirmed by the High Court set aside and the trial court directed to decide upon a non-adjudicatory ADR process - appeal allowed.

(Case No: Cr. Appeal No. 488 of 2009)
Dhan Singh v. State of Haryana
Date of Decision: 22-07-2010.
Judge(s): Hon'ble Dr. Justice B. S. Chauhan and Hon'ble Mr. Justice Swatanter Kumar.

Subject Index: Indian Penal Code, 1860 sections 302, 323, 452 and 148 - punishment of murder, hurt, criminal trespass and rioting with deadly weapons - conviction and sentence under - dispute between 2 brothers relating to property the appellant alongwith others entered into the house of the deceased and opened attack upon him and on his family members - the injured gave his statement and died within couple of days - both the trial court and the High Court concluded that the death was a direct result of the impact of injuries attributable to the appellant - appeal - the statement of the deceased, in the form of dying declaration, was clear and unambiguous about the role of appellant which was fully corroborated by medical evidence - held - the mere fact that the doctor had declared Shiv Ram (deceased) fit to make a statement does not mean that there was no eminent danger of death to his life. Further observed - no evidence to show that the appellant and other persons had gone to the house of deceased with the intention to kill him, thus, the conviction of the appellant altered from sec.302 to sec.304 - Part II of IPC and awarded him RI for 10 years with fine of Rs.20,000/- appeal disposed of.

(Case No: Cr. Appeal No. 2093 of 2008)
Narinder Kumar v. State of Jammu & Kashmir
Date of Decision: 21-07-2010.
Judge(s): Hon'ble Mr. Justice Aftab Alam and Hon'ble Mr. Justice T.S. Thakur.

Subject Index: Ranbir Penal Code Section 302 - punishment of murder - conviction and sentence under on the date of occurrence, there was exchange of hot words and abuses between the deceased and the appellant and the appellant fired at the deceased from close range and fled from the spot carrying the weapon with him. The injured removed to Kathua hospital where he was declared dead - the trial Court held that the prosecution had established the commission of an offence punishable under Section 302 RPC against the appellant beyond any shadow of doubt. The High Court confirmed his conviction and sentence - appeal - the ocular evidence of the witnesses fully corroborated by the medical evidence adduced in the case the prosecution led evidence that the weapon in question was licensed in the name of the father of the appellant - nothing on record to suggest that the deceased had at any stage either assaulted the appellant or otherwise caused any injury to him to justify infliction of gunshot injury upon him in defence - further held that in the absence of anything to suggest that the brothers of the deceased had any reason to screen the real offender and falsely implicate the appellant, the Courts below were justified in accepting their version and holding the charge against the appellant proved - appeal dismissed.

(Case No: Cr. Appeal No. 535 of 2009)
Mohd. Ayub Dar v. State of J&K
Date of Decision: 21-07-2010.
Judge(s): Hon'ble Mr. Justice V.S. Sirpurkar and Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: TADA Act, 1987 Section 3(3), Ranbir Penal Code Section 302 - conviction and sentence under - three unknown terrorists entered into the house of Mirwaiz Moulvi Farooq with the intention of killing him and was severely injured by gun-shot. He, ultimately, succumbed to the injuries - prosecution urged that the appellant visited Pakistan, where received training in handling of firearms and explosives - was involved in a number of other such cases - Section 15 of the TADA Act - voluntary confession made under - the appellant confessed the aforesaid crime and disclosed the names of other two assailants - the trial Court concluded that non-performance of post-mortem did not matter as it was clear that Moulvi Farooq died due to gun-shot injuries. The trial Court also accepted the confession made by the appellant and awarded imprisonment for life with other concurrent sentence - appeal - the P.W.-2 deposed regarding presence of the accused in the Court and about his making confessional statement. He reiterated that the accused was given time to ponder over and even after pondering over the issue of making the confessional statement, the accused, of his own free will, was prepared to give confessional statement which was recorded in his own words by the witness. The witness also identified signature of the accused - Hon'ble Supreme Court opined that the appellant had made the confession voluntarily and he was not, in any way, compelled to give the same. The confession was indeed made by the appellant, and the meticulous planning that went behind committing murder of Moulvi Farooq, which has been reflected in the confession, not only renders it voluntary, but truthful also - appeal dismissed.

Legal briefs from High Court of J&K

(Case No. LPASW No. 46 of 2004)

Secretary J&K Academy of Art & Anr. v. Rajinder Nath & Anr.

Date of Judgment: 01-06-2010

Judge(s): Hon'ble Mr. Justice Aftab H. Saikia and Hon'ble Mr. Justice Sunil Hali

Subject Index : Service selection - Two posts of Asstt. Instructor (Vocal) were advertised by the appellant with qualification of B. Music with 55% marks and two years experience - Respondent No. 1/Writ petitioner applied for the post and his application form was rejected - challenged in writ petition on the grounds that writ petitioner had passed Sangeet Prabhakar from Prayag Sangeet Samiti which is equivalent to B.Music - writ court allowed petition holding that the two qualifications were equivalent and writ petitioner has secured qualifying marks - appeal filed - DB held that the writ petition did not deserve merit on two counts, one that the petitioner had annexed some Diplomas/certificates which do not reflect that writ petitioner had passed Sangeet Prabhakar and secondly, the certificates so annexed do not reflect that writ petitioner had secured 55% marks - appeal allowed - Order of Single Judge set aside - writ petition dismissed.

(Case No. SWP No. 1336-S/2004)

Mohd. Iqbal v. State & Ors.

Date of Judgment: 06-05-2010

Judge(s): Hon'ble Mr. Justice Mansoor Ahmad Mir

Subject Index : Reversion without enquiry - Petitioner was working as Head Constable came to be promoted as ASI in July 2002. In November 2004 order was passed by Respondents whereby promotion order was recalled/rescinded - this order of recall of promotion was challenged in writ petition on the ground that it was passed at the back of petitioner and without hearing him - it was contended by the Respondents that petitioner was not considered by the DPC and an enquiry was pending against him - Held : Right of consideration for promotion is a legal right, but to claim promotion is not a right. But when promotion is granted, it creates a vested right and it cannot be taken away without hearing an employee - In terms of Regulation 396 of J&K Police Manual, a promotion order can be withdrawn, rescinded or cancelled during the period of probation without conducting departmental proceedings-inquiry within two years from the date of issue of the order. If the order is not passed within two years, then in terms of the said Regulation, departmental inquiry was required - In the present case, order of reversion was passed after two years that too without any enquiry - Writ petition allowed - impugned order quashed.

(Case No. SWP No. 2678/2001)

Hans Raj v. State of J&K & Ors.

Date of Judgment: 07-07-2010

Judge(s): Hon'ble Mr. Justice J.P. Singh

Subject Index: Deputation and repatriation - Petitioner, a Teacher in the Education Department of the State Government, was deputed to Navodaya Vidyalaya Samiti as T.G.T. (Hindi) Kot-Ranka-Rajouri for a period of two years. The period of his deputation was extended by another one year. The Navodaya Vidyalaya Samiti had placed the petitioner in the Masters Grade during his stay with it. His efforts for absorption in Navodaya Vidyalaya Samiti did not, however, fructify and he was repatriated to his parent department in the Teachers Grade in which he was serving at the time of his deputation. He filed Writ Petition seeking issuance of directions to the State-respondents to place him in the Masters Grade in which he had been serving in the Navodaya Vidyalaya Samiti - some employees of the Forest Department, situated similarly with him, had been allowed similar benefit - Held - Petitioner's plea that he was entitled to the Pay Scale, which he was getting during the period of his deputation with the Borrowing Organization, is misconceived, in that, his entitlement to salary in the Parent Department, is governed by the Rules of his Service, which permit him salary in the Pay Scale of a Teacher, and not by the Rules prevalent in the Borrowing Organization. The period spent by him on deputation with the Borrowing Organization, at a higher Pay Scale, would not vest any additional right in him to claim higher Pay Scale in his Parent Department - petition dismissed.

(Case No. C. Rev. No. 12/2010)

Khursheed Ahmed Nath v. National Insurance Co. Ltd. and Ors.

Date of Judgment: 19-04-2010

Judge(s): Hon'ble Mr. Justice Muzaffar Hussain Attar

Subject Index: Motor Accident Claim – Jurisdiction of Tribunal – Jurisdiction of the Tribunal was challenged in a claim petition, on the ground that a case under Section 304 RPC was registered and there was no accidental death. Held – The claim petition is based on the allegation that accident has arisen out of the use of the Motor Vehicle which resulted in death of the person. The proceedings in Criminal investigation and in Criminal trial may not, in all circumstances, deter a civil court/tribunal to proceed with the trial/enquiry of a case. The

procedure provided for conducting investigation and trying a criminal case is different than that of conducting of enquiry by the learned MACT for arriving at a just and lawful conclusion. The two proceedings may be overlapping in certain areas but that does not mean that a civil Court/Tribunal loses its jurisdiction to enquire into the matter and pass appropriate orders in accordance with law - Tribunal has jurisdiction to entertain and try the claim.

(Case No. C2Appeal No. 15/2004)
Asgar Ali v. Ali Mohammad
Date of Judgment: 08-04-2010
Judge(s): Hon'ble Mr. Justice Hasnain Massodi

Subject Index: Order 22 & Order 23 CPC – Suit of the plaintiffs/respondents claiming exclusive right over a water spring for irrigation purposes, was decreed by the trial court. Appeal filed against the Decree of trial court was also dismissed. Civil Second Appeal was filed mainly on the grounds that one of the defendants had expired during the pendency of suit, his LR's were not brought on record, as such suit would have abated; and that during the penance of suit parties had agreed to abide by the decision of Shariee Board (Madarsa Asna Ashariya District Kargil), who had given its decision which was binding on the parties. In view thereof, judgments passed by trial court and first appellate court were without jurisdiction. Observed by the Court – the contesting respondents/plaintiffs having not claimed any relief against the deceased pro-forma defendant and the fact that suit could commence and proceed even in absence of the deceased pro-forma defendant and the contesting respondents/plaintiffs in a position to obtain the relief prayed in the suit, the death of pro-forma defendant does not result in abatement of the suit. Further Held – Parties had shown reservations over the decision of Shariee Board and sought time to present separate compromise deed, which did not happen - Cause of action to maintain the suit, did not vanish in wake of the decision of Shariee Board and that the trial court had jurisdiction to pass the judgment and decree impugned in the appeal - Judgments - decree of court below upheld.

CASE COMMENTS

Damodar S. Prabhu v. Syed Babalal H.
(2010 (5) SCC 663)

In this judgment, Hon'ble Supreme Court of India was mainly concerned with the issue pertaining to compounding of offences without limitation of stage of trial at which it could be done. The Hon'ble Supreme Court noticed that in large number of cases the applications for compounding were being made at a very late stage. It was also noticed that Sec. 147 of the Negotiable Instruments Act does not prescribe for the stage at which offence under Section 138 of N.I. Act could be compounded.

In order to fill up the legal vacuum, the Hon'ble Court has issued the following guidelines :-

(a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority or such authority as the court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

Shanti Budhiya Vesta Patel & Ors.

v.

Nirmala Jai Parkash Tiwari & Ors.
(2010(5) SCC 104)

When a suit is based on the allegations of coercion or fraud, as per the rule of pleadings under Order VI Rule 4, it is mandatory to give full material particulars of such coercion or fraud in plaint. In absence of such particulars, Court can not take cognizance of such allegations.

In the case under discussion, this aspect has been considered by the Hon'ble Supreme Court. In this behalf, it is worthwhile to quote the observations of the Hon'ble Court :-

"It is plain and basic rule of pleadings that in order to make out a case of fraud or coercion, there must be (a) an express allegations of coercion or fraud, and (b) all the material facts in support of such allegations must be laid out in full and with high degree of precision. If coercion or fraud is alleged, it must be set out with full particulars.

Oriental Aroma Chemical Industries Ltd.

V.

Gujrat Industrial Development Corpn.

(2010 (5) SCC 459)

Term 'Sufficient Cause' appearing in Section 5 of the Limitation Act is not a static term, capable of exact meaning. It is a relative term dependent on the attending circumstances of the case. Any attempt to put a straight-jacket formula to define the term, is liable to fail. Authoritative pronouncement of Hon'ble Supreme Court, in the above mentioned case, has tried to clear the haze and has given an approach which can be utilized as test to determine 'sufficiency of cause'. It has been held as under :

"14. ..... The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the right of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time."

Hon'ble Court referring to the import of earlier decisions on the subject, observed that:

"15. The expression "sufficient cause" employed in Section 5 of the Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard-and-fast rule can be laid down in dealing with the application for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning delay of short duration and stricter approach where the delay is inordinate."

LEGISLATIVE TREND

Vide Section 2 of The Code of Criminal Procedure (Amendment) Act, 2009 (Act No. XIV of 2009) dated 6th October, 2009, published in J&K Government Gazette dated 8th October, 2009, amendment has been made in Schedule II of the Cr.P.C. The relevant provision of the Amendment Act reads as under :-

2. *Amendment of Schedule II of the Code of Criminal Procedure, Samvat 1989* - In the Code of Criminal Procedure, Samvat 1989, for the Chapter "Offences against other laws" appearing at the end of Schedule II, the following Chapter shall be substituted, namely :-

"Offences Against Other Laws

Offences	Cognizable	Bailable	By what court Triable
1.	2.	3.	4.
If punishable with death, imprisonment for life or Imprisonment for more than 7 years	Cognizable	Non-Bailable	Court of Session
If punishable with death, imprisonment for three Years and upwards but Not more than 7 years	Cognizable	Non-Bailable	Magistrate of the First Class
If punishable with imprisonment for less than 3 years or with fine only	Non-Cognizable	Bailable	Any Magistrate"

LEGAL MIND - TEASER

Court proceeds to frame charge against the accused who is noticed to be deaf and dumb, and on an enquiry the Court is satisfied of his being so. Court is of the opinion that his being deaf and dumb will hamper the normal course of trial.

Suggest the procedure and provisions under which the Court will proceed to frame charge and thereafter conduct the trial.

GANDHI'S TALISMAN

"Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man [woman] whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him [her]. Will he [she] gain anything by it? Will it restore him [her] to a control over his [her] own life and destiny? In other words, will it lead to *swaraj* [freedom] for the hungry and spiritually starving millions?

Then you will find your doubts and your self melt away."

Edited, Printed and published by Rajeev Gupta, Incharge Director, Jammu & Kashmir State Judicial Academy
on behalf of the Jammu and Kashmir State Judicial Academy, High Court Complex, Jammu / Srinagar