



# SJA NEWSLETTER

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## Topic of the Month

<b>Chief Patron</b> Hon'ble Mr. Justice F.M. Ibrahim Kalifulla <b>Acting Chief Justice</b>	
<b>Judge Incharge</b> Hon'ble Mr. Justice Mansoor Ahmad Mir	
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<b>Contents</b>	
Topic of the Month.....	1
Academy News.....	2
News & Views.....	4
Legal Jottings.....	5
Case Comments.....	8
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Security of the nation, infrastructure of governance, including those that relate to law making and law keeping functions, crime prevention, detection and punishment, coordination of the economy, and ensuring minimal levels of material, and cultural goods for those who may not be in a position to fend for themselves or who have been left by the wayside by the operation of the economy and society, may all be cited as some examples of the kinds of public goods that the State is expected to provide for, or enable the provision of. In as much as the market is primarily expected to cater to purely self centered activities of individuals and groups, markets and the domain of purely private social action significantly fail to provide such goods. Consequently, the State, and government, emerges to rectify the coordination problem, and provide the public goods.

Unaccounted monies, especially large sums held by nationals and entities with a legal presence in the nation, in banks abroad, especially in tax havens or in jurisdictions with a known history of silence about sources of monies, clearly indicate a compromise of the ability of the State to manage its affairs in consonance with what is required from a constitutional perspective. This is so in two respects. The quantum of such monies by itself, along with the numbers of individuals or other legal entities who hold such monies, may indicate in the first instance that a large volume of activities, in the social and the economic spheres within the country are unlawful and causing great social damage, both at the individual and the collective levels. Secondly, large quanta of monies stashed abroad, would also indicate a substantial weakness in the capacity of the State in collection of taxes on incomes generated by individuals and other legal entities within the country. The generation of such revenues is essential for the State to undertake the various public goods and services that it is constitutionally mandated, and normatively expected by its citizenry, to provide. A substantial degree of incapacity, in the above respect, would be an indicia of the degree of failure of the State; and beyond a particular point, the State may spin into a vicious cycle of declining moral authority, thereby causing the incidence of unlawful activities in which wealth is sought to be generated, as well as instances of tax evasion, to increase in volume and in intensity.

Consequently, the issue of unaccounted monies held by nationals, and other legal entities, in foreign banks, is of primordial importance to the welfare of the citizens. The quantum of such monies may be rough indicators of the weakness of the State, in terms of both crime prevention, and also of tax collection. Depending on the volume of such monies, and the number of incidents through which such monies are generated and secreted away, it may very well reveal the degree of "softness of the State."

The concept of a "soft state" was famously articulated by the Nobel Laureate, Gunnar Myrdal. It is a broad based assessment of the degree to which the

State, and its machinery, is equipped to deal with its responsibilities of governance. The more soft the State is, greater the likelihood that there is an unholy nexus between the law maker, the law keeper, and the law breaker....

... The citizens of our country can make, and ought to be making, rational assessments of the situation. We fervently hope that it leads to responsible, reasoned and reasonable debate, thereby exerting the appropriate democratic pressure on the State, and its agents, within the constitutional framework, to bring about the necessary changes without sacrificing cherished, and inherently invaluable social goals and values enshrined in the Constitution. The failures are discernible when viewed against the vision of the constitutional project, and as forewarned by Dr. Ambedkar, have been on account of the fact that man has been vile, and not the defects of a Constitution forged in the fires of wisdom gathered over eons of human experience. If the politico-bureaucratic, power wielding, and business classes bear a large part of the blame, at least some part of blame ought to be apportioned to those portions of the citizenry that is well informed, or is expected to be informed. Much of that citizenry has disengaged itself with the political process, and with the masses. Informed by contempt for the poor and the downtrodden, the elite classes that have benefited the most, or expects to benefit substantially from the neo-liberal policies that would wish away the hordes, has also chosen to forget that constitutional mandate is as much the responsibility of the citizenry, and through their constant vigilance, of all the organs of the state, and national institutions including political parties. To not be engaged in the process, is to ensure the evisceration of constitutional content. Knee jerk reactions, and ill advised tinkering with the constitutional framework are not the solutions. The road is always long, and needs the constant march of the citizenry on it. There is no other way. To expect instant solutions, because this law or that body is formed, without striving to solve system wide, and systemic, problems that have emerged is to not understand the demands of a responsible citizenry in modern constitutional republican democracies.

These matters before us relate to issues of large sums of unaccounted monies, allegedly held by certain named individuals, and loose associations of them; consequently we have to express our serious concerns from a constitutional perspective. The amount of unaccounted monies, as alleged by the Government of India itself is massive. The show cause notices were issued a substantial length of time ago. The named individuals were very much present in the country. Yet, for unknown, and possibly unknowable, though easily surmisable, reasons the investigations into the matter proceeded at a laggardly pace. Even the named individuals had not yet been questioned with any degree of seriousness. These are serious lapses, especially when viewed from the perspective of larger issues of security, both internal and external, of the country.

[Taken from Judgment of Hon'ble Supreme Court in case titled "Ram Jethmalani and Ors. v. Union of India (UOI) and Ors." decided on July 4, 2011]

## ACADEMY NEWS

### 1. Training Programme on 'Time Management'

On Sunday, August 14, Academy organized a training programme on 'Time Management' at Jammu in the Morning and at Srinagar in the evening. Judicial Officers of all the ranks from Jammu and Kashmir participated in the programme. Sh. N.C. Sridharan, Neuro-Linguistic Programming (NLP) expert from Chennai, Tamil Nadu was the resource person. Objective of the programme was to make the participants aware about the need of time management and to provide them tools & techniques for effectively managing the available resources to overcome the time constraints especially in dispensation of justice.



Hon'ble Judges and participants while the session on Time Management in progress

At Srinagar, Hon'ble Mr. Justice F.M. Ibrahim Kalifulla, Acting Chief Justice, Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge Incharge, State Judicial Academy, Hon'ble Mr. Justice Mohammad Yaqoob Mir and Hon'ble Mr. Justice Hasnain Massodi also graced the occasion. Hon'ble Judge Incharge delivered the welcome address and Hon'ble Acting Chief Justice delivered key note address.



Resource person Mr. N.C. Sridharan while addressing the participants

Sh. N.C. Sridharan in his Power Point Presentation and lecture apprised the participants that



Neuro-Linguistic Programming (NLP) is the latest state of the art technology to perform at one's full potential. NLP which is very popular in the West, is becoming popular in India. All the individuals have a lot of untapped potential and talents just waiting to be used. We all have goals and ambitions in life, however, not all of us use our talents fully. If we know how to inspire, empower and motivate ourselves, we can operate at an enhanced level of performance.



Training Session in Progress

By employing simple NLP principles, concepts and skills, we can effectively deal with some of the time management problems such as laziness, procrastination, limiting beliefs and lack of consistency to realize our ambitions and goals.

Participants were greatly motivated and enlightened by the programme and resolved to utilise the tools and techniques learnt by them in their day to day working in order to enhance their potential.

## 2. Training Programme on Child Psychology

State Judicial Academy organised training programme on "Psychology, Clinical Psychology & Psychiatry" and "Child Psychology", at High Court Complex, Jammu on July 31, 2011, for Chief Judicial Magistrates, newly appointed Munsiff/Judicial Magistrates and Panel Lawyers of Legal Services Authority of Jammu province. Resource persons for the programme were Dr. J.R. Thappa, HoD, Psychiatry Department, Government Medical College, Jammu, Dr. Manu Arora, Assistant Professor, Psychiatry Department, Government Medical College, Jammu and Dr. Gurmeet Kour, Senior Medical Officer, Psychiatry Hospital, Jammu.

Objective of the programme was to sensitize the Judicial Officers and Panel Lawyers of Legal Services Authority about the sensitive issues relating to the child psychology including the causes of delinquency and their coming into conflict with law. Juvenile Justice Act as applicable to State of Jammu & Kashmir includes many provisions which provide for care and protection of 'neglected juveniles' and reformation of 'delinquent juveniles'. It requires

those dealing with Juvenile Justice System to understand the child psychology so as to understand psychological and social requirements of children.



Resource Persons while interacting with the participants

Resource persons very effectively dealt with important issues relating to the understanding of child psychology and also elaborated the genetic and socio-environmental factors which push the juveniles to delinquency and coming into conflict with law. Resource persons quoted numerous instances from Indian and foreign context to demonstrate that the issues relating to juveniles coming into conflict with law, have increased to alarming proportions which has led to new studies by the Psychologists, Psychiatrists and social scientists to understand the causes of such deviant behaviours. They also stressed upon those involved in the Justice Delivery System to study the genesis of the problem from all possible points of views so as to apply the correct approach while dealing with juveniles.



Participants while participating in Orientation Programme on Child Psychology

Participants were greatly appreciative of the inputs provided by the resource persons on the subject as it has sensitized them enormously and has improved their understanding of the child-psychological issues and causes of deviant behaviour.

## 3. Orientation Programme on Economic Offences



State Judicial Academy organized Orientation Programme on “Adjudication of Economic Offences” on Sunday, August 07, 2011 at High Court Complex, Jammu, for Chief Judicial Magistrates and Judicial Magistrates of Jammu province. Professor (Dr.) Kulwant Singh, Law Department, University of Jammu, Sh. K.S. Parihar, 1st Additional District & Session Judge, Jammu, and Sh. Ranjeet Singh Sambyal, Additional Superintendent of Police, Crime Branch, Jammu were the Resource Persons.



Resource Person Prof. (Dr.) Kulwant Singh addressing the participants

Objective of the programme was to make the participants aware about the concept, nature and genesis of economic offences. Professor (Dr.) Kulwant Singh made a presentation on the concept and overview on the economic offences, Sh. Ranjeet Singh Sambyal spoke on the nature of economic offences prevalent in the State of Jammu & Kashmir and Sh. K.S. Parihar specifically dealt with the aspect of cases arising out of dishonour of cheques.



Orientation Programme in Session

Professor (Dr.) Kulwant Singh presented the jurisprudential concept of economic offences and told the participants that economic offences can not be categorized as criminal offences in the strict sense. These offences generally involve civil or contractual liability or violation of public law. Dr. Singh traced the genesis of economic offences and told the participants that greed and urge of influential persons for

accumulation of wealth of in few hands leads to rise in economic offences. These are generally termed as white collar crimes or socio-economic offences. They obstruct the economic development of the country. Stashing of black money in foreign banks at safe heavens is one such manifestation of economic offences. Dr. Singh told the participants that this menace can be substantially curbed by bringing about Ethical, Enforcement, Structural i.e. reforms in institutions of prevention and investigation and Political reforms in India. This can be done by collective and concerted efforts of the common masses, civil society groups and intelligentsia.

Sh. Ranjeet Singh Sambyal apprised the participants about the fact that J&K State is also fast catching up in cases pertaining to economic offences. A large number of cases relating to non-banking finance companies, chit-fund companies, fraudulent Banking transactions, lottery scams, credit/debit card frauds, on-line banking transactions, narcotics trade and Hawala transactions have been reported in the State in recent times. Cyber crimes are also contributing to the rise in economic offences in a big way. It was told that in order to curb the economic offences a special cell has been constituted in Crime Branch of J&K Police which is focusing only on investigation and prevention of economic offences.

Sh. K.S. Parihar spoke on the issues relating to the trial of complaints of dishonour of cheques by the Magistrates. Procedural aspects of these cases were discussed and interactive discussion was made on technical complications involved in procedures. It was told that basic object of the Negotiable Instruments Act; especially Chapter on Dishonour of Cheques is to enhance the credibility of cashless transactions in business and trade dealings. Primarily bouncing of cheque gives rise to civil liability but provisions of Section 138 to 147 of the N.I. Act make such liability a criminal liability on fulfillment of certain legal prerequisites. Cases under these provisions do not involve the element of mens-rea. Participants cleared their doubts in the mutual discussions and interaction.

Director, State Judicial Academy in his concluding remarks stressed upon the Chief Judicial Magistrates and Judicial Magistrates to evolve strategies for quick disposal of cases involving socio-economic offences so as to give right message to the society that guilty of these offences can be made accountable in the courts of law. By adopting best practices in adjudication of economic offences, trust in the court processes can be restored.

## NEWS AND VIEWS

**Delhi Government restrained to set up parallel juvenile body**

Delhi High Court has restrained the State Government from forming a parallel body to manage Juvenile Observation Homes in the capital.

Chief Justice Dipak Misra and Justice Sanjive Khanna while staying the Government order directed Department of Women and Child Welfare to set up a separate panel for managing such juvenile homes.

The Court directed the Government to explain why a parallel body was being formed when a ten-member committee is already functioning.

Government counsel told the Court that the new body was being constituted to assist and supplement the existing panel in managing 15 juvenile homes in Delhi and not to substitute it.

The Court instead suggested the Government to set up panels for beggars' homes and shelters for destitute and lactating women. (UNI/09-08-2011)

### **Kerala HC directs Government to formulate policy on life convict**

The Kerala High Court directed the State Government to formulate a policy regarding the release of a life convict. The State Government through Advocate General informed the Court that it would formulate a policy within the stipulated time. The directive issued in a *suo motu* proceedings initiated by the High Court regarding the release of life convict. (UNI/09-08-2011)

### **Apex Court deprecates killings in fake encounters**

The Supreme Court directed the investigative agencies to arrest all the police officials involved in the fake encounter of Dara Singh in Rajasthan.

A Bench headed by Justice Markandeya Katju was annoyed when the bench was told that all accused in the case have not been arrested till now.

Justice Katju in his earlier judgement had ruled that all police officials involved in fake encounter deserve death penalty and on being proved guilty before the court must be sent to gallows to send the message that the murder of innocent citizens by the police will be dealt with an iron hand. Such officials do not deserve any mercy and such murders falls in the category of the rarest of rare, he had ruled.

The Apex Court took serious note of the casual approach of the investigating agency in not apprehending all the culprits in the case.

Dara Singh was an alleged criminal who was killed by Rajasthan Police reportedly in a fake encounter. (UNI/08-08-2011)

### **Delhi HC questions Delhi government on denying admission to girl child**

The Delhi High Court directed the Delhi Government to file its reply for their inaction to fulfill their tall claims regarding the education of a girl child in response to a petition filed by a girl alleging that she

was denied admission in class XI in Government schools.

Justice Kailash Gambhir directed the Delhi Government to file its response by August 4 as to what action the Government had taken against the schools which denied admission to the girl.

A petition filed by lawyer Ashok Agrawal of an NGO Social Jurist, alleged that since Komal, who was studying in the Government school of Nand Nagri, got a compartment in class X was being denied re-admission in the school even though she had cleared the exam and is eligible for class XI. Komal approached her previous school as well as other Government run schools in the vicinity to get admission in class XI, but unfortunately no response from any of the schools was received. She had every right to continue in class X. By getting a compartment, she can't be deprived of her right to continue her studies in the same school, it was contented before court. It was further alleged that School had shown total disrespect and disregard to the Fundamental Right of a girl child. This exposes the failure of system with regard to the education of the children. It is really unfortunate that a girl child has to run from pillar to post fighting for her Right to Education as guaranteed to her by the Constitution of India. (UNI/25-07-2011)

## **LEGAL JOTTINGS**

### **Legal briefs from Supreme Court**

**(Criminal Appeal No. 1489 of 2011)**

**Glaxo-SmithKline Pharmaceuticals Ltd. & Anr. v. State of Madhya Pradesh**

**Date of Decision: 28-07-2011.**

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

Subject Index: Drugs & Cosmetics Act, 1940 - section 25(3) - application under - the Drug Inspector took a sample of Betnesol tablets manufactured by the appellant-company for the purpose of analysis Government Analyst declared that the sample was not of "standard quality" as defined under the Act 1940 - the Magistrate took cognizance and issued summons to all accused persons including the appellants - the appellants filed an application under section 25(3) for sending the sample of Betnesol tablets for chemical analysis to the Director, Central Drugs Laboratory rejected - hence, the appeal - the appellants did not express an intention to adduce evidence to controvert the analyst report within the statutory limitation period of 28 days. Even otherwise, expiry date of the medicine was only after 4 months of submission of the reply by the appellants, and they did not fulfill their burden of expressing intention to adduce



evidence in contravention of the report, therefore, held that inordinate delay in launching the criminal prosecution or filing the complaint is thereby of no consequence - order of the High Court upheld - appeal dismissed.

**(Civil Appeal No. 6034 of 2011)**

**Umerkhan v. Bismillabi @ Babulal Shaikh**

**Date of Decision: 28-07-2011.**

**Judge(s): Hon'ble Mr. Justice Aftab Alam and Hon'ble Mr. Justice R. M. Lodha.**

Subject Index: Civil Procedure Code, 1908 - sections 100, 101 - second appeal - partition and separate possession - suit filed for - the trial Court declared that plaintiff and 2nd defendant were entitled to 1/4th share each and the 1st defendant was entitled to 1/2 share in the suit property. However, the first appellate court reversed the finding of the trial court and held that the 1st defendant became owner of the suit property by adverse possession - second appeal filed - the High Court set aside the judgment and decree of the first appellate court hence, the appeal - a second appeal is entertainable by the High Court only upon its satisfaction that a substantial question of law is involved in the matter and its formulation thereof - the judgment of the High Court does not indicate that scope of second appeal as provided in Section 100 and Section 101 of the Code was kept in mind while hearing the second appeal - impugned judgment set aside and matter remitted to the High Court for fresh consideration in accordance with law - appeal allowed - no costs.

**(Criminal Appeal No. 78 of 2003)**

**State of Punjab v. Jagtar Singh & Ors.**

**Date of Decision: 26-07-2011.**

**Judge(s): Hon'ble Mr. Justice V.S. Sirpurkar and Hon'ble Mr. Justice T.S. Thakur.**

Subject Index: Indian Penal Code, 1860 - sections 302/34, 304-Part I/34 - accused persons, convicted for killing deceased and their sister by strangulation on account of their sexual relations - the trial Court convicted the accused persons under section 302/34 and sentenced each one of them to undergo imprisonment for life - appeal filed - the High Court, on the basis of the post-mortem report concluded that it was deceased Gurnam Singh who himself sneaked into the house of the accused persons and must have had sexual intercourse with Paramjit Kaur and on seeing them in a compromising position, the accused persons must have killed them, therefore, held it a case of grave and sudden provocation and altered the conviction and sentence of the appellants - accused from Section 302/34 IPC to Section 304 Part-I read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for five years - hence,

the appeal - order of the High Court upheld - appeal dismissed.

**(Civil Appeal Nos. 5901, 5902, 5903, 5904, 5905, 5906, 5907 of 2011)**

**UPS.R.T.C. v. Kulsum & others**

**Date of Decision: 25-07-2011.**

**Judge(s): Hon'ble Mr. Justice Dalveer Bhandari and Hon'ble Mr. Justice Deepak Verma.**

Subject Index: Motor Vehicles Act, 1988 - compensation claim - liability of Insurance Co. to pay - under consideration - if insured vehicle is plying under - an Agreement of Contract with the Corporation, on the route as per permit granted in favour of the Corporation, in case of an accident, whether the Insurance Company would be liable to pay compensation or would it be the responsibility of the Corporation or the owner - the vehicle was given on hire by the owner of the vehicle together with its existing and running insurance policy and the effective control and command of the bus was that of the Appellant - the Supreme Court held that as the Corporation had become the owner of the vehicle for the specific period, even if, the vehicle having been insured at the instance of original owner, it will be deemed that the vehicle was transferred along with the Insurance Policy in existence to the Corporation and thus Insurance Company would not escape its liability to pay the amount of compensation - appeals allowed.

**(Criminal Appeal No. 1428 of 2011)**

**A. Subash Babu v. State of A.P. & Anr.**

**Date of Decision: 21-07-2011.**

**Judge(s): Hon'ble Mr. Justice J.M. Panchal and Hon'ble Mr. Justice H.L. Gokhale.**

Subject Index: Indian Penal Code, 1860 - sections 498-A, 494, 495, 417, 420 - proceedings initiated against the appellant for commission of offences under - respondent No.2 lodged FIR against the husband/appellant, feeling aggrieved by the acts of the appellant in cheating her, committing bigamy and meting out cruelty to her for dowry, etc. - petition for quashment filed - the High Court quashed the proceedings under Section 498-A IPC, whereas the proceedings relating to the offences punishable under Sections 494, 495, 417 and 420 IPC - ordered to continue against the appellant - hence, the appeal - the appellant having a wife living, married with the respondent no. 2 by concealing from her the fact of former marriage and therefore her complaint against the appellant for commission of offence punishable under Section 494 and 495 IPC is, maintainable - the Supreme Court held that a person who enters into marital arrangement cannot be allowed to take shelter behind the smoke screen of contention that since there

was no valid marriage the question of dowry does not arise - impugned Judgment quashing the complaint filed by the respondent no. 2 for alleged commission of offence by the appellant under Section 498-A IPC set aside and the chargesheet under section 498-A restored/revived- appeal dismissed.

**(IA No.36 and IA No.44 In Writ Petition(C) No. 967 of 1989)**

**Indian Council for Enviro-Legal Action v. Union of India & others**

**Date of Decision: 18-07-2011.**

**Judge(s): Hon'ble Mr. Justice Dalveer Bhandari and Hon'ble Mr. Justice H.L. Dattu.**

Subject Index: Interlocutory applications - non-compliance of the Court's Order - respondent No.4, the chemical industrial plant started producing certain chemicals like Oleum and Single Super Phosphate. Since the toxic untreated waste waters were allowed to flow out freely and the untreated toxic sludge was thrown in the open in and around the complex, the toxic substances percolated deep into the bowels of the earth polluting the aquifers and the sub-terrain supply of water sudden degradation of earth and water - writ petition filed - the Supreme Court while accepting the report of the MOEF directed the applicant M/s Hindustan Agro Chemical Ltd. to pay a sum of Rs.37.385 crores towards the costs of remediation. The final judgment was delivered way back in 1996 however, the said judgment has not been permitted to acquire finality because the respondent Nos. 4 to 8 had filed multiple interlocutory applications and has ensured non-compliance of the judgment of the Court can a party who does not comply with the court order be permitted to retain the benefits of his own wrong of non-compliance whether the successful party be not compensated by way of restitution for deprivation of its legitimate dues for more than fourteen years - whether the court should not remove all incentives for not complying with the judgment of the court - the applicant-industry directed to pay Rs.37.385 crores along with compound interest @ 12% per annum from 04-11-1997 till the amount is paid and also to pay costs of Rs.10 lakhs in both the Interlocutory Applications - interlocutory applications disposed - important directions for the courts below to follow.

#### **Legal briefs from High Court of J&K**

**(LPANo. 57/2008, CMPNos. 408/2009)**

**Asif Khan v. Sardar Amanullah Khan**

**Date of Decision: 26-07-2011**

**Judge(s): Hon'ble Mr. Justice F.M. Ibrahim Kalifulla (Acting Chief Justice), Hon'ble Mr. Justice Muzaffer Hussain Attar**

Subject Index: Civil Procedure Code - Sections 4, 100-A, Order 47 Rule 7, Civil Laws (Amendment) Act, 2009 - Section 32, General Clauses Act - Section 6 - Respondent (plaintiff) filed a suit for permanent prohibitory injunction alongwith an application for grant of interim injunction - interim application rejected by trial court after contest - appeal against - appellant herein (defendant) on caveat - statement made in the appellate court by appellant that no construction would be made on spot till next date - alleged violation of assurance by appellant - application under Order 39 Rule 2-A for disobedience of assurance by appellant, moved - appellate court directed appellant to pull down the structure raised in violation of assurance - review against - rejected - LPA against both the orders maintainability of, under challenge - contended that Section 100-A as amended by Act of 2009 bars further appeal, appeal against original order was also barred by limitation and that LPA is not maintainable in view of Order 47 Rule 7 - Held - Section 100-A substituted by Civil Laws (Amendment) Act, 2009 has prospective application - LPA as preferred is maintainable having been filed in 2008 under pre-amendment Section 100-A - further appeal against order rejecting review would lie under clause 12 of Letters Patent, notwithstanding bar to further appeal under Order 47 Rule 7(1) - Section 6 General Clauses Act and Section 32 Civil Laws (Amendment) Act do not take away the right of appellant to prefer appeal under Clause 12 of Letters Patent - LPA, held maintainable - delay in filing appeal against original order was occasioned on filing of review petition, as such condoned.

**(561-A No. 2 of 2009)**

**Gh. Mohammad Rather v. State of J&K & Ors.**

**Date of Decision: 06-06-2011**

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

Subject Index: Criminal Investigation - Quashment of FIR - In the course of investigation of a case commenced on lodgment of FIR at Police Station Bijbehara, investigation handed over to the Crime Branch - investigation nearing completion as per status report furnished to the Court - petition moved for quashment of FIR - Held - Court only has to ascertain whether the allegations made in the FIR do disclose or do not disclose the commission of offences, if it does, then it cannot be quashed at its thresh-hold stage. It is not proper to scuttle away the investigation enroute. Court should also not interfere with the investigation and jurisdiction of statutory authorities to exercise powers in accordance with the provisions of Code of Criminal Procedure - in view

of allegations contained in the FIR and status report, no case made out for interference - petition dismissed.

**(561-A No. 48/2004)**

**Dr. Ghulam Hassan Khan v. State of J&K & Ors.**

**Date of Decision: 10-06-2011**

**Judge(s): Hon'ble Mr. Justice Hasnain Massodi**

Subject Index: Criminal Investigation - Defective and illegal investigation - Written complaint received by Vigilance Organisation, Kashmir that the Petitioner alongwith Respondents 2 & 3 and certain officials of J&K State Sports Council and Directorate of Youth & Sports, by misuse of official position, manipulated procurement of 'Sports Proficiency Certificate' thereby got admission in MBBS course in 1991 - Vigilance Organisation registered a case under Section 5(2) Prevention of Corruption Act and Section 408, 420, 471 RPC during investigation Vigilance Organisation did not find truth in allegations of misuse of official position by officials of J&K State Sports Council and Directorate of Youth & Sports under Section 5(2) Prevention of Corruption Act, as such investigation was dropped against them - final report produced against Petitioner and Respondent No. 2&3 for commission of offences under Section 408, 420, 471 RPC in the court of CJM, Srinagar - contended by Petitioner in trial court - investigation conducted by Vigilance Organisation was without jurisdiction and Sanction under Section 197 CrPC was not obtained - contentions rejected by trial court and charges framed - petition for quashment of criminal proceeding - Held - defective or illegal investigation or investigation without jurisdiction do not vitiate the criminal trial unless it is shown that such defective or illegal investigation has caused prejudice to accused - in the present case in the inception investigation having included offence under Section 5(2) Prevention of Corruption Act, as such Vigilance Organisation had basic jurisdiction, which would not be taken away if during investigation said offence was not established - sanction under Section 197 CrPC not required as the offence was not committed in pursuance of some official duties - petition dismissed.

## CASE COMMENTS

**Siddharam Satlingappa Mhetre  
versus  
State of Maharashtra & Ors.  
(2011) 1 SCC 694**

In the above noted case Hon'ble Supreme Court has elaborately dealt with the jurisprudential and legal aspects of 'Anticipatory Bail'. Concept of Anticipatory Bail has been lucidly explained and

some confusion on few legal issues regarding purpose, extent, duration and conditions which may be imposed, has been sufficiently cleared. While dealing with object behind incorporating this provision in the CrPC, Hon'ble Court has made enlightening observations as regards the guarantee of life and personal liberty enshrined in Article 21.

Following principles have been reiterated by the Hon'ble Supreme Court:

1. In essence, function involved in grant of bail is constitutional guarantee of protection of life and personal liberty.
2. Exercise of jurisdiction to consider grant or refusal of bail requires maintaining perfect balance between two conflicting interests viz. sanctity of individual liberty and interest of society. Just as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important.
3. Provision of anticipatory bail in Section 438 CrPC is not "extraordinary" in the sense that it should be invoked only in exceptional or rare cases, but in the sense of it being extraordinary remedy, not otherwise available under law.
4. Anticipatory bail cannot be limited to a particular period; it has to continue till completion of trial. Granting bail for a limited period and asking accused to apply for regular bail is illegal.
5. Proper course of action for courts is that after evaluating averments and accusation available on record, interim bail may be granted and after putting Public Prosecutor to notice and hearing him, court may either reject application or confirm grant of bail.
6. Court may also impose certain conditions (illustrated in the judgment) on grant of bail and if conditions are violated or bail is misused then at the instance of Public Prosecutor or complainant, anticipatory bail may be cancelled.
7. There is no justification for reading into Section 438 CrPC, the limitations mentioned in Section 437 CrPC. Section 437 does not control Section 438.
8. Court's power to grant or refuse anticipatory bail is discretionary in nature. Discretion vested with the court under Section 438 CrPC should be exercised with caution and prudence (some factors and parameters which may be taken into consideration enumerated).

Hon'ble Court also has suggested some illustrative guidelines which may be taken into consideration by the State, being measures to avoid curtailment of personal liberty.