SJA e-NEWSLETTER

Official Newsletter of Jammu & Kashmir Judicial Academy
(For internal circulation only)

Volume 4 | Monthly | August 2021

Contents

Editor
Sanjay Parihar
Director

Composed by:
Vishali Razdan
Computer Operator

From the Editor's Desk

The status of women in society is a critical factor in judging its pace of development and the phenomenal role rendered by her in the progress of a nation has to be acknowledged emphatically. She is the epitome of strength and dignity and encompasses intelligence, character, resilience and has the unique ability to turn her cannot(s) into cans. She is a formidable entity when empowered and in the powerful words of ***Diane Marie Child,*** *"She is the full circle. Within her, is the power to create, nurture and to transform."* However, the status of women has been subjected to many upheavals in the recorded history of our country and even in this century, women have to face multifold challenges for their bare existence and basic human rights. Across the globe, women have to regularly suffer barriers to their development in the backdrop of a heterogeneous society and quintessential myriad challenges ranging from human rights violations, discriminations of all nature, violence, sexual harassment at domestic and workplaces and crimes committed upon their physical and mental being. These challenges may have different manifestations based on age, ethnicity, nationality, religion, health status, marital status, education, disability, socio economic status but predominantly they all emerge from one common and quotidian patriarchal mind-set which is not only deep but is intrinsic to the social set up where the status and development graph of women has not been uniform. Theoretically, the Constitution ensures equality and equal rights to her akin to the men and the principle of gender equality has been enshrined and is intrinsic in the Preamble itself, but practically and rather unfortunately, women of our Country are unaware of their rights because of so many barriers ranging from illiteracy, oppressive traditions, archaic mind set and the male centric fabric of the society. The legal sphere commands equality, yet the social sphere where most of the women reside, has remain unchanged despite clear legal and constitutional rights.

A concatenation of women specific and women related legislations including welfare, protective and penal enactments including The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act,2013 and the guidelines in the case of *Vishakha & Ors vs State of Rajasthan & Ors (1997) 6 SCC241*,The Dowry Prohibition Act,1961, The Immoral Traffic (Prevention Act),1956, the multitude provisions of IPC related to women et al comprehensively strive to protect the interests of women facilitating their holistic development. However, a lot more needs to be accomplished in the shape of better laws, fair and adept trials and above all it is to be ensured that they have full access to their rights for their holistic development and their meaningful inclusion and productive participation in the collective development of the nation. Quoting ***Manusmriti***, as it aptly announces ***"Yatra naryastu pujyante,ramante tatra devtaa*** i.e. where women are honoured, divinity blossoms.

LEGAL JOTTINGS

"The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice and as such no action can be permitted which may shake the very foundation itself."

Dr A.S. Anand, J. in Ajay Kumar Pandey, Advocate, In re, (1998) 7 SCC 248, para 18

CRIMINAL

Supreme Court Judgments

Criminal Appeal No. 594 of 2021
Indra Devi Vs. State of Rajasthan & Anr.
Decided on: July 23, 2021

The Supreme Court Bench comprising Justices Sanjay Kishan Kaul and Hemant Gupta observed that sanction from competent authorities under Section 197 of Code of Criminal Procedure is required to prosecute public servants if the alleged act committed is directly concerned with the official duty. The yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties, the bench comprising observed. The court while dismissing an appeal against a Rajasthan High Court judgment which allowed a petition filed by a accused - public servant under Section 482 of the Cr.P.C and held that sanction under Section 197 Cr.P.C was necessary. The accused was alleged to have conspired with his superiors and issued a forged lease. The stance of the complainant and the State was that the action of forging documents would not be considered as an act conducted in the course of his official duties and, thus Section 197 of the Cr.P.C would not give protection to the accused. It was observed:

"9. We have given our thought to the submissions of learned counsel for the parties. Section 197 of the Cr.P.C seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognisance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. However, such sanction is necessary if the offence alleged against the public servant is committed by him "while acting or purporting to act in the discharge of his official duty" and in order to find out whether the alleged offence is committed "while acting or purporting to act in the discharge of his official duty", the yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. The real question, therefore, is whether the act committed is directly concerned with the official duty."

Criminal Appeal No. 569 of 2021
Prakash Gupta v. Securities and Exchange Board of India.
Decided on: July 23, 2021

Hon'ble Supreme Court Bench comprising Justices D.Y. Chandrachud and MR Shah while interpreting the compounding provision under Section 24A of Securities and Exchange Board of India Act observed that the power of compounding must be expressly conferred by the statute which creates the offence.

The bench of observed that in respect of offences which lie outside the Indian Penal Code, compounding may be permitted only if the statute which creates the offence contains an express provision for compounding before such an offence can be made compoundable. This is because Section 320 Cr.P.C provides for the compounding of offences only under the IPC.

In its judgment interpreting the compounding provision under Section 24A of Securities and Exchange Board of India Act, the bench also referred to provisions of Section 320 of the Code of Criminal Procedure and noted that the legislative sanction for compounding of offences is based upon two contrasting principles. First, that private parties should be allowed to settle a dispute between them at any stage (with or without the permission of the Court, depending on the offence), even of a criminal nature, if proper restitution has been made to the aggrieved party. Second, that, however, this should not extend to situations where the offence committed is of a public nature, even when it may have directly affected the aggrieved party.

"59....The first of these principles is crucial so as to allow for amicable resolution of disputes between parties without the adversarial role of Courts, and also to ease the burden of cases coming before the Courts. However, the second principle is equally important because even an offence committed against a private party may affect the fabric of society at large. Non-prosecution of such an offence may affect the limits of conduct which is acceptable in the society. The Courts play an important role in setting these limits through their adjudication and by prescribing punishment in proportion to how far away from these limits was the offence which was committed. As such, in deciding on whether to compound an offence, a Court does not just have to understand its effect on the parties before it but also consider the effect it will have on the public. Hence, societal interest in the prosecution of crime which has a wider social dimension must be borne in mind"

"62. However, Section 320 provides for the compounding of offences only under the IPC. Hence, in respect of offences which lie outside the IPC, compounding may be permitted only if the statute which creates the offence contains an express provision for compounding before such an offence can be made compoundable. The power of compounding must, in other words, be expressly conferred by the statute which creates the offence."

Criminal Appeal No. 590-591 of 2021
Somesh Chaurasia v. State of M.P. & Anr.
Decided on: July 22, 2021

The Hon'ble Supreme Court Bench comprising Justices D.Y. Chandrachud and Hrishikesh Roy while considering an appeal against the Madhya Pradesh High Court order concerning the Congress leader Devendra Chaurasia's murder in Damoh, Madhya Pradesh took note of the harassment faced by Additional Sessions Judge, Hata who is in charge of the criminal case and observed that the Trial judges work amidst appalling conditions and that the colonial mindset which pervades the treatment meted out to the district judiciary must change. The Hon'ble Court observed that Judicial independence of the district judiciary is cardinal to the integrity of the entire system as it is the first point of interface with citizens.

"An independent and impartial judiciary is the cornerstone of democracy. Judicial independence of the district judiciary is cardinal to the integrity of the entire system. The courts comprised in the district judiciary are the first point of interface with citizens. If the faith of the citizen in the administration of justice has to be preserved, it is to the district judiciary that attention must be focused as well as the 'higher' judiciary. Trial judges work amidst appalling conditions – a lack of infrastructure, inadequate protection, examples of judges being made targets when they stand up for what is right and sadly, a subservience to the administration of the High Court for transfers and postings which renders them vulnerable. The colonial

mindset which pervades the treatment meted out to the district judiciary must change. It is only then that civil liberties for every stakeholder – be it the accused, the victims or civil society – will be meaningfully preserved in our trial courts which are the first line of defense for those who have been wronged."

The Hon'ble Court also observed that the Constitution specifically envisages the independence of the district judiciary and that the judiciary should be immune from political pressures and considerations and a judiciary that is susceptible to such pressures allows politicians to operate with impunity and incentivizes criminality to flourish in the political apparatus of the State. Further observed that India cannot have two parallel legal systems, "one for the rich and the resourceful and those who wield political power and influence and the other for the small men without resources and capabilities to obtain justice or fight injustice." The existence of a dual legal system will only chip away the legitimacy of the law.

Criminal Appeal No.601 of 2021
Bhagwanrao Mahadeo Patil v. Appa Ramchandra Savkar & Ors.
Decided on: July 14, 2021

The Supreme Court Bench comprising Justice Vineet Saran and Justice Dinesh Maheshwari observed that an accused cannot be discharged for an offence under Section 306 of the Indian Penal Code while confirming the charge under Section 304B IPC.

On facts, a married woman committed suicide within a period of about 15 months of marriage, leaving behind two suicide notes. The complainant/father of the deceased filed an FIR for offences under Sections 304B, 306, 498A, 406, 506 read with Section 34 IPC and under Sections 3 and 4 of Dowry Prohibition Act against the husband and also against the father in-law and mother-in-law. Later, the mother-in-law and father-in-law of the deceased, were discharged by the High Court of the offence under Section 306 IPC while confirming the charges under Section 304B IPC and Dowry Prohibition Act.

The Hon'ble Bench relying on Bhupendra vs. State of Madhya Pradesh - (2014) 2 SCC 106, set aside the verdict of the High Court and held that:

"30. We are, therefore, of the opinion that Section 306 IPC is much broader in its application and takes within its fold one aspect of Section 304B IPC. These two sections are not mutually exclusive. If a conviction for causing a suicide is based on Section 304B IPC, it will necessarily attract Section 306 IPC. However, the converse is not true."

Criminal Appeal No. 585 of 2021
Md. Ghouseuddin v. Syed Riazul Hussain & Anr.
Decided on: July 12, 2021

The Hon'ble Supreme Court Bench comprising Justices AM Khanwilkar and Sanjiv Khanna while allowing an appeal filed against a judgment of the Telengana High Court wherein the High Court reversed the decision of the Trial Court in rejecting the application for summoning of the document (s) observed that right to summon document has to be exercised when trial is in progress and not when trial is completed. During proceedings, it was contended that the trial had already completed long back and the accused was examined under Section 313 Criminal Procedure Code and the application for summoning the document(s) was moved only thereafter.

Section 91 of the Code of Criminal Procedure empowers a court to issue summons to the person in whose possession or power a document or thing is believed to be, requiring him to attend and produce it, if it finds that such document or thing is necessary or desirable for the purposes of trial.

"*The right to summon document(s), indeed, is available but that has to be exercised when the trial is in progress and not when the trial is completed, including after the statement of accused under Section 313 of Criminal Procedure Code had been recorded. The efficacy of the trial cannot be whittled down by such belated application.".*

Observing thus, the bench restored the Trial Court order by setting aside the High

Court judgment.

J&K HIGH COURT JUDGEMENTS

Criminal Appeal No. 432 of 2021
Dharmesh @ Dharmendra @ Dhamo Jagdishbhai @ Jagabhai Bhagubhai Ratadia & Anr. v. The State of Gujarat
Decided on: July 07, 2021

Hon'ble Supreme Court Bench comprising Justices Sanjay Kishan Kaul and Hemant Gupta observed that a condition for payment of compensation to victims cannot be imposed at the stage of bail. The factual background pertains to an incident of free fight between the complainant and allegedly by certain members of his caste providing assistance to the police on 10-11-2019 resulting in registration of FIR under Sections 302, 307, 324, 323, 506(2), 504, 143, 144, 147, 148, 149, 120B and 34 of the IPC as well as Section 135(ii) of the Gujarat Police Act. A counter FIR was also filed against the complainant and other witnesses under Sections 324, 323, 504, 506(2), 143, 144, 147, 148 and 149 of the IPC as well as Section 135 (ii) of the Gujarat Police Act. 2. Upon applying for bail, the same was granted by the High Court upon condition requiring them to deposit Rs.2.00 lakh each as compensation to the victims before the trial court within a period of three months.

It was observed that:

"16. In our view the objective is clear that in cases of offences against body, compensation to the victim should be a methodology for redemption. Similarly, to prevent unnecessary harassment, compensation has been provided where meaningless criminal proceedings had been started. Such a compensation can hardly be determined at the stage of grant of bail…

17. We may hasten to add that we are not saying that no monetary condition can be imposed for grant of bail. We say so as there are cases of offences against property or otherwise but that cannot be a compensation to be deposited and disbursed as if that grant has to take place as a condition of the person being enlarged on bail."

CrlA (D) no.02/2019
Showkat Ahmad Sofi Versus State of J&K and others
Pronounced on: 26 July, 2021

Hon'ble High Court of Jammu & Kashmir and Ladakh, while considering the Appeals directed against the composite Order passed by the court of Special Judge designated under NIA Act, Srinagar whereby bail applications of appellants were rejected in Case FIR registered under Section 120-B RPC, 17, 18, 38, 39 and 40 ULA(P) Act, observed that the public prosecutor has the option to agree or disagree with the reasons given by the IO for seeking extension of time and that on expiry of period of 90 or 60 days, as the case may be, an indefeasible right accrues in favour of accused for being released on bail.

Hon'ble Court referred to the provisions of Section 43D of ULA(P) Act and particularly Section 43D(2)(b) to observe that if it is not possible to complete the investigation within a period of ninety days, the Public Prosecutor is required to approach the Court with a report in which he should give the progress of investigation and specific reasons for detention of the accused beyond the said period of ninety days and if the Court is satisfied with the report of the Public Prosecutor, it may extend the said period of ninety days up to one hundred and eighty days. Hon'ble Court relied on *State of Maharashtra v. Surendra Pundlik Gadling and others, (2019) 5 SCC 4* and observed that status of the prosecutor is not a part of the investigating agency as it is an independent statutory authority. Further, referring to case law *Hitendra Vishnu Thakur and others v. State of Maharashtra and others, (1994) 4 SCC 602* wherein emphasis was laid on the importance of the scrutiny by a public prosecutor so as to not leave the detenu in the hands of the IO alone, being the police authority, Hon'ble Court opined that the public prosecutor has the option to agree or disagree with the reasons given by the IO for seeking extension of time and request of I.O. for

extension of time is not a substitute for report of public prosecutor under the provisions of Section 43D (2)(b) of ULA(P) Act but in the facts of the present case, the second document in the form of an application shows scrutiny of the first document and thereafter details grounds and expanded reasons for the requirement of further time to complete the investigation. Further referring to case laws *Union of India v. Nirala Yadav, (2014) 9 SCC 457* and in *Rakesh Kumar Paul v. State of Assam, 2018 Cri.L.J.155* on the issue of grant of default bail wherein it has been held that on expiry of period of 90 or 60 days, as the case may be, an indefeasible right accrues in favour of accused for being released on bail. While considering the matter in hand, the Hon'ble Court observed that the Trial Court had not at all dealt with right of appellants to grant of default bail, even when application(s) were filed by them. It was also not denied that the Charge Sheet/Challan has been filed beyond the period of ninety days and, therefore, in those circumstances, notwithstanding the subsequent filing of challan, appellants could not have been deprived of their right to the benefit of default bail. With these observations, the appeal was allowed.

CRM(M) No. 50/2021
Murtaza Sadeeq Khan and others v. Serish Chowdhary
Decided on: 26 July, 2021

Hon'ble High Court of Jammu & Kashmir and Ladakh , in a petition filed under Section 482 of the Cr PC seeking quashing of proceedings pending before the trial court initiated by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005 on the ground that the complainant had no right to claim any maintenance from the petitioner, inasmuch as, the relationship of husband and wife has since ceased to exist between the parties on account of the fact that the petitioner had since divorced the complainant, held that the petitioner cannot take a new stand in proceedings under section 482 Cr.P.C before the High Court for the first time regarding divorce between the parties, if no such previous stand has been taken before the trial court where proceedings are already pending .

Factually, It was urged that the petitioner in the present petition had pronounced Talaq on the respondent on 27.05.2020 in the presence of the witnesses in accordance with the Muslim rights and customs and also got the divorce deed duly registered through notary public, which was communicated to the said respondent through WhatsApp and through registered post which was received by the respondent on 27.06.2020. It was thus urged that the continuation of proceedings in the case by the trial Court would be an abuse of the process of law.

The Hon'ble Court crystallized the issue involved for consideration as to whether the proceedings pending before the Trial Court under the Act can be quashed merely because of the fact that the petitioner has pleaded for the first time in the present petition filed under Section 482 of the Cr. PC that he had divorced his wife and replied in negative to the same. Hon'ble Court relied on the judgment of coordinate Bench in ***"Mohammad Naseem Bhat Vs Bilquees Akhter and another," (2012)4 JKJ 318*** in paragraph 26 & 27 held: "*26. From the above discussion, it emerges that a husband to wriggle out of his obligations under marriage including one to maintain his wife, claiming to have divorced her has not merely to prove that he has pronounced Talaak or executed divorce deed to divorce his wife but has to compulsorily plead and prove: (i) that effort was made by the representatives of husband and wife to intervene, settle disputes and disagreements between the parties and that such effort for reasons not attributable to the husband did not bear any fruit, (ii) that he had a valid reason and genuine cause to pronounce divorce on his wife, (iii) that Talaak was pronounced in presence of two witnesses endued with justice, (iv) that Talaak was pronounced during the period of tuhr (between two menstrual cycles) without indulging in sexual intercourse with the divorcee during said tuhr. 27. It is only after*

the husband pleads and proves all the above ingredients that divorce — Talaak, would operate and marriage between the parties would stand dissolved so as to enable husband to escape obligations under the marriage contract, including one to maintain his wife. The Court in all such cases would give a hard look to the case projected by the husband and insist on strict proof."

Hon'ble Court while dismissing the petition observed that the respondent in the complaint has not even filed response to the application before the trial Court and accordingly held that the mere fact that the petitioner has pleaded in the writ petition that he has divorced his wife is not enough unless that factum is pleaded before the trial Court and proved, more so, when the complainant still claims that she is still the legally wedded wife of the petitioner

CRMC No.10/2019
Abdul Majeed Dar v. Javid Ahmad Bhat
Pronounced on: 15 July, 2021

Hon'ble High Court of Jammu & Kashmir and Ladakh, in a petition filed under section 561-A Cr.P.C. while dealing with the issues as to whether non-recording of statement of accused under Section 242 of the Code is fatal to the case, even if the accused seeking benefit of such omission has not suffered any prejudice on such account and whether statement of the accused under Section 242 of the Code can be recorded even after the evidence in the complaint has been led, held that omission to record the statement of accused under Section 242 of the Code is a mere irregularity curable under Section 537 of the Code, unless such irregularity has occasioned failure of justice

On facts, the petitioner in the proceedings is accused in a complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 before the the trial Court. When the trial Court took up the complaint for final disposal after both sides had adduced their evidence, it was found that at the time of commencing the trial statement of the accused under Section 242 of the CR.P.C. had not been recorded. The trial Court came to the conclusion that failure to record statement of the accused under Section 242 of the Code was a curable defect and accordingly fixed the complaint for recording statement of the accused aggrieved of which the petitioner filed a revision petition before the revisional Court which dismissed the revision petition. It was observed that as per section 242 Cr.P.C, the moment an accused appears or is brought before the Magistrate, particulars of the offence of which he is accused are required to be stated to him and he would be asked if he has any cause to show cause as to why he should not be convicted, however, it shall not be necessary to frame formal charge. However, in terms of sec 244 of the Code, in a case where accused does not admit the charge, the Magistrate shall proceed to hear the complainant, if any, and take all such evidence as may be produced in support of prosecution and shall also hear the accused and take all evidence as he produces in his defence. It was observed *"It is true that recording of statement under Section 242 of the Code is an important aspect of trial in summons cases and it provides an opportunity to the trial Court to terminate the proceedings at its inception, if accused admits that he has committed the offence of which he is accused. However, where the accused does not admit the accusation, the trial Court shall proceed and hear the complainant and take all such evidence, as may be produced in support of the prosecution. The trial Court" shall also hear the accused and take all such evidence as he produces in his defence".*

With these observations, the Hon'ble Court dismissed the petition.

"Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to the prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself."

T.S. Thakur, J. in P. Sanjeeva Rao v. State of A.P., (2012) 7 SCC 56, para 23

CIVIL

Supreme Court Judgments

Civil Appeal No. of 2021
The Project Director, National Highways No.45 E and 220 National Highways Authority of India V. M. Hakeem & Anr.
Decided on: July 20, 2021

In appeals filed by NHAI against the Madras High Court judgment which held that, at least insofar as arbitral awards made under the National Highways Act, 1956, Section 34 of the Arbitration Act, 1996 must be so read as to permit modification of an arbitral award made under the National Highways Act so as to enhance compensation awarded by an Arbitrator, a Bench of Hon'ble Supreme Court comprising Justices RF Nariman and BR Gavai while dismissing the appeals observed that a Court, under Section 34 of the Arbitration and Conciliation Act, cannot modify an award. It was observed that "If one were to include the power to modify an award in Section 34, one would be crossing the Lakshman Rekha",

Section 34 of the Arbitration & Conciliation Act,1996 stipulates grounds to challenge the award made under section 31 of the Act. One of the issues considered in the appeal was whether the power of a court under Section 34 of the Arbitration and Conciliation Act, to "set aside" an award of an arbitrator would include the power to modify such an award. While addressing this contention, the bench referred to Section 34 and observed that it provides only for setting aside awards on very limited grounds, such grounds being contained in sub-sections (2) and (3) of Section 34.

"14. What is important to note is that, far from Section 34 being in the nature of an appellate provision, it provides only for setting aside awards on very limited grounds, such grounds being contained in sub-sections (2) and (3) of Section 34. Secondly, as the marginal 18 note of Section 34 indicates, "recourse" to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-sections (2) and (3). "

It was observed that what is clear from a reading of the said provisions is that, given the limited grounds of challenge under sub-sections (2) and (3), an application can only be made to set aside an award.

The court also noted that under Sections 15 and 16 of the Arbitration Act, 1940, the court is given the power to modify or correct an award in the circumstances mentioned in Section 15, apart from a power to remit the award under Section 16. However, a Section 34 proceeding does not contain any challenge on the merits of the award, referring to various judgments on this aspect, the Hon'ble Bench observed:

"40. It can therefore be said that this question has now been settled finally by at least 3 decisions of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act"

The court also disapproved the High Court approach of assimilating the Section 34 jurisdiction with the revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908. Further, it was held that in interpreting a statutory provision, a Judge must put himself in the shoes of Parliament and then ask whether Parliament intended this result.

2401-2402 of 2021
Sayyed Ayaz Ali v. Prakash G Goyal & Ors
Decided on: July 20, 2021

The Supreme Court Bench comprising Justices D.Y. Chandrachud and MR Shah held that while rejecting a plaint under Order 7 Rule 11(d) of Code of Civil Procedure, the Court cannot grant liberty to the plaintiff to amend the plaint. It was observed that the proviso to Rule 11 covers the cases falling within the ambit of clauses (b) and (c) and has no application to a rejection of a plaint under Order 7 Rule 11(d) CPC.

In this case, the Trial Court permitted the plaintiff to carry out an amendment for seeking appropriate reliefs. Allowing the Revision petition, the High Court held that since the plaint was rejected under Order 7 Rule 11 (d) there was no occasion to direct that an amendment be made to the plaint. Hon'ble Bench noted the proviso in Order 7 Rule 11 and said that it deals with a situation where time has been fixed by the Court for the correction of the valuation or for supplying of the requisite stamp paper.

13.....Under the proviso, the time so fixed shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by a cause of an exceptional nature from complying within the time fixed by the court and that a refusal to extend time would cause grave injustice to the plaintiff. The proviso evidently covers the cases falling within the ambit of clauses (b) and (c) and has no application to a rejection of a plaint under Order 7 Rule 11(d). In the circumstances, the High Court was justified in coming to the conclusion that the further direction that was issued by the Trial Judge was not in consonance with law.

Special Leave Petition (C) No.2492 of 2021
K.P. Natarajan & Anr. v. Muthalamal & Ors.
Decided on: July 16, 2021

The Supreme Court Bench comprising Justices Indira Banerjee and V Ramasubramanian upheld a judgment of the Madras High Court and held that an ex-parte decree passed against a minor not represented by a guardian who is duly appointed is a nullity. The bench was considering an appeal filed against the High Court judgment in a revision petition filed under section 115 CPC arising out of a suit seeking specific performance of a sale agreement, wherein the High Court had set aside the ex-parte decree of the Trial Court passed against a minor on the ground that he was not represented by a guardian appointed in terms of procedure contemplated under Order XXXII, Rule 3 of the Code of Civil Procedure. The trial court dismissed the application to set aside the ex-parte decree on the ground of unexplained delay of 862 days in preferring the application. One of the defendants in the suit was a minor. While considering the revision, the High Court had summoned the records to ascertain if the guardian was duly appointed as per procedure. On finding that there was no proper appointment of guardian, the High Court set aside the ex-parte decree as a nullity, without going into the question of adequacy of reasons for delay. The Hon'ble Supreme Court observed that the Court cannot be negligent even if the party was negligent and the Court has to ensure that proper procedure was followed.

"The manner in which the trial Court disposed of the application under Order XXXII, Rule 3, is without doubt, improper and cannot at all be sustained, especially in the teeth of the Madras Amendment", The Supreme Court also refused to accept the argument that the High Court could not have set aside the decree invoking Article 227 while hearing a revision application under Section 115 CPC.

The Court also held that the failure to appoint guardian *ipso facto* will result in prejudice to the minor and it need not be specially established. Further, the Supreme Court agreed with the High Court's view that the decree as a whole required to be set aside and not merely against the minor defendant. With these observations, the Hon'ble Court found *no illegality in the order of the High Court and dismissed the Special Leave Petition .*

J&K HIGH COURT JUDGEMENTS

RP No. 28/2021
Abdul Ahad Lone v. Union Territory of J&K & Ors
Pronounced on: 15 July, 2021

Hon'ble High Court of Jammu & Kashmir and Ladakh while dealing with a bunch of review petitions and consequently dismissing them, reiterated the parameters and grounds for seeking review of the judgment or order in terms of Section 114 read with Order XLVII Rule 1 CPC. The petitioners before the Court were seeking review of the judgment passed by the Hon'ble Court in LPA along-with clubbed matters. The Hon'ble Court observed

" As is apparent from the judgment, all the issues raised by the parties have been elaborately discussed and decided. These review petitions are an effort by the petitioners to re-agitate the same issues which have been finally decided by this Court by a well-considered judgment. From the memorandum of the review petitions, it clearly transpires that the petitioners want this Court to hear the matter afresh and decide the issues already decided by taking a different view. Such course is not permissible in law."

Hon'ble Court referred to the observations of the Hon'ble Supreme Court made in *"Sow Chandra Kante and Anr. Vs. Sheikh Habib, 1975(1) SCC 674"*, and "*M/s Northern India Caterers (India)Ltd. vs. Lt. Governor of Delhi, (1980) 2 SCC 167"*, to buttress that the normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. Hon'ble High Court held that review of the judgment or order in terms of Section 114 read with Order XLVII Rule 1 CPC will be maintainable only on the following grounds:-

i) Discovery of new and important matter or evidence which after, the exercise of due diligence was not within the knowledge of the petitioner or could not be produced by him;
ii) Mistake or error apparent on the face of record;
iii) Any other sufficient reason.

It was also observed that a review will not be available on the following grounds:-

i) Repetition of old and overruled argument is not enough to reopen concluded adjudications;
ii) Minor mistake of inconsequential import;
iii) Review proceedings cannot be equated with the original hearing of the case;
iv) Review is not maintainable unless the material error, manifest on the fact of the order, undermines its soundness or results in miscarriage of justice;
v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error;
vi) Mere possibility of two views on the subject cannot be a ground for review;
vii) The error apparent on the face of the record should not be an error which has to be fished out and searched;
viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition;
ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative.

ACTIVITIES OF THE ACADEMY

3-DAY TRAINING PROGRAMME ON THE TOPIC "COGNIZANCE PROCEDURE AND JURISDICTION IN CASES OF NEGOTIABLE INSTRUMENTS ACT,1881"

J&K Judicial Academy organized 3-Day Online Training Programme for Civil Judges (Junior Division) on the topic "Cognizance Procedure and Jurisdiction in cases of Negotiable Instruments Act,1881" w.e.f. 7th July, 2021 to 9th July, 2021.

On day one, the judicial officers were sensitized about the various nuances of the NI Act by Mr. Mohammad Yousuf Wani, Principal District and Sessions Judge, Baramulla. The resource person referred to various provisions of the Act and the procedures to be undertaken while dealing with cases pertaining to cheque dishonor.

On the second day, the resource person Mr. Sanjay Parihar, Director, J&K Judicial Academy, educated the officers on various aspects relating to the Act. He referred to the various landmark judgements pertaining to the provisions of the Act and the evolution of law including penal provisions.

Sh. Parvez Kachroo, who was the resource person on the third day gave a detailed overview of the provisions and the mode and manner which is to be adopted in the conduct of cases under section 138 of NI Act.

WEBINAR ON "MAKING MORE EFFICIENT USE OF JUDICIAL PROCEDURE"

On 14th July, 2021, Jammu & Kashmir Judicial Academy organized a webinar on the topic "Making more efficient use of Judicial Procedure" for Judicial Officers of Jammu, Kashmir and Ladakh. The webinar was guided by the resource person Dr. Arun Mohan, Senior Advocate, Supreme Court of India in the presence of Mr. Sanjay Parihar, Director, Jammu & Kashmir Judicial Academy.

Dr. Arun Mohan in his deliberations guided the participants on the procedural flow of the cases in civil proceedings including pleading, document & record, interrogatory, affidavit, statement before bail issues, evidence and judgement. The entire process in civil proceedings was lucidly explained to the participants. Similarly, the contours of criminal proceedings were also explained in detail. The resource person particularly dealt with the aspects of material and evidentiary facts in both proceedings in detail.

Judicial Officers had an interactive session with the vastly experienced resource person who ably responded to the doubts and queries raised by the participating officers.

2-DAY TRAINING PROGRAMME ON THE TOPIC "ANALYSING PROVISIONS OF DOMESTIC VIOLENCE ACT WITH EMPHASIS ON DRAWING MAINTENANCE AND GRANT OF SHELTER ORDERS" HELD ON 28TH JULY, 2021 AND 30TH JULY, 2021

Jammu & Kashmir Judicial Academy organized a 2-Day Online Training Programme for Civil Judges (Junior Division) on the topic "Analysing Provisions of Domestic Violence Act with emphasis on drawing maintenance and grant of shelter orders" on 28th July, 2021 and 30th July, 2021.

On day one, the judicial officers were trained on various aspects of Domestic Violence Act by the resource person Sh. M.S. Parihar, Special Judge, Anti Corruption, Jammu. The resource person educated the trainees about the contours of the Act and the specific provisions vis-à-vis Maintenance and Shelter orders.

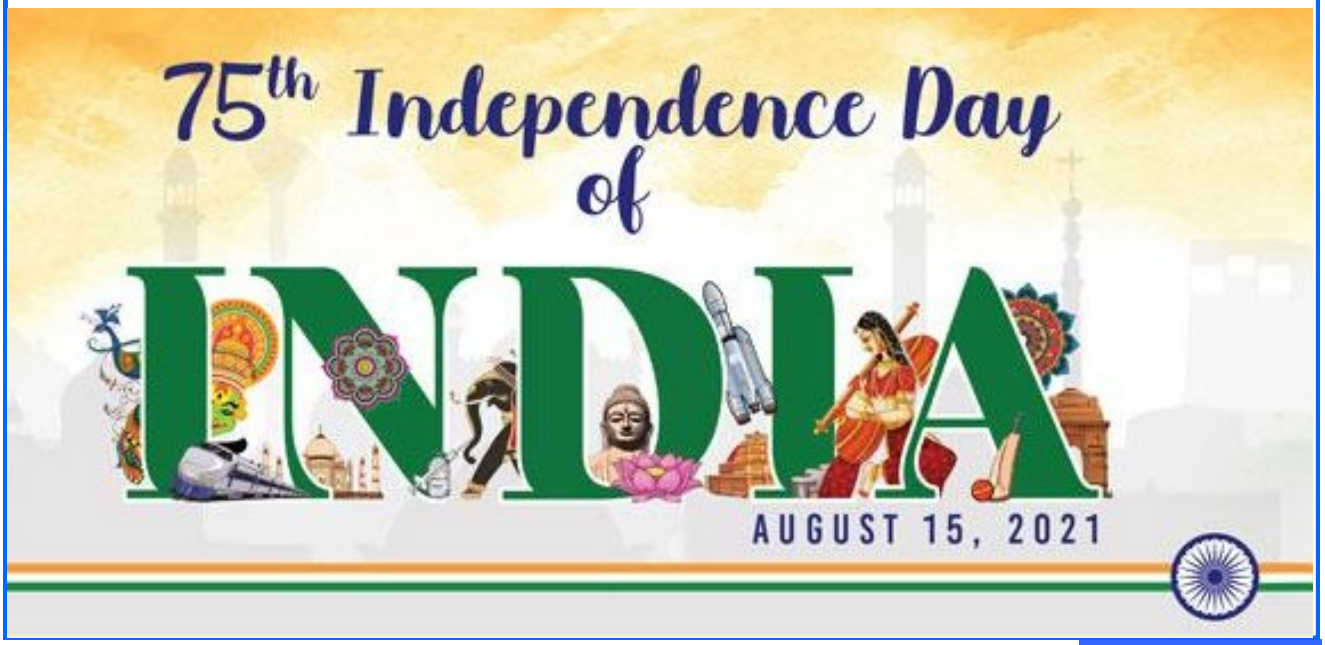
On day two, the resource person Sh. Haq Nawaz Zargar , Principal District & Sessions Judge, Ramban educated the participants about the provisions of the Act vis-a vis protection, residence and maintenance provisions and the relevant case laws. The training sessions were supervised by Sh. Sanjay Parihar, Director, Jammu & Kashmir Judicial Academy who also interacted with the participants and relieved their queries.

WEBINAR ON "EMERGING TRENDS IN MEDIATION"

Jammu & Kashmir Judicial Academy conducted a webinar on the topic "Emerging Trends in Mediation" for the Judicial Officers of Jammu, Kashmir and Ladakh on 29th July, 2021. To guide the Judicial Officers on the topic, the Jammu & Kashmir Judicial Academy had invited Mr. Sriram Panchu, Senior Advocate who is an internationally recognized mediator. The resource person apprised the participants on the concept of mediation and its emerging trends in the presence of Mr. Sanjay Parihar, Director, Jammu & Kashmir Judicial Academy.

The keynote speaker described mediation as a relatively recent occurrence and talked about the fundamental facet of mediation. He described the concept as a path -breaking step to resolve conflicts in company-matters, in civil disputes, in matrimonial matters, commercial disputes etc. He described the judge as a key role player in the process and urged all the judicial officers to bring the parties together and spend some minutes for opening statements and for building confidence and trust in the process. He also described the role of mediator who should constantly find out new innovative ideas, develop quality of listening and suggest alternative solution. He underscored the importance of pre-institutional mediation in commercial disputes and emphasised that the success rate of mediation is pre-dominantly due to low risk factors and possibility of creating larger perspective.

The resource person had an interactive session with the Judicial Officers and with his vast experience the resource person ably responded to the doubts and queries raised by the participating officers.



EXPLOITATION OF CHILDREN & LAWS IN PLACE

Children are, perhaps, the most beautiful creation of nature that are vulnerable to a nefarious society. The immoral choices made by adults exploits children by infringing their rights and receding their entitlements. Abuse of any kind, social or sexual, is harmful for a child's physical and mental development and is also an offence against their dignity. These children are the future of the nation ,who deserve a chance in unlocking their full potential so that they can follow their dreams. Thus it's the duty of the State and its institutions to address the issues pertaining to their vulnerable stakeholders and determine practical solutions.

"There is no greater violence than to deny the dreams of our children."

Child labour is a form of work that deprives children of opportunities in childhood , quashes their dreams of beaming rainbows and imprisons them in the shackles of perpetual poverty. It refers to work that is mentally, physically, social or morally dangerous and harmful to children, and or interferes with their schooling. By seizing their chance at education, it pushes children to a precarious future. The worst form of child labour involves children being enslaved, separated from their families, exposed to serious hazards and illness or left to fend for themselves on the streets of large cities- often at very early age.

The State as a just system has recognized and advocated children rights by enshrining them within the constitution. India ratified the UN Convention on the Rights of the Child ,thus taking the responsibility to guarantee rights for children. All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict is strictly prohibited and the use, procuring or offering of a child for prostitution, for the production for pornography or for pornographic performances. Hazardous child labour or hazardous work which is likely to harm the health, safety or morals of children and work which exposes children to physical, psychological or sexual abuse is strictly prohibited. Hiring children below the age of 14 yrs for any kind of work, other than in certain family based work, is a cognizable offence and will attract a Jail term of up to 2 years. Adolescents between the age of 14-18 years cannot be employed in any hazardous occupation i.e.,

- An occupation connected with transport of passengers, goods or mails by railway, clearing of an ash pit or building operation in the railway premises.
- Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or cut off a moving train. Work relating to the construction of a railway station or with any other network where such work is done close to or between the railway lines and diving, circus and

caring for elephants.

- Any of the following process Bidi-making, carpet- weaving including preparatory and incidental process there of; cement manufactures, including bagging of cement, cloth printing, dyeing and weaving including processes, preparatory and incidental to it, manufacture of matches, explosives and fireworks.

Despite such constitutional assurances, children are exploited and given inhuman treatment. At a very tender age they are forced to work & engage themselves as Labour for their survival. According to data from Census 2011, the number of child labourers in India is 10.1 million of which 5.6 million are boys and 4.5 million are girls. Child trafficking is also linked to child labour and it always results in child abuse. Despite rates of child labour declining over the last few years, children are still being used in some severe forms of child labour such as bonded labour, child soldiers, and trafficking. While law of the land mandates free and compulsory education to all children aged 6-13 yrs. ,cases of children from poor families neglecting education over an occupation remain common. Despite the presence of plethora of laws including Child labour Act ,cases of child abuse & child Labour are reported. We find cases of severe violence against children rising at an alarming rate . Children deprived of maintenance & other basic human Rights is a disheartening reality. There are many Social welfare schemes under Child Labour Platform for rehabilitation of children who have been forced to the system of employment , yet the same are not implemented . Though "Rashtriya Bal Kosh" is an initiative under the Ministry of Women & Child Development to raise funds for welfare of children, its utilization has not been constituted yet.

It is said that despite the implementation of POCSO Act ,cases of violence against children and sexual offences, are still reported in large numbers. The worst form of exploitation of children is found in "Circus" where at times they are met with cruel treatment and a gross violation of their rights. In "Bachpan Bachao Andolan V/S Union of India" & as on 18-04-2011 by Hon'ble Justice Dalveer Bhandari & Justice A.K Patnaik , it was held that child welfare committee must directly come under supervision of District Judges &/ Hon'ble Judges of High Courts so that children's right to free & compulsory Education, Right to Health & nutrition & protection of child rights Act are to be implemented to avoid children's exploitation & their mental health be taken care of. While the courts have helped in the wider interpretation of the statutes so that a larger number of victims can be compensated, the lack of education and growth in formal economy has led to an increase in engagement of children in labour so as to raise their families. This has entailed to a continuous struggle for existence. Children belong to schools and not workplaces ,yet the present conditions of economy and social institutions has deprived children of their right to go to school and reinforced the intergenerational cycles of poverty. Child labour, thus acts as a major barrier to education, affecting both attendance and performance in school.

Author's View:-

There is a dire need to discourage child labour and to help needy children receive education and good nutrition to create a vibrant & robust society.

-Contributed by:
Ms. Bala Jyoti
Presiding Officer
Industrial Tribunal Cum Labour court
(District & Sessions Judge)

IMPACT OF PANDEMIC ON ENVIRONMENT

The prevailing pandemic is quite an unprecedented happening in the world history. An invisible virus called Corona Virus has virtually made the world helpless. We were actually somewhere feeling complacent that we have made much wonders in the field of science and technology. We were claiming that we are now exploring the existence of life on the planet Mars. But in this fanciful imagination, we forgot our role as a human being. Somewhere we have gone wrong in our blind pursuits of achieving excellence and abdicated playing our best altruistic roles in the society. We also failed to realize our limitations and God Almighty made us realize to analyse our capabilities and capacities. How high and vast we can comprehend has been conveyed to us through this pandemic. Till now we are unable to explore what actually was the origin of the current pandemic. Whether it was a man made virus or a lesson from the nature, debate is still on with no concrete or correct conclusion drawn so far.

The pandemic also put a deep impact on our environment. It may be distinguished in two forms for the present discussion. In my apprehension we are living in two types of environment i:e Social and Physical. The traditional discussion on the environment mostly relates to the physical environment, means the flora, fauna, ecosystem, biodiversity, ecology etc, which comes within the scope of the term "physical environment". There is no denial to this acknowledged fact that the physical environment has a deep impact on the survival of all the living organisms including "homosapiens" the man, and same is under threat to be saved at all costs for our better survival. The impact of pandemic on the physical aspect of the environment has a positive as well as negative result, and taking note of the studies in this regard, it can be said that the pandemic has put more positive impact than negative. This is the only silver lining, a hope which we have witnessed of this pandemic. All the lethal gases and their emission has been reduced, our flora and fauna has increased and the purity level in the air and water has augmented more. It was said that for the first time the river Yamuna was seen blue in Delhi. Briefly put, pandemic proved blessing in disguise for the physical environment around. But at the same time there are some negative impacts of pandemic on the physical environment around, especially in context of the lot of wastages coming out of the hospitals, health institutions and many other such aspects of it which have been discussed in various studies available on the internet. However, if we compare both, the positive impact outweighs the negative. Now comes another form of environment called social environment and how pandemic has influenced it is an area which

has entailed much attention now. As I said earlier, this pandemic is unprecedented in the history of mankind and has created unprecedented challenges for the human beings, even to their very existence. Fact remains that human being has become helpless before an invisible virus. Plethora of challenges are there on account of it and most importantly to our right to life, to our social values, ethos and social fabric. Unfortunately lacs and lacs of people have fallen prey to the pandemic especially in our country in last three months. Every sector of the society is severely hit by the pandemic and people seem to be struggling for their survival. In sum, we should keep in our minds both physical and social aspect of the environment visa-vis impact of covid-19 pandemic. In context of deteriorating situation of our physical environment on account of unmindful activities of the human being, I am reminded of a couplet which goes like this:-

zameen ke gosha gosha se sada ye sunnay ko aa rehi hai; ujaad ker merey runuknoo ko amnaa kahii bi na paasakoga.

(That from every corner of this planet earth, I am listening a voice that if you will spoil me, you will not get solace anywhere.)

This is in brief in context of our physical environment. However, in context of the social environment, it is the time when the human values and ethos deserve their full application. It is a test time for the human beings as how they are going to respond to this unprecedented catastrophic situation arisen in the human history which resulted into colossal irreparable human losses, affecting every sector of the society. There are many helpless people around who are now struggling for two course meal a day. Crisis are so deep that it has made many have's of the society as have-nots and their number is increasing multifold, while the already have-nots have lost their hope in their survival. It is therefore, high time when we think, act and perform altruistically. It is time to show our utmost benevolence for the people around who feel dejected and have lost hope in their existence and in life too. Here, I am reminded of a couplet which depicts my thoughts as such;-

Dardey dil ke vastay Paida kiya insaan ko warna taatt ke liya kuch kum na thai karo biyan

("That it is for sharing the pain of others human beings have been created, otherwise angles were sufficient for prostration before God").

I sanguinely hope the message given in context of impact of pandemic on our physical and social environment will be appreciated in its true sense and carried forward around with zeal and zest. Let's be on the same page in our endeavour's to bring life back in our all wrecked and crumbling institutions on account of Pandemic, so that the society as a whole blossoms again spreading the fragrance of hope, stars and enchantment.

Contributed by:
Mr. Tahir Khursheed Raina
Principal District & Sessions Judge
Kulgam