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From the Editor's Desk

Article 39A of the Constitution of India enjoins upon the State to secure the operation of the Legal System on the basis of equal opportunity, and for providing of free legal aid to the socially or economically marginalized sections of the society. This provision read with Preamble to the Constitution is the foundation for 'Access to Justice for All', which is also the motto of Legal Services Authorities in India. 'Access to Justice for All' requires breaking of all the barriers to ensure that justice is availed of by every person irrespective of his status in the society, position in life or his/her economic or social condition. Physical barriers such as remoteness of the place of residence of the consumer of justice cannot become a stumbling block for the justice seekers and deny them their due. On the ground of inaccessibility there cannot be a denial of the fruits of justice.

The ideals of the Constitution are set out in its Preamble. Justice in all its manifestations viz. social, economic and political, is the first ideal which the State and its functionaries are mandated to ensure for all the citizens of the country. The Judiciary is an important constituent of the State and is the principal tool for dispensation of justice. The courts, as such, are under constitutional obligation to secure justice even to the last person standing in the queue. Remoteness of the courts notwithstanding, the justice delivery system is required to reach to the disadvantaged and marginalized persons and sections of the society. Out of the box solutions are needed to be worked out to ensure that the justice is not denied to any person.

'Insaaf ki Dastak' a flagship programme of the High Court of Jammu and Kashmir is an important tool and a solution to bridge the gap and to reach out to the consumers of justice. This programme takes into account the fact that despite setting up and meeting the developmental goals, still there is lingering problem of docket exclusion. The rules of procedure, thus, have to be suitably modified in order to facilitate access to justice to those residing in far flung areas, inaccessible in terms of the means of communication. It is intended to ensure that any person in any inaccessible areas is not denied justice. As a departure from the settled rules of procedure having the tendency of impeding the flow of justice, in this programme every possible solution is explored to facilitate the consumers of justice. Afterall, the procedures are only a hand-maid of justice and cannot be allowed to impede the course of justice. Every procedural rule tending to impede justice needs to be tinkered suitably to meet the constitutional expectations from the State authorities, especially the Judicial System. We cannot sit quiet until we are able to achieve the objective set out by the Constitution.

LEGAL JOTTINGS

"The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being weaponized for using the force of criminal law. Our courts must ensure that they continue to remain the first line of defense against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many. We must always be mindful of the deeper systemic implications of our decisions ."

Dr Dhananjaya Y Chandrachud, J *in Arnab Manoranjan Goswami v. State of Maharashtra, Criminal Appeal No. 742 of 2020, decided on November 27, 2020*

CRIMINAL

Supreme Court Judgments

SLP (Crl.) No. 4931 of 2020
Skoda Auto Volkswagen India Pvt. Ltd. v. The State of U.P. & Ors.
Decided on: November 26, 2020

The Supreme Court in this case reiterated that quashing of a complaint should be an exception and a rarity than an ordinary rule. If a perusal of the FIR leads to the disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police. The Court further held that mere delay in the part of the complainant in lodging the complaint cannot by itself be the ground to quash the FIR.

Criminal Appeal No. 801 of 2020
Venkatesan Balasubramaniyan v. the Intelligence Officer, D.R.I. Bangalore
Decided on: November 20, 2020

In this case, the accused who were intercepted by D.R.I officials in Hyderabad found in possession of 45 kg contraband were booked for offences under NDPS Act and granted default bail by Special court, Hyderabad on completion of 180 days in custody. The part of subject crime arose within the jurisdiction of Special court, Omerga, Maharashtra State and the prosecution has filed single charge sheet before Special Court, Omerga on 06.07.2018.

On 12.07.2018 accused prayed for default bail before Special Court, Hyderabad and the same was granted on 12.07.2018 itself as 180 days had lapsed and no charge sheet was filed before Hyderabad Court nor the factum of single charge sheet which was filed by prosecution on 6.7.2018 brought to notice of Special Court, Hyderabad.

Prosecution thereafter applied for cancellation of bail u/s 439(2) CrPC before High Court and the bail order granted erroneously was set aside. Appellants assailed the said order before apex court wherein the Order setting aside order of grant of bail passed by High court was upheld as the bail was granted due to the fact that filling of Single charge sheet was not brought into the notice of Hyderabad Court by prosecution while dealing with bail application. Reliance was placed upon the earlier decision of Supreme Court in Pandit Dhyanu's Vs State of Maharashtra and Ors., (2008) 17 SCC 745.

Criminal Appeal No. 800 of 2020
Omanakkuttan & Ors. v. State of Kerala
Decided on: November 20, 2020

This criminal appeal was filed by the accused/A1 to A3, aggrieved by the judgment of conviction and sentence passed by the High Court of Kerala, at Ernakulam. The appellants/ accused A1 to 3, were tried for offence punishable under Sections 324, 326 and 308 read with Section 34 of Indian Penal Code.

The Supreme Court modified the conviction and sentence imposed by the High Court. While maintaining the conviction recorded by the trial court, as confirmed by the High Court, for the offence under Section 308 read with Section 34 IPC and also under Section 326 IPC, the Apex court reduced the sentence imposed on the 3rd appellant, for the period already undergone. The compensation awarded for the offence under Section 308 read with Section 34 and Section 326 IPC was reduced.

It was held that - If the compensation, as awarded, was not paid, the same shall be paid within a period of two months from today

to PW-1. At the same time, the judgment of the trial court, for the offence under Section 324 IPC, as confirmed by the High Court was confirmed.

SLA (Crl.) No. 5385 of 2020
Manish Jain v. Haryana State Pollution Control Board
Decided on: November 20, 2020

The Supreme Court in this case ruled that a person cannot file an anticipatory bail application apprehending arrest following the cancellation of his regular bail. The Court observed that a person released on bail remains under the constructive custody of law and a person in custody cannot seek anticipatory bail. Thus, anticipatory bail was denied to the petitioner who was apprehending his arrest after his regular bail was cancelled.

Criminal Appeal No. 590 of 2015
Jayantilal Verma v. State of M.P. (Now Chhattisgarh)
Decided on: November 19, 2020

In this case, the appeal was filed before the Supreme Court against the judgment of High Court convicting appellant, which was dismissed by the Supreme Court and affirmed the judgment of High Court.

This case dates back to 1999 where a married woman was found dead in her matrimonial home. The Supreme Court upheld the conviction of her husband even though a large number of witnesses had turned hostile.

The Court observed that the most significant point was where the death was caused and the body found, it was in the boundaries of the house of the appellant herein where there were only family members staying. The High Court also found that the location of the house and the surrounding buildings were such that there was no chance that somebody from outside could come and strangulate the deceased

The Court also observed that mere presence or absence of a large number of witnesses cannot be the basis of conviction. It is the quality of evidence and not the number of witnesses, which is relevant. In this behalf, a reference was made to the following case:

Yanob Sheikh Alias Gagu v. State of West Bengal 4 (2013) 6 SCC 428, where it was observed as under:

> We must notice at this stage that it is not always the quantity but the quality of the prosecution evidence that weighs with the Court in determining the guilt of the accused or otherwise. The prosecution is under the responsibility of bringing its case beyond reasonable doubt and cannot escape that responsibility. In order to prove its case beyond reasonable doubt, the evidence produced by the prosecution has to be qualitative and may not be quantitative in nature.

The court held that the appellant herein was under an obligation to give a plausible explanation regarding the cause of the death in the statement recorded under Section 313 of the Cr.P.C. and mere denial could not be the answer in such a situation.

Finally, the Supreme Court directed the respondent State to examine whether the appellant herein has completed 14 years of an actual sentence or not and if it is so, his matter shall be examined within a maximum period of two months. If not, the exercise should be undertaken within the same time on completion of 14 years of the actual sentence.

Criminal Appeal Nos. 760- 764 of 2020
M/S Fertico Marketing and Investment Pvt. Ltd. & Ors. Etc v. Central Bureau of Investigation & Anr.
Decided on: November 17, 2020

In this criminal appeal, the question before the Supreme Court was whether investigation conducted by CBI, for offences under The Prevention of Corruption Act, 1988, against public servants without prior permission of the state government was illegal and beyond jurisdiction for non-compliance with section 6 of Delhi Special Police Establishment Act.

Section 6 of the DSPE Act provides:

Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, [not being a Union territory or railway area], without the consent of the Government of that State.

The Supreme Court observed that if the names of the public servants did not figure in the FIR and their names came to light during

the course of investigation and charge sheet was filed against them, the consent given after completion of the investigation would be a valid consent under section 6 of the DSPE Act.

It was further observed by the Supreme Court that cognizance and trial cannot be set aside unless the illegality in the investigation can be shown to have brought about miscarriage of justice. It relied on the judgment in **H.N. Rishbud and Inder Singh v. The State of Delhi [1955] 1 SCR 1150.** The Supreme Court opined that in the present case, the public servants failed to plead any prejudice being caused to them due to non-obtaining of prior consent under section 6 of DSPE Act qua them specifically in addition to the general consent in force, nor with regard to miscarriage of justice.

Criminal Appeal No. 707 of 2020
Hitesh Verma v. State of Uttarakhand
Decided on: November 05, 2020

The matter before the Supreme Court was an appeal against an Uttarakhand High Court judgment that dismissed the petition filed by the appellant Hitesh Verma under section 482 of the Code of Criminal Procedure seeking to quash a charge sheet and summoning order against him for an offence under Section 3(1) (r) of the SC/ST Act.

The responded has alleged that the appellant has specifically targeted her caste and humiliated and threatened to kill her. An FIR was registered against the appellant for offences of trespass, criminal intimidation and for insulting and humiliating SC/ST person under the relevant sections of the Indian Penal Code and SC/ST (prevention of atrocities) Act.

The Court observed that: “The property disputes between a vulnerable section of a society and a person of upper caste will not disclose any offence under the Act unless, the allegations are on account of the victim being a scheduled caste,”.

The Apex Court quashed the charge sheet filed specifically for offence under section 3(1)(r) of the SC/ST Act and left it open for the police to investigate the case under Indian Penal Code offences.

The Court further held that an offence under the Act does not stand on its legs merely because the informant is from scheduled caste or schedule tribe community.

Criminal Appeal No.715 of 2020
Hindustan Unilever Ltd v. The State of Madhya Pradesh
Decided on: November 05, 2020

The challenge in the present appeals is to an order of Hon'ble High Court of Madhya Pradesh, passed on 09.01.2020 whereby the appeal filed by the appellant/Nominated Officer (Incharge) of Hindustan Unilever Ltd, was allowed, however the matter was remitted back to the trial court to revisit the evidence adduced by both the parties, so far as it relates to the appellants, Nirmal Sen and the Company.

Hon'ble Supreme Court has held that:

“in the absence of company, the nominated person cannot be convicted or vice versa. Since the company was not convicted by the trial court, we find that the finding of the High Court to revisit judgment will be unfair to the appellant/Nominated person to who has been facing trial for more than last thirty years. Therefore, the order of remand to the trial court to fill up the lacuna is not a fair option exercised by the High Court as the failure of the trial court to convict the company renders the entire conviction of the Nominated person as unsustainable."

Criminal Appeal No. 730 of 2020
Rajnesh v. Neha & anr.
Decided on: November 04, 2020

In this case, the Apex Court deemed it appropriate to frame guidelines on various issues related to maintenance. Directions related to the following issues were passed:

Issue of overlapping jurisdiction— where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or setoff, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding.

It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.

If the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.

Payment of Interim Maintenance—The Affidavit of Disclosure of Assets and Liabilities, shall be filed by both parties in all maintenance

proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

Criteria for determining the quantum of maintenance

For determining the quantum of maintenance payable to an applicant, the Court shall take into account the following factors:

The status of the parties; reasonable needs of the wife and dependent children; Age and employment of the parties; Right to residence; Serious disability or ill health; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed before her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child-rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

Date from which maintenance is to be awarded—The Hon'ble Supreme Court made it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance.

Enforcement / Execution of orders of maintenance— For enforcement/execution of orders of maintenance, it was directed that an order or decree of maintenance may be enforced under— Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act and Section 128 of Cr.P.C., as may be applicable -

The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order XXI.

Criminal Appeal No. 763-764 of 2016
Shatrughna Baban Meshram v. State of Maharashtra
Decided on: November 02, 2020

The Appellant filed the special leave petition before the Supreme Court challenging the judgment and order dated 12-10-2015 passed by the High Court in which the judgment and order passed by the trial Court (under POCSO Act) and order of death sentence awarded to the appellant on two counts i.e. under section 302 and under section 376 of the Indian Penal Code, was confirmed.

The Supreme Court observed that "The circumstances proved on record are not only conclusive in nature but completely support the case of the prosecution and are consistent with only one hypothesis and that is the guilt of the Appellant. They form a chain, so complete, consistent and clear, that no room for doubt or ground arises pointing towards innocence of the Appellant. It is, therefore, established beyond any shadow of doubt that the Appellant committed the acts of rape and sexual assault upon the victim and that injury no.17 was the cause of death of the victim."

The Supreme Court further observed that "Considering the age of the victim in the present case, the accused must have known the consequence that his sexual assault on a child of 2 ½ years would cause death or such bodily injury as was likely to cause her death. The instant matter thus comes within the parameters of clause fourthly to Section 300 IPC and the question posed at the beginning of the discussion on this issue must be answered against the Appellant. The Appellant is therefore guilty of having committed the offence of culpable homicide amounting to murder."

The Hon'ble Supreme Court in Para 30 of the judgment noted that 67 cases were dealt with by the Court in last 40 years in which the offences involved were under section 302 and section 376 Indian Penal Code and the victims were below the age of 16 years. Out of 67 cases in 51 cases the age of the victim was below 12 years. Out of those 51 cases in 12 cases the death sentence was initially awarded. In three cases the death sentence was commuted to a life imprisonment.

The Supreme Court further observed that "a) it is not as if imposition of death penalty is impermissible to be awarded in circumstantial evidence cases; and b) if the circumstantial evidence is of an unimpeachable character in establishing the guilt of the accused and leads to

an exceptional case or the evidence sufficiently convinces the judicial mind that the option of a sentence lesser than death penalty is foreclosed, the death penalty can be imposed."

The Supreme Court further observed that "We therefore, find that though the Appellant is guilty of the offence punishable under Section 302 IPC, since there was no requisite intent as would bring the case under any of the first three clauses of Section 300 IPC, the offence in the present case does not deserve death penalty."

The Supreme Court further observed that "On the basis of the same aspects that weighed with us while considering the appropriate punishment for the offence under Section 302 IPC, in view of the fact that Section 376A IPC was brought on the statute book just few days before the commission of the offence, the Appellant does not deserve death penalty for said offence. At the same time, considering the nature and enormity of the offence, it must be observed that the appropriate punishment for the offence under Section 376A IPC must be rigorous imprisonment for a term of 25 years."

J&K High Court Judgments

CM(M) No. 99 of 2020
Ghulam Hassan Beigh v. Mohammad Maqbool Magrey & Ors.
Decided on: November 26, 2020

The petitioner contended that the respondent Nos. 1 to 7 were required to be charged under section 302 IPC and that the trial court has committed grave error of law while charging the respondent Nos. 1 to 7 for commission of offence under section 304 part II IPC as the court could not have evaluated the evidence at this stage. It is further contended that the trial court has referred the sections 268 and 269 of the Code of Criminal Procedure those were repealed at the time the matter was considered by the learned court below.

As per the mandate of sections 227 and 228 of Cr. P.C, while considering the issue of framing charge/discharge of the accused, the trial court has to form opinion on the basis of material on record by the Investigating Officer as to whether there is sufficient ground for presuming that the accused has committed an offence or not. The material on record would constitute the statement of witnesses, injury report/post-mortem report along with other material relied upon by the prosecution. At this stage, the trial court cannot indulge in critical evaluation of the evidence, as can be done at the time of final appreciation of evidence after the conclusion of trial but the charge can be framed against the accused even when there is strong suspicion about the commission of offence by the accused. The trial court can sift the evidence brought on record by the prosecution so as to find out whether the unrebutted evidence placed on record fulfils the ingredients of offence or not. If the ingredients are lacking then the Court has no option but to discharge. The perusal of the order passed by trial court reveals that the trial court after considering the statement of the eye witnesses including the injured witnesses and the statement of the deceased has come to the conclusion that the ingredients of offence under section 302 I.P.C are lacking. There is no force in the contention of the petitioner that the trial court has critically evaluated the evidence but the trial court has simply examined the material facts so as to find out as to whether there is sufficient material to charge the private respondents for commission of offence under section 302 IPC or not.

The contentions of the petitioner that the reference to sections 268 and 269 of the erstwhile Code of Criminal Procedure has been made by the trial court is of no consequence and the other contention as to allegations of the framing of charge in haste too deserves to be rejected. The order impugned, as such, is upheld.

CRR NO.32/2014
Gun Manufacturers Association v. State & Ors.
Decided on: November 25, 2020

The instant revision petition was filed before the High Court under section 435 to 439 J&K CrPC against the acquittal order passed by the judgment and trial court 31-01-2014 in a challan titled State v. Vinay Kumar & Anr.

The petitioner contended that the arms manufacturing company M/S Himalya Arms company is being run by the respondent 3 and 4 on the basis of a fake and forged manufacturing license and while dealing with the same the trial court has overlooked the evidence on record; the investigation of the case has been conducted in a

shabby manner; and the trial court has not appreciated the evidence on record.

The respondents in their preliminary objections have questioned the maintainability of the revision petition contending therein that the petitioner neither represents the prosecution side nor has been a prosecution witness and hence lacks any locus standi to file this revision petition.

The High Court while dealing with the preliminary objection raised by the respondents 3 and 4 held that though the filing of revision against the acquittal order in a challan case lies within the domain of prosecution only but the High court can call for the record of any proceeding before inferior criminal court to examine its correctness and legality. The High Court while referring to the judgments of the Apex Court in K. Chinnaswamy Reddy v. State of A.P and another, 1963(3) SCR and Mahendra Pratap Singh v. Sarju Singh & Anr. AIR 1968 SC 707 wherein the Apex Court has held that though the right of revision against an order of acquittal in a case instituted on challan lies with the prosecution only but the High Courts can still proceed with the revision petition where the trial court has committed a gross illegality by overlooking the material evidence or where the acquittal is based on compounding of offences which is invalid in law.

Holding that the instant case does not fall in any of the above exceptions and the petitioner is also not a prosecution, the Court dismissed the petition.

CRMC 423 of 2015
Janak Raj Gupta v. Ashwani Kumar & Anr.
Decided on: November 24, 2020

In the instant petition, the petitioner has challenged order dated 02.03.2015 passed by the trial court, whereby the evidence of the complainant (petitioner herein) was closed and the complaint was fixed for arguments on framing of charge.

Upon the perusal of entire records, Hon'ble High Court observed that the minutes of proceedings show that the complainant has continued to appear before the trial court on a number of dates of hearing, but, either on account of absence of the accused or his counsel and on some occasions, on account of non-availability of the Presiding Officer, the cross-examination of the complainant could not be recorded. Ultimately, on 29.12.2014, when the complainant as well as his counsel were present in the court, the trial Court proceeded to record that no witness of the complainant is present and last and final opportunity was granted to him to produce his witnesses. Thereafter, vide the impugned order dated 02.03.2015, inspite of the presence of the complainant in the court, the learned trial Court recorded that no witness of the complainant was present and proceeded to close the evidence of the complainant. From the aforesaid facts, it appears that the statement of the complainant was not recorded by the trial court in full. It was obligatory for the trial court to record the remaining statement of the complainant prior to recording the statements of other witnesses.

Hon'ble Court thus held that once part statement of the complainant had been recorded and the complainant was present in the court, it was not open to the trial Court to record that no witnesses of the complainant was present in the Court and proceed to close the evidence of the complainant. The order of closure of evidence recorded by the trial Court is, therefore, palpably illegal and cannot be justified in any circumstances.

Moreover, the trial court record shows that the complainant had deposited diet expenses in respect of as many as four witnesses before the trial court. Once the diet expenses had been deposited before the trial court, it is the duty of the said court to issue summons to the witnesses of the complainant to secure their presence for recording their statements.

As per the provisions contained in Sub-section (2) of Section 252 of J&K CrPC a Magistrate is duty bound to summon the person (s) likely to be acquainted with the facts of the case after ascertaining the same from the complainant. Thus, in the instant case, the trial court has at no point in time issued summons to the witnesses of the complainant for securing their presence before it despite the fact that the petitioner/complainant had not only furnished the list of witnesses, but had also deposited the diet expenses of the witnesses. On this count, the impugned order of closure of evidence of the complainant becomes unsustainable in law and accordingly set aside.

The trial court was directed to record the cross-examination of the complainant, summon the witnesses and to make every endeavor to decide the said complaint within a period of three months.

CRMC 51 of 2016
Devi Dayal Khajuria v. State & Ors.
Decided on: November 18, 2020

In this case the High Court held that the preconditions for taking cognizance of the offences by the Courts as contained in Section 27 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 are applicable only to the complaints made under Section 26 of the Act of 2013 and not to the criminal prosecutions initiated in respect of offences under the Penal Code. The offences defined under Section 26 of the said Act of 2013 as per Section 27(3) of the Act of 2013 are non-cognizable, whereas the offences of sexual harassment as defined under Section 354 to 357 of RPC are all cognizable offences and their cognizance can be taken by a court in accordance with the provisions contained in the Criminal Procedure Code. Section 27 of the Act of 2013 has no applicability at all to such matters.

The Court said that there is no bar to a victim to approach the police directly without availing remedy available under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Sec 28 of the Act makes it very clear that the provisions of the Act of 2013 are in addition to and not in derogation of any other law.

CRMC No. 82 of 2019
Gajendar Singh Maan v. State of J&K
Decided on: November 12, 2020

A perusal of the order dated 09.10.2018 reveals that Revision petition against the order of framing of charges under sections 420 and 471 RPC, dated 09.02.2016 passed by the 2nd Additional Munsiff, Srinagar, was dismissed solely on the ground that the order of framing of charges is interlocutory in nature and the revision petition is not maintainable.

The only question that arises for consideration by this Court is whether the order of framing of charges in an interlocutory in nature. Held that— The order of framing of charges is neither purely an interlocutory order nor final order. Revision petition, as such, is maintainable against the said order.

CRMC No. 412 of 2018
Mushtaq Ahmad Badyari v. Ruquya Akhter
Decided on: November12, 2020

The present petition has been filed under section 561-A CrPC by the petitioner for quashing of order dated 26.12.2017 passed by the Additional Special Mobile Magistrate, Awantipora

The only issue that has been raised by the petitioner is whether a wife is entitled to interim maintenance once a plea of divorce has been taken by the husband in his objections. The respondent-wife had also filed an application for interim maintenance before the trial court. The petitioner herein filed the objections in which he has categorically stated that the respondent was a divorcee and was not entitled to any maintenance under Muslim Law. A comparison of these provisions with Section 125 CrPC will make it clear that requirements provided in Section 125 and the purpose, object and scope thereof being to prevent vagrancy by compelling those who can do so to support those who are unable to support themselves and who have a normal and legitimate claim to support are satisfied. The object and scope of Section 125 CrPC is to prevent vagrancy by compelling those who are under an obligation to support those who are unable to support themselves and that object being fulfilled, we find it difficult to accept the contention urged on behalf of the petitioners." So the sole purpose and object of section 488 CrPC is to prevent the vagrancy of the wife, children and parents as the case may be, by compelling those who are under legal obligation to support those who are unable to support themselves. This principle is embodied in the maxim "ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest" (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist).

The admitted fact remains that there was a relationship of husband and the wife and once there is a plea of dissolution of marriage by a husband, the onus is always on the husband to prove the same by way of cogent evidence. The respondent-wife cannot be denied interim

maintenance solely on the plea taken by the petitioner-husband in his objections that he has sent the divorce deed to the respondent and when there is nothing on record to demonstrate that the respondent-wife has ever received the divorce deed particularly when the stand taken by the petitioner before the two courts is contradictory. The trial court has rightly granted the maintenance and also the order of the trial court has rightly been upheld by the revisional court. For all what has been discussed above, this petition has no merit, as such, the same is dismissed. Petitioner is directed to liquidate whole of the arrears of maintenance in six installments with in the period of six months from today.

Criminal Appeal No. 20 of 2012
Prem Nath v. State of J&K
Decided on: November 10, 2020

In the instant appeal, the appellant/ accused, who was working as a Roller Attendant in the Mechanical Engineering Division, came to be regularized as a permanent employee of the said Department. At that time, he produced a school leaving certificate issued by the Government Middle School, Garnai showing his date of birth as 25.07.1955 which came to be reflected in his service book. On 12.09.2005, PW-4 Bhagwan Singh, cousin brother of the appellant/accused, filed a written complaint before the Deputy Commissioner, Udhampur alleging therein that the date of birth of the appellant/accused is 20.04.1944 and that the appellant/accused should have since retired from the Government service. On the basis of the said complaint, a preliminary enquiry was conducted by the Police of Police Station, Rehmbal and after conclusion of the said preliminary enquiry, FIR No. 57/2006 for the offences under Sections 420/467/468/471 RPC was registered with Police Station, Udhampur. The trial court came to the conclusion that the prosecution has failed to prove that the appellant/accused was responsible for making the false document. The learned trial court, while observing that the school leaving certificate, on the basis of which date of birth of the appellant/accused was recorded as 25.07.1955 in his service record is a forged document held that on the basis of this forged document, the appellant/accused was regularized as a permanent employee and, as such, the use of the said forged document stands proved. Therefore, he is liable to be convicted for the offence under Section 471 RPC.

In the instant Appeal, the appellant/ accused challenged the findings of the trial court. The Hon'ble High Court relying on a case titled A.S. Krishanan vs. State of Kerala, (2004) 11 SCC 576, observed that the essential ingredients of Section 471 are (i) fraudulent or dishonest use of document as genuine (ii) knowledge or reasonable belief on the part of person using the document that it is a forged one. It further observed that it is incumbent upon the prosecution to establish by leading cogent evidence that the said person knew or had reason to believe that the document produced by him was a forged one.

In the instant case, it was established from the circumstances on record that the said document was used by the appellant/accused for getting the date of birth recorded in his service record, yet, there was no evidence on record to establish that the appellant/accused had either the knowledge or reason to believe that the said document was forged. Therefore, all the ingredients of offence under Section 471 RPC were not established in this case. The impugned judgment of conviction and sentence, therefore, was set aside.

SLA 6 of 2016
State of J&K v. Prikshit Singh & Ors.
Decided on: November 10, 2020

The application was filed for condonation of 147 days delay for filing the application seeking leave to file an appeal against judgment dated 31-12-2015 by virtue of which the respondents have been acquitted of the charges for commission of offence under section 8, 21 and 22 of NDPS Act. The Hon'ble High Court after hearing the counsel for both the sides and after considering the evidence brought on record by the prosecution observed that no independent witness despite being available at the place of occurrence has been examined and produced before the court by the prosecution. The contraband was not sealed by the I.O. So far as NDPS cases are concerned the Malkhana register is a vital document but I.O has not bothered to place on record the Malkhana register and also there is no evidence with regard to deposit of capsules/ contraband in Malkhana .

The High Court held that in NDPS cases I.O is the important witness but prosecution has failed to produce I.O as a witness before the court which has caused a great prejudice to the respondents/ accused's. Besides, there is a violation of section 57 of NDPS Act which mandates that where any person makes any arrest or seizure under the Act, he shall within the period of 48 hours after seizure make a full report of arrest/ seizure to his immediate officer and there is absolute non-compliance of section 57 of the Act. Thus the trial court has rightly concluded after appreciating the prosecution case meticulously that respondents are entitled to be acquitted. The Court did not find any reason to leave to the application to prefer an appeal as such the application was dismissed.

SLA No 127 of 2017
State of J&K v. Abdul Rashid
Decided on: November 10, 2020

The present application was filed seeking leave in filling appeal against the judgement dated 29.04.2017 passed by the Additional session Judge Jammu by virtue of which the respondent has been acquitted of the charges for commission of offenses under section 8/20 of NDPS Act 1985.

The High Court after going through the evidence recorded by the trial court held that the prosecution case suffers from material contradictions with regard to sealing, weighing of the charas and also with regard to sample taken on spot and its custody. The High court also held that the trial court has recorded the findings those are based on the meticulous appreciation of evidence available on record, while dismissing the SLA the High Court reiterated the well settled law that High Court while hearing an appeal can re-appreciate the evidence, however, it should not interfere with the order of acquittal if the view taken by the trial court is not perverse. In the instant application the prosecution has not been able to demonstrate that the findings recorded by the trial court are manifestly erroneous, contrary to the evidence on record or perverse. The application being misconceived was dismissed.

CRMC 560 of 2016
Vikas Sarkar v. State & Anr.
Decided on: November 10, 2020

The petitioner has challenged FIR No. 126/2016 for the offence u/s 420 RPC registered by P/S Gandhi Nagar, Jammu. The petitioner contended that he is one of the Directors of M/S Trestle Recruiters Private Limited, Kolkata which is engaged in recruitment of persons for different kinds of job in the foreign countries and vessels. He stated that the son of respondent No.2 approached the office of the said Company with an intention to work abroad and was offered a job in shipping company in Egypt. He further alleges that the son of respondent no. 2, after landing in Egypt, did not take up the said job and that he has returned the fee amounting Rs. 50,000 hence, the FIR is filed merely for extorting more money from petitioner.

Status report filed by respondent no. 1 revealed that the said FIR was registered upon forwarding of complaint filed by respondent no.2 before Crime Branch Jammu wherein he alleged that he saw the advertisement put by the petitioner offering placements abroad and called on petitioner's number which was given in the said advertisement. It was further alleged that Rs. 1.5 lakh was deposited in petitioner's account as advance and rest 3.5 lakh was paid later. However, instead of work visa, he was given tourist visa of Sudan and hence, cheated by the petitioner.

After the said FIR, the petitioner got the investigation stayed from this Court vide order dated 07.11.2016.

The petitioner is that the petitioner has dealt with respondent No.2, the complainant, in his capacity as a Director of the Company and hence cannot be prosecuted in private capacity. Moreover, the complainant's son did not take up the contract. The respondent contended that the contentions raised by the petitioner cannot be gone into at this stage as the same raise disputed questions of fact and need to be investigated. Moreover, FIR clearly discloses commission of the offence under Section 420 RPC against the petitioner, as such, the same cannot be quashed.

The Court observed that — There is no averment in the FIR to even remotely suggest that the complainant, while entering into the transaction, which is subject matter of the instant case, had even remote idea that the petitioner is Director of any Company.....the

Bank account to which the respondent No.2 has transferred the money, is in the name of the petitioner and not in the name of the Company of which he claims to be the Director. Thus, there is material on record to prima facie suggest that respondent No.2, the complainant, has transacted with petitioner in his individual capacity and not in his capacity as Director of the Company.

The Court thus, refused to quash the FIR as it observed that the power u/s 561-A of J&K CrPC is limited and present case does not come under the grounds illustrated by the Supreme Court in the case of State of Haryana and ors vs Ch. Bhajan Lal & Ors, AIR 1992 SC 604. The petition was dismissed and interim orders withdrawn.

CR No. 30 of 2017
Mohammad Ramzan Lone v. Ghulam Mohammad Lone
Decided on: November, 03, 2020

The perusal of the order impugned reveals that the trial Court has dismissed application on the grounds that the factual aspects on which the application is filed for setting aside ex-parte order are not correctly mentioned nor any proof of the same is on record. The plea taken in the application filed for setting aside ex-parte proceeding was that the petitioner herein was not keeping well at the relevant point of time and further that the counsel of the petitioner was busy in his marriage ceremony,

The argument of the learned counsel for the petitioner that it is in the interest of justice that technicality should not have come in the way of the trial court to allow the application cannot be accepted. It is always convenient to take refuge of such a plea and expect order in favour at the expense of the opposite party. The same cannot be allowed by the Court. The court finds no error in the order impugned in the present petition. The application is, accordingly, dismissed having no merits.

"Article 32 of the Constitution constitutes a recognition of the constitutional duty entrusted to this Court to protect the fundamental rights of citizens. The exercise of journalistic freedom lies at the core of speech and expression protected by Article 19(1)(a)..... The airing of views on television shows which he hosts is in the exercise of his fundamental right to speech and expression under Article 19(1)(a). India's freedoms will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal. The exercise of that fundamental right is not absolute and is answerable to the legal regime enacted with reference to the provisions of Article 19(2)."

Dr Dhananjaya Y Chandrachud, J *in Arnab Manoranjan Goswami v. Union of India & Ors., Writ Petition (Crl) No 130 of 2020, decided on May 19, 2020*

CIVIL

Supreme Court Judgments

Civil Appeal No. 8607 of 2010
Noy Vallesina Engeneering Spa v. Jindal Drugs Limited & Ors.
Decided on: November 26, 2020

In the present case, Supreme Court has ruled out the possibility of maintenance of proceedings under section 34 of the Arbitration Act to challenge a foreign award. Court's position was clear that the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 cannot be maintained to challenge a foreign award.

Court was hearing an appeal against the judgment of Bombay High Court. Respondent had filed a petition before the Bombay High Court under Section 34 of the Act challenging the partial award passed by the arbitral tribunal in favour of the N V Engineering (appellant in the present case) while rejecting the claims of Jindal. Tribunal had passed its final award on 22.10.2001.

The petition (under Section 34) challenging the partial award was decided by the High Court by an order of a Single Judge dated 6.2.2002, which held that since the partial award was a foreign award, a challenge through a petition was not maintainable under Section 34 of the Act. Jindal had preferred an appeal against that order before the Division Bench.

During the pendency of the appeal, NV

Engineering had applied for enforcement of the two awards, i.e. the partial and final awards, under Sections 47 and 48 of the Act, in the chapter relating to foreign awards. This petition was allowed and Jindal's objections against the two awards' enforceability were overruled. By the impugned judgment, even as the later two appeals, which directly dealt with the same subject matter (enforcement of a foreign award were pending), the Division Bench decided Jindal's challenge appeal preferred in 2002, and set aside the single judge's order (which had ruled that a petition under Section 34 was not maintainable). The Division Bench relied on the judgments of Apex court in Bhatia International v. Bulk Trading S. A. & Anr (2002) 4 SCC 105 and Venture Global Engineering v. Satyam Computer Services Ltd. & Anr 2008 (4) SCC 190 to hold that proceedings under Section 34 of the Act could be validly maintained to challenge a foreign award.

The Apex Court while considering the law governing the seat of Arbitration referred to a number of judgments. Ranging from quoting excerpts from BALCO to its judgment in recent case of Government of India v Vedanta Ltd 2020 SCC Online, it said— "Having regard to the precedential unanimity, so to say, about the manner of applicability of BALCO in respect of agreements entered into and awards rendered earlier, with respect to the law of the seat of arbitration (or the curial law) excluding applicability of Part I of the Act, and the unambiguous intention of the parties in the present case (expressed in Clause 12.4.2) that the seat of arbitration was London, where the ICC arbitration proceedings were in fact held, and the awards rendered, this court is of the opinion that the impugned judgment cannot be sustained."

Referring to its judgment in Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333, it observed further : "[…]it is noticeable that the decision in Feurest Day Lawson unambiguously ruled out the maintainability of any appeal against an order granting enforcement of a foreign arbitration award. In the present case, both the partial and final awards are foreign awards. Therefore, the provisions of Sections 47/48 were correctly invoked by NV Engineering, for enforcement of the awards."

Court said— In view of the categorical holdings in the judgments of this court, Jindal's appeal to the Division Bench, (Appeal No. 492/2006) is not maintainable. However, in view of the above decisions, and the express terms of Section 50, NV Engineering's appeal (Appeal. No. 740/2006), against the order of the single judge (to the extent it refuses enforcement) is maintainable.

Concluding its analysis, the Court said— This court has not considered the merits of the substantive challenge to the enforcement order, because the parties were not heard and therefore, it would not be fair to comment on it. Further, Jindal has proceeded on the assumption that its appeal to the Division Bench on this aspect is pending. In view of the finding of this court that such an appeal (against an order of enforcement) is untenable by reason of Section 50, the merits of Jindal's objections to the single judge's order, are open for it to be canvassed in appropriate proceedings. Such proceedings cannot also be a resort to any remedy under the Code of Civil Procedure. In the event Jindal chooses to avail of such remedy, the question of limitation is left open, as this court is conscious of the fact that Fuerst Day Lawson is a decision rendered over 10 years ago; it settled the law decisively and has been followed in later judgments. It cannot be said that Jindal was ignorant of the law."

Accordingly appeal was allowed and impugned judgment and order were set aside.

Civil Appeal No: 1460 of 2010
B. K. Ravichandra & Ors. v. Union of India.
Decided on: November 24, 2020

In the instant case, an appeal was filed before the Supreme Court by the appellant against the judgment of the Karnataka High Court which rejects his claim to direct the respondent to vacate their lands. While hearing appeal, the Court has observed that the phrasing of Article 300A of the Constitution is determinative and its resemblance with Articles 21 and 265 cannot be overlooked, in effect they guarantee the supremacy of the law. The Court relied upon the prior judgments in case of Grahak Sanstha Manch v. State of Maharashtra and State of Rajasthan v. Basant Nahata, wherein it was held by the Court that the property owner's right cannot be deprived

or suspended indefinitely. Moreover, in a very recent judgment of D.B. Basnett vs. Land Acquisition Officer, the Court approved the findings of the subordinate courts that the lands were never acquired because the procedure prescribed was not followed, notice of acquisition had not been given, nor was any amount proved to have been received. Hence, the Court also turned down the state's plea of adverse possession. The Court, thus, held that the impugned judgment of the High Court committed an error in refusing relief to the appellants and further directed the respondent to hand back possession of the suit lands to the appellants within three months.

Civil Appeal No. 3687 of 2020
UMC Technologies Private Limited v. Food Corporation of India & Anr.
Decided on: November 16, 2020

This Special Leave Petition arises out of the judgment dated 13th February, 2019 passed by High Court of Madhya Pradesh in Writ Petition No. 2778 of 2019, whereby the High Court upheld the validity of order dated 9th January, 2019 passed by the Food Corporation of India i.e. the respondent no.1 through its Deputy General Manager (Personnel), i.e. the respondent no.2, terminating the Contract of service of the appellant with further order of blacklisting of appellant from participating in any future tenders of the Food Corporation of India, for a period of five years.

The brief facts set up in the Special Leave Petition by the appellant were that the Contract for conduct of process of recruitment for hiring the Watchmen for the Corporation's office was granted for a period of two years with effect from 14th of February, 2017 by the respondent no.1. The appellant as per the Contract conducted the written Examination on 1st April, 2018 for the post of watchmen and on the said date about Fifty persons were arrested by a Special Task Force of Bhopal Police, who were found to be involved in leakage of question paper related to said examination. The appellant was served with a Show Cause Notice dated 10th April, 2018 alleging that the appellant has breached various clauses of Bid Document dated 25th November, 2016. The appellant furnished the explanation of the Show Cause Notice and thereafter, the respondent no.1 corporation on the basis of order dated 9th January, 2019, found the appellant negligent in smooth conduct of the examinations and terminated its Contract and further blacklisted the appellant from participating in future tenders of the Corporation for a period of five years. After forfeiting the security deposit, the appellant was directed to execute the unexpired portion of the Contract at its own cost and risk. The said order was challenged by the appellant by way of a Writ petition and the High Court upheld the order dated 9th January, 2019.

The moot question raised before the Supreme Court in Special Leave Petition was to determine the validity of blacklisting of the appellant as per order dated 9th January, 2019. The Show Cause notice dated 10th April, 2018 neither mentioned the ground for blacklisting nor such proposed punishment was mentioned in the notice and there was no occasion for the appellant to respond to such action taken by the respondent no.1. The appellant raised the plea that no reasonable opportunity of being heard was given to the appellant, which is essential element of all administrative decision- making particularly blacklisting which entail grave consequences. The Bid Document is also silent about the blacklisting of the Contractor, as stated by the appellant. While relying upon Nasir Ahmed v. Assistant Custodian General, Evacuee Property, Lucknow and Anr(1980) 3 SCC 1;Erusian Equipment & Chemicals Ltd v. State of West Bengal (1975)1 SCC 70; Raghunath Thakur v. State of Bihar (1989)1 SCC 229 and Gorkha Security Services v. Government (NCT of Delhi) and Ors. (2014) 9 SCC 105, the order dated 9th January, 2019 of blacklisting of appellant is found to be against the principles of natural justice as blacklisting amounts to civil death and unless full opportunity of being heard is not given to the person against whom action is proposed, as the Show Cause Notice was not in consonance with principle of natural justice, the order impugned dated 9th January, 2019 and order dated 13th February, 2019 passed by High Court are quashed, so far as it pertains to blacklisting of the appellant from participating in future tenders of the Corporations.

Civil Appeal Nos. 3681-3682 of 2020
Rattan Singh & Ors. v. Nirmal Gill & Ors.
Decided on: November 16, 2020

Prior proceedings of this matter was

before the trial court, after that first appellate court and then High Court. Now this matter was before the Supreme Court of India in the form of SLP. In this SLP before the Supreme Court of India, the Court allowed the appeal and set aside the decree passed by the High Court. The judgment passed by the first appellate court was upheld. The Court while delivering the judgment held that it is settled that the standard of proof required in a civil dispute is preponderance of probabilities and not beyond reasonable doubt. In the present cases, though the discrepancies in the 1990 GPA (General Power of Attorney) are bound to create some doubt, however, in absence of any tangible evidence produced by the plaintiff to support the plea of fraud, it does not take the matter further. Rather, in this case the testimony of the attesting witness, scribe and other independent witnesses plainly support the case of the defendants. That evidence dispels the doubt if any; and tilt the balance in favour of the defendants. Here in this matter fraud was not established hence as the first appellate court held that the respondent is entitled to 9 marlas of land out of the rest property, same was upheld by the Supreme Court.

Civil Appeal Nos. 250-252 of 2019
Telecom Regulatory Authority Of India v. M/S Bharti Airtel Ltd. & Ors. Etc.
Decided on: November 06, 2020

In the light of the historical background, what is sought by TRAI to ensure adherence to the regulatory principles of transparency, non-discrimination and non-predation, and it cannot be said, at least prima facie to be either illegal or wholly unjustified.

Hence the I.A. was allowed and a direction was issued to the respondents to disclose information/details sought by the applicant/appellant regarding segmented offers. But it is the duty and responsibility of TRAI to ensure that such information is kept confidential and is not made available to the competitors or to any other person.

Civil Appeal No. 3441 of 2020
C. Bright v. The District Collector & Ors.
Decided on: November 05, 2020

The present appeal was preferred against an order passed by the Division Bench of the Kerala High Court whereby it was held that Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is a directory provision.

The Hon'ble Apex Court relied on the judgment of Mardia Chemical, Transcore and Hindon Forge Private Limited in which it was held that the purpose of the Act pertains to the speedy recovery of dues, by banks and financial institutions. The Apex Court observed that keeping the objective of the Act in mind, the time limit to take action by the District Magistrate has been fixed to impress upon the authority to take possession of the secured assets. However, inability to take possession within time limit does not render the District Magistrate Functus Officio. The appeal was dismissed and held that the provision of section 14 of the Act is directory in nature.

Civil Appeal Nos. 4883-4884 of 2017
Biraji @ Brijraji v. Surya Pratap and Ors.
Decided on: November 03, 2020

In this case, the Apex Court held that where there are no pleadings submitted at the appropriate stage within the stipulated time, any amount of evidence submitted later on, will not be taken into consideration by the Court.

The petitioner had challenged the validity of an adoption deed from 2001 through a suit filed in 2010. Records pertaining to evidence were submitted at the stage of final arguments, well past the stage of closing of evidence, to show that the biological father of the child who was being adopted was not present at the time of the execution of the deed of adoption. The trial court, High Court and in this case, the Supreme Court also held that the courts cannot accept evidence which was not included in pleadings at such a later stage.

The court observed -

"The suit in Original Suit No. 107/2010 is filed for cancellation of registered adoption deed and for consequential injunction orders. In the adoption deed itself, the ceremony which had taken place on 14.11.2001 was mentioned; hence it was within the knowledge of the appellants/ plaintiffs even on the date of filing of the suit. In the absence of any pleading in the suit filed by the appellants, at belated stage, after evidence is closed, the appellants have filed the application to summon the record relating to leave/service of the father."

The Court held that, "It is fairly well

settled that in absence of pleadings being submitted to the court, any amount of evidence will not help the party. When the adoption ceremony had taken place on 14.11.2001 and is mentioned in the registered adoption deed, was questioned in the suit, there is absolutely no reason for not raising specific plea in the suit and instead to file application at a belated stage. It is clear from the conduct of the appellants, that in spite of directions from the High Court, for expeditious disposal of the suit, appellants/ plaintiffs were trying to protract the litigation."

Hence, the Court upheld the order of trial court as well as the appellate court and dismissed the appeals without costs.

Civil Appeal No. 3602 of 2020.
Chief Manager, PNB & Anr. v. Anit Kumar Das
Decided on: November 03, 2020

The Supreme Court set aside Odisha High Court's order and termination of the service of over qualified Bank peon in the case of Chief Manager Punjab National Bank versus Anit Kumar Das. The Court rejected a plea that over qualification cannot be a ground for disqualification and upheld the order to terminate the services of a peon of Punjab National Bank.

The Court held that suppression of material information and making a false statement has a clear bearing on the character an antecedents of the employee in relation to his continuance in service.

The peon has concealed the fact that he was a graduate. The Apex Court quashed two orders of the Odisha High Court, Where in the Court had asked the Bank to allow the peon to continue his service.

The Apex Court said:- A candidate who hides important information or misinforms cannot claim to remain in service. It also pointed out the fact that it was clear in the advertisement that the candidate should not be a graduate. Therefore, a candidate having suppressed the material information and / or giving false information cannot claim right to continuance in service.

The Court observed that it stands for the Employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the courts to consider and assess. A greater latitude is permitted by the courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in mind the needs and interest of an institution, industry or an establishment as the case may be.

The Court held that they are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts.

The Court ratified that instead of challenging the qualification, Anit Kumar Das had applied for the job by hiding his qualification. The Apex Court pronounced that Das deliberately concealed information about his graduation and hence the High Court erred by directing the defendant to continue his work as a peon.

The Court also referred to the fact that the Bank had invited applications for the post of peon by advertising in newspaper in which it was clarified that by the date of January 1, 2016 the applicant should have passed class 12 or its equivalent but not be a graduate. As per the eligibility mentioned in the advertisement, the graduate person was not eligible to apply for this post. The Court held that Das had applied for the post of peon, but did not provide information that he had a bachelors degree since 2014 and only mentioned that he had passed class 12.

The Apex Court referred to one of its earlier verdicts saying that hiding important information and misrepresentation, affects the character of the employee and his introduction. Suppression of material information and making false statement had a clear bearing on the character and the antecedents of the employee in relation to his continuance in service.

A candidate having suppressed the material information and or giving in false information cannot claim the right to continuance in service.

Civil Appeal No. 6264 of 2013
Smt. Renuka Dey & Ors v. Naresh Chandra Gope (d) Thr. Lrs. & Anr.
Decided on: November 02, 2020

The present case deals with a deed of conveyance executed on 26th April, 1968. The transferors of the land forming subject matter of that deed applied for restoration thereof on 9th

August, 1974 under the West Bengal Restoration of Alienated Land Act, 1973 which contemplates, in substance, return of land to a small land-holder in a situation such a landholder conveys the same to raise funds to tide over financially distressed condition. It was urged by the Appellants that the subject land was sold in distress and the deed of conveyance was coupled with a re-conveyance agreement. The main point which was urged on behalf of the purchaser/respondents was that the land in question was homestead non-agricultural land and hence the said Act would not be applicable so far as the subject transaction was concerned.

The Court held that the mere fact that part of the sale proceeds has been utilized for purchasing another agricultural land would not per se disentitle a transferor from invoking the restoration provision contained in the 1973 Act, provided ofcourse, the transaction sought to be repudiated otherwise attracts the provisions of the said statute. In the given facts of this case, substantial part of the sale proceeds was to be applied to meet the maintenance need of the vendors and their family. However, the Court had no sufficient reason to upset the finding of the High Court that the nature or character of land was never gone into as that would be the determinant factor for invoking the provisions of Section 4 of the 1973 Act. Thus, the Court modified the judgment under appeal and remanded the matter to the West Bengal Land Reforms and Tenancy Tribunal with a direction to the Tribunal to undertake the exercise of determining the nature of the land with the object of finding out if the same came within the purview of the 1973 Act or not. In the event the Tribunal finds the land to be covered by the said statute, the order of the authority of first instance passed on 14th March, 1995 shall stand revived and the Tribunal shall make appropriate order for refund of the sum received as sale proceeds with interest upon making computation in terms of the statutory provisions. If, on the other hand, it is found that the land did not come within the purview of the said Act on the date of execution of the deed in the year 1968, then the Appellants shall have no right or claim under the 1973 Act for restoration of the land conveyed and the deed executed on 26th April, 1968 shall remain effective, without any interference from the authorities constituted under the 1973 Act.

J&K High Court Judgments

CM(M) No. 62 of 2020
Bashir Ahmad Najar v. Abdul Rashid Wani & Ors.
Decided on: November 27, 2020

The issue before the Hon'ble Court was Whether admitted/agreed rent would mean the rent agreed to be outstanding in written statement or the rent as prayed for by the plaintiff in his plaint? Whether the court in suit for recovery of arrears of rent can direct payment of whole of the outstanding rent while passing an order in interim application more particularly when issue to that extent has been framed?

From the perusal of written statement, it is evident and is rightly observed by the learned trial court that the execution of the rent agreement has not been denied by the petitioners meaning thereby that the parties are bound by the terms and conditions of the agreement. A further plea has been taken in the written statements that there was dispute between the parties and as per the subsequent settlement between the parties, the parties had agreed for reduction of monthly rent by 25 per cent of the basic rent and the 75 per cent of the basic monthly rent shall be payable only.

The perusal of issues framed by the trial court reveals that issue has been framed with regard to this fact and the onus to prove this issue has been placed upon the petitioners. More so, the learned trial court has protected the interest of the petitioners by specifically providing that in the event they successfully proved the said issue, the respondents would reimburse of the whole of the amount so there is no illegality in the order passed by the learned along with connected matters trial court with regard to the payment of the agreed rent is concerned. Otherwise also, this contention raised by the petitioners does not fall within the purview of the parameters laid down by the Apex Court in case (supra), as such, this deserves to be rejected.

The trial court could have avoided the present controversy by clearly providing in the order impugned the period for which the rent has been ordered to be paid. This Court under Article 227 of the Constitution of India cannot furnish any meaning to the order passed by the learned trial court, particularly when period for

which the rent has been ordered to be paid has not been specified by the trial court in the order impugned. It is for the parties to approach the trial court to get clarification with regard to the period for which the rent has been along with connected matters ordered to be paid and then only either of them can throw any challenge to the said finding, if they feel aggrieved of the same. The petitioners have no cause to be aggrieved of, in absence of any finding with regard to the period for which the rent has been ordered to be paid as such the order impugned does not call for any interference at this stage on this ground as well. In view of above, all these petitions are dismissed. However, the parties are left free to approach the trial court for clarification with regard to the period for which the rent has been ordered to be paid.

CONC No. 53 of 2019
National Insurance Company Limited v. Ghulam Nabi Ganai & Ors.
Decided on: November 26, 2020

First and foremost; there cannot be actual compensation for anguish of heart or for mental tribulations. The quant essentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 stipulates that there should be grant of "just compensation". Thus, it becomes a challenge for a court of law to determine "just compensation" which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance." [Vide: K. Suresh v. New India Assurance Co. Ltd. (2012) 12 SCC 274].

In the present case, appellant Insurance Company maintains that the Tribunal has exorbitantly granted compensation because deceased was not a skilled labourer and to that extent claimants did not produce any documentary evidence. The Tribunal assessed income of deceased on the basis of unshaken evidence produced before it. The court of first instance, viz. Tribunal, was in a better position to appreciate oral testimony that was available before it, while it assessed computations on various heads on the basis of evidence and as a result thereof computed compensation in favour of claimants that is correct on all counts. My above views, observations and finding are fortified by a judgement rendered by the Supreme Court in Mohammed Siddique and another v. National Insurance Company Ltd and others, 2020 (3) SCC.

Even major, married and earning legal representatives of deceased have a right to apply for compensation and it would be bounden duty of the Tribunal to consider application irrespective of the fact whether concerned legal representative is fully dependent on the deceased and not to limit claim towards conventional heads only. while fixing amount of compensation payable to a victim of an accident, damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which victim has actually incurred and which are capable of being calculated in terms of money whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include : (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life, which may include a variety of matters, i.e. on account of injury claimant may not be able to walk, run or sit; (iii) damages for loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

CR No. 76 of 2020
Harish Khajuria & Ors. v. Rakesh Khajuria
Decided on: November 17, 2020

In the present case, the petitioners, aggrieved by the interim order passed by the trial Court in a suit for mandatory injunction and the upholding the order by the appellate Court, prayed to set aside the latter order in exercise the power of superintendence under Article 227.

The Court while quoting the Apex Court's judgments in Waryam Singh v. Amarnath, AIR 1954 SC 215, Shalini Shyam Shetty v. Rajendra Shankar Patil, (2010) 8 SCC 329 and several other cases, emphasised that although the power of superintendence under

Article 227 is wider than Article 226, its exercise is subject to high degree of judicial discipline. "Article 227 can be invoked by the High Court suo motu as a custodian of justice. An improper and a frequent exercise of this power will be counter productive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle"

Further, it was held that if any order is passed by subordinate court under its vested discretionary jurisdiction, then the same could not be interfered with by the High Court either under revisional jurisdiction under Section 115 of CPC or under supervisory jurisdiction vested under Article 227 of the Constitution of India.

Observing that both trial court and the Appellate Court have arrived at concurrent findings and the fact that petitioners have neither alleged that trial court as well as the appellate court have acted without or in excess of jurisdiction, nor that the trial court has violated any provision of law admissible, the Court refused to interfere.

CR No. 50 of 2018
J&K State Board of School Education & Anr. v. Mir Asif Fayaz & Anr.
Decided on: November 12, 2020

In a Suit for Declaration and Mandatory Injunction decreed by the trial court to declare decision taken on his representation by the defendants regarding correction of parentage in the official record, belated appeal was filed.

Held by the High Court that— "It may not be out of place to mention here that Appellate Court, while passing impugned order, has not exercised a jurisdiction not vested in it or has failed to exercise a jurisdiction vested in it or has acted in exercise of its jurisdiction illegally or with material irregularity or that impugned order has caused failure of justice. It is not a case of petitioner-Board that Appellate Court does not possess the jurisdiction to decide application for condonation of delay. Appellate Court has taken into account all aspects of the matter and only thereafter passed order impugned.

This takes me to next contention that cause referred to variously as "administrative delay / administrative reasons / administrative procedure" is itself a sufficient cause, irrespective of facts of the case, on the premise that the same is a question of principle. This submission on the part of counsel for petitioner-Board is misconceived inasmuch as when delay is sought to be condoned for cause or causes referred to as "administrative delay / administrative reasons / administrative procedure", this is merely a reason set out for condonation of delay. The submission of counsel for petitioner-Board in this context clearly ignores the word "sufficient" which occurs within the phrase "sufficient cause". For making out "sufficient cause" a factual foundation is essential, and that therefore, question of sufficiency of cause cannot be decided on abstract principles and de hors the facts of the case which constitute reasons for the delay. I am inclined to uphold this submission. The problem only is that more the Courts become liberal the more the Government become complacent. This must stop and the Courts will have to take notice of this casualness which is creeping into the functioning of the Government, particularly in the law Department. The law of limitation is intended to provide some sort of discipline in proceedings before the Court. The very fact that this law prescribes certain fixed periods for doing certain things itself means that the legislative intention is to enforce discipline in Court affairs which cannot be left to the personal whims of a person or to his convenience. It may not be incongruous to say that though the Supreme Court has taken lenient view while condoning delay in filing a motion/appeal, yet that discretion has been taken only after considering the merits of the case, so that the merit shall not become a casualty. In the case in hand, as discoursed herein before as well, contents of Appeal, concomitant with the condonation of delay Application, do not portray any merit to take a lenient view in condoning the delay inasmuch as condoning the delay in filing the Appeal would have become a casualty, and simultaneously it would have become an irretrievable casualty and injury to respondent no.1, who, for correction of name of his father, has been all along, for one and a half decade, put in melancholy."

Accordingly, the civil revision petition was dismissed.

Academic activities of the High Court of J&K for the Law Interns

Webinar on "Forest and Biodiversity Law, and Governance"

The activities for the month of November started with the online session on 'Forest and Biodiversity Law, and Governance' on 7th November. The session was conducted by Smt. Uma Subrhamanaym, IFS, Joint Secretary in the Ministry of Environment , Forests and Climate Change, Government of India.

The resource person talked about various legislations on the forest and Biodiversity Law in India. She presented the historical perspective in which the Forest Act was legislated and the changes that have been bought about in the governance of matters related to Forests in India. She highlighted the importance of protection of Forests for survival of the mankind and also highlighted the need for sustainable exploitation of the Forests to fulfil the needs of the Forest dwellers in specific and the citizens of the country in general. In her discussion she mentioned about the challenges posed by the uncrudest people with regard to the forest and forest produce, and the mechanism put in place under the Forest Act for conservation and preservation of Forests.

Talking about Biodiversity, the resource person said that Biodiversity Act was put in place to strengthen the regime and to ensure sustainable development. She highlighted the importance of Biodiversity in the plants and animals as it is important for preservation of race. She also talked about the Genetic Research being carried out at the International level especially for the benefit of the farming community for increasing the crop yield and to get best resistant varieties. In this regard sufficient measures have been put in place to regulate such genetic research and to regulate the commercial exploitation of such genetic research.

Webinar on "Career and Mediation"

On 8th November, 2020 a Webinar on 'Career and Mediation' was organized for the law interns. The programme was conducted by Mr. J.P. Sengh, Senior Advocate, Ms. Laila Ollapally, Mr. A.J. Jawad, Mr Jonathan Rodrigues, Advocates. The programme was moderated by Mr. J.P. Sengh. The resource persons are highly acclaimed and internationally renowned mediators and mediation trainers.

The resource persons discussed various aspects of Mediation as an alternative dispute resolution (ADR Tool). They talked about the Indian concept of the mediation in the system of "Panch" and community support in disputes between the individuals, community and the society, related it to the present structured system of Mediation for dispute resolution. They also discussed the provisions of law and the judgements of the supreme court which have expanded the scope of mediation.

The resources persons then talked about choosing mediation as career by the law professionals. In this regard they discussed the national and international scenario. They cited the examples of Singapore and London becoming the major seats of the mediation and the law professionals from all over the globe taking their law practice to these places. Many law professionals have started specializing in mediation and establishing their practice exclusively in mediation. They said that India is also fast catching up in the field of mediation and it has the potential of becoming the major destination of mediation.

Webinar on "Hate Speech in digitally interconnected India"

On 15th November, 2020 a Webinar on "Hate Speech in digitally interconnected India" was organized. The session was guided by Dr. Abhinav Chandrachud, Advocate. Dr. Chandrachud is a renowned writer, author, speaker apart from being an eminent lawyer practicing in Bombay High Court. He has extensively written on the matters of constitutional importance.

In the deliberations in the online session the resource person talked about the provisions of various legislations which are meant to ensure cordial exchange of ideas between the citizens of the country and exercise of right of free

speech by the Individuals in exercise of their fundamental right guaranteed by the constitution of India. The speaker drew a distinction between the concept of free speech in the Indian Legal System and the American Legal System. He said that in American Legal System, the constitution guarantees right of free speech in which the citizens of America are permitted to speak anything including the hate speech with requisite risk of legal remedies as to defamation and libel. However in Indian System the fundamental right of speech is regulated by the constitutional safeguards. Therefore Indian citizens are not free to speak anything. He further said that various provisions of penal laws, especially Section 153 A and 295A of IPC are the mechanisms provided for punishing a person indulging in hate speech involving the religious, social or community based values . The provisions are intended to bring peace and tranquility in the society and to deter the tendencies of hate speech.

Talking about the social media and online content available on the Internet, the resource person said that the unregulated electronic media has contributed a lot in spread of hate speech and in the world over this has created a wedge between the communities and the sections of the society. The peaceful atmosphere and the social fabric of the society is being disturbed. Such tendencies need to be tackled appropriately without putting unnecessary restrains on the right to free speech. These two corresponding rights need to be balanced delicately.

Webinar on "Career in Civil Law Practice"

On 21st November, 2020 a Webinar was organized on "Career in Civil Law Practice of Criminal Law". In this programme Mr. A.S Chandhiok, Mr. Sanjeev Sindhwani, Mr Sanjay Jain, Senior Advocates and Mr Rushab Aggarwal, Advocate practicing in Delhi High Court were the resource persons. Mr Aggarwal moderated the discussions.

The resource persons discussed various dimensions of civil law and guided the law interns on the importance of choosing civil law as career option. They shared their personal experiences and tracked their journey from the time of their joining law profession and going on to become recognized faces in the field of civil law. They said that generally civil law is considered to be more engaging, which is the reason for not to be many persons being interested in choosing civil law practice as career but given the vast area covered by the civil law and the multiple dimensions of civil law practice, it is interesting and challenging for the law professionals. In civil law their being multiple branches, the law professionals can expertise and choose individual branches. With ever increasing litigation and specialized laws being put in place and special forums being constituted for adjudication of disputes , it has become imperative now to specialize and to establish practice in a particular field.

The resources persons gave useful inputs to the law interns on how to start their journey in the practice of civil law and to establish them in civil law litigation.

Webinar on "Gender Justice"

On 22nd November, 2020 a Webinar was organized on "Gender Justice". The programme was conducted by Prof. (Dr.) Ved Kumari, an eminent scholar and a renowned speaker on issues like Gender Justice, Juvenile Justice, Judicial Education and Bias. Presently she is a professor at Law Centre-I, Delhi University

While speaking to the law interns and the Judicial Officers she raised various issues of day to day life involving gender perspective. She discussed that the social construct has created gender inequalities and it requires a constant dialogue on gender justice. She said that the constitutional principles of equality would become meaningless unless we identify the gender issues and inequalities in the society and communities, and make concerted efforts to remove them. She also exhorted that special provisions made in the constitution for empowerment of women, children and the marginalized sections of the society are the manifestation of the principle of Justice as enshrined in the Constitution of India.

To create a gender just society it would also require the mind sets to be changed and the actions to be brought in sync with the constitutional mandate. Special mechanisms including special protection laws are needed to

bring about the gender justice in real sense. Gender justice is required for bringing peace and harmony in the society. Creating equal opportunities for all sections of the society ignoring the gender biases would be beneficial for the overall development of the country. Afterall, no person can be left out of the progress of the nation.

Talk on "Preamble to the Constitution of India and the Idea of Inclusion"

On the occasion of 71st Constitution Day, a Talk was organized on "Preamble to the Constitution of India and the Idea of Inclusion", on 26th November 2020. Constitution Day is celebrated every year to commemorate the adoption of the Constitution of India by the Constituent Assembly on this day in the year 1949. Mr. Gautam Bhatia, Advocate was the resource person for the programme.

Mr. Bhatia took the audience to the Constituent Assembly debates to highlight the ideals that were set out to be the guiding light in the Constitution of India. He said that the Constitution gives an idea of inclusion and cautions against exclusion of any person from all the manifestations of Justice, Liberty, Equality and Fraternity. Every provision in the Constitution is woven around the idea of inclusion. It talks only about the inclusive growth and development. Socialistic model adopted in the Constitution is meant to ensure equal and distributive Justice. Every person is endowed with liberty of thought, expression, faith and worship, and it places every religious faith or belief on equal pedestal. Even the non-believers cannot be excluded from availing of the benefits of Justice. The Constitution promotes the idea of fraternity among the masses for securing dignity of the individual. The idea of inclusion is aimed at securing unity and integrity of the Nation.

Mr. Bhatia referred to the landmark judgments of the Supreme Court of India to highlight the role of the Court in expounding and amplifying the idea of inclusion and to render even handed justice. He said that social action litigation or public interest litigation mechanism was developed by the Apex Court to ensure that access to justice is available to every citizen of the country and no body is excluded from the benefits of State policies and programmes.

Webinar on "Career in the Constitutional Law Practice"

On 28th November 2020, a Webinar was organized on "Career in the Constitutional Law Practice" for the Law Interns. Mr. Shyam Divan and Mr. Parag P. Tripathi, Senior Advocate, and Mrs. Madhavi Goradia Divan and Mrs. Neelima Tripathi, Advocates were the panelists in the session and Mr. Gautam Bhatia, Advocate moderated the discussion.

The discussion began with the opening remarks by the panelists about their interesting journey from joining the law profession and becoming eminent lawyers in the constitutional law. They narrated the anecdotes to tell to the audience as to what had inspired them to get into the practice of constitutional law. They highlighted the role of their seniors in selection of their career. They also talked about many options available within the field of constitutional law and special requirements of every branch of constitutional law.

The panelists quoted from the life experiences of the legal luminaries and said that all of them had great skills of oration and interpretation. Many of these stalwarts had their unique and unmatchable styles. Few of them were known for arguing for days together in many cases of constitutional importance that became landmark cases and contributed to the development of legal principles.

The panelists told the participants about the special skills and requirements for the constitutional law practice. They said that reading of Constituent Assembly debates and books written by the celebrated authors is necessary to understand the ticklish legal propositions in the field of constitutional law. Reading books on freedom struggle and the lives of great leaders gives an idea about the constitutional principles and the historical perspective of the provisions of the Constitution.

Celebrating the Constitution Day

Benjamin Franklin had observed:

"***The constitution only gives people the right to pursue happiness. You have to catch it yourself***".

Constitution of India was the intellectual creation of the founding fathers of the nation. While the freedom which this country got from the foreign rule was the product of long drawn political struggle of the people, the Constitution was the intellectual creation of the best intellectual brains of the country. After independence, this was the first formidable challenge to the founding fathers of the newly independent country as what sort of constitution they were going to give to the countrymen which will guide them for all times to come. And that challenge was successfully surmounted by the best brains of country who came out with the best constitution of the world, adopted on 26th November 1949 and taken effect on 26th January 1950, as called the Republic day. What is this constitution. For that let me quote from the Judgment of Hon'ble Supreme Court in "Good Year India v. State of Haryana, AIR 1990 SC 781:

> "Constitution is not to be construed as a mere law, but as the machinery by which laws are made. A constitution is a living and organic thing, which of all instruments has the greatest claim to be construed broadly and liberally".

So, what is held is that constitution is not only a law, but a machinery of law, a living document from which all other laws crop up and enacted. Constitution is in fact the supreme lex of the country, a grundnorm. It lays down the framework, demarcating fundamental political code, structure, procedure, powers and duties of govt institutions and sets out fundamental rights, directive principles and duties of the citizens. It is the largest written constitution of any country on this planet. Its influenced by many other best practices and concepts then prevailing in the world.

Apart, all laws and legislations are finally to be tested on the touch stone of the constitution, that is why there is a concept of declaring laws as ultra-wires, if they are found to be in contradiction to the spirit of constitution. Our Hon'ble Supreme Court at times have declared many such legislations as ultra-vires when they were found in conflict with the constitution, especially part 3rd of the Constitution. And it is in this backdrop we have got a famous Judgment of Hon'ble Supreme Court in Kasavananda Bharti v. State of Kerala, in 1973, also called Fundamental Rights case. In the said landmark Judgment a theory called "Basic structure Theory" was propounded where in it was finally held by the Larger bench of the Hon'ble Supreme Court that though the parliament has got power to amend the constitution, but it cannot amend the basic structure of the constitution. Thus, the unrestricted and unfettered power of the parliament, as claimed to amend constitution was regulated and circumscribed by the said Judgment by putting the rider of basic structure on the amending power of the parliament. In the same Judgment, Judgment delivered earlier in Re-barburi case was reversed and held that preamble is also part of the constitution and can be amended, with the same rider of basic structure, which cannot be amended. However, what is basic structure, is not exhaustively defined by Hon'ble Supreme Court. At times various concepts enshrined in the constitution have been declared as basic structure like, secularism as the basic structure, democracy as the basic structure, constitutional supremacy as the basic structure etc. But there is no final word as to what constitutes basic structure. It is upto Hon'ble Supreme Court to declare what is basic structure. So, we have got only illustrative list of basic structure, and not its exhaustive list.

Mr. Om Birla, the Speaker of 17th Lok Sabha, Indian Parliament, in his write-up on the Constitution Day, while concluding his article has given a thought providing message to the countrymen. What he has said I quote:

> "we have our rights and they will always remain with us, but if we as citizens are able to adhere to our duties and

act accordingly, this century will certainly be the century of India".

So, the fundamental rights which constitute the part 3rd of the constitution are of course inextricably linked with us for all times to come. But there is one more aspect attached with the fundamental rights that are called Fundamental duties, which Mr. Om Birla specially referred to. He is of the opinion and his words matters that if we convictionally adhere to fundamental duties, "this century will certainly be the century of India". So, the bottom line of his column is "this century will be century of India". However, there is a caveat, provided the citizenry of the India will convictionally feel that we are supposed to behave like a responsible citizen who is equally abreast with his role and rights as a citizen of the country. I think the start of the day and end of the day must be based on a fair analysis of our role and responsibility in the nation building , coupled with a resolve to discharge these sacred duties in their true spirit . They will help in the promotion of a source of discipline and commitment towards the nation. And for that, whatever role we have got to play in any sphere we have joined in, that be played with utmost honesty and dedication. If this concept will be invoked and practiced in our daily life, I hope these golden words of Om Birla will come true, that "this century will be century of India".

Apart, constitutional day does not mean only to read and recite preamble, but constitution we must understand, as it is a guiding document. Every citizen is under social, legal and moral duty to understand the constitution and the guiding principles enshrined therein. It is not only for the law students, lawyers and Judges to read it. For what purpose otherwise then great founding fathers of the nation struggled, borrowed the best ideas of the times from all over the world to make this constitution a best document which could guide generations for all times to come. And that is possible only when we all open it with all curiosity to learn and practice. When I call it a sacrosanct document, I do not mean to keep it in Almirahs and shelves with reverence. But to read it, with a pure intention to imbibe and implement it in letter and spirit.

It's equally applicable to a citizen as well as to all govt institutions and its functionaries.

Now let me refer to the second important aspect of my speech which is about the guiding words of the main architect of the Constitution, I mean Dr. Bhim Rao Ambedker. While referring to the Indian Constitution he has said that it is bound how to turn bad if those who work on it happened to be a bad lot. However, bad it may be, will turn to be good if those who work on it happened to be a good lot. In the light of this litmus test laid down by no one else then the architect of the constitution himself we have to ponder upon, whether in any sphere, if we have not touched the desired target, the question will be – is it the constitution which failed us or we failed the constitution ? For that we must assess fairly our all past and present endeavours, from individual level to the national level and test them on the touch stone of guiding words of Dr. Ambedker. It is the day when we ought to revisit our entire pursuits and match them with the mandate of our constitution and the goals fixed there in by the founding fathers for the generations to achieve.

We must look back to 1949 when the founding fathers, after a long intellectual struggle came out with this beautiful document. Even we should know and realise the preceding hundred years struggle to this constitution that how the people dreamt of an independent nation and then toiled tirelessly for making it to happen, a country where they will move freely and independently, where they will have a right of speech and expression, profess and practice religion of their choice and where they will have a dignified life. These were the rights which then people of India were deprived of. At least what is expected from citizens now is to preserve the sanctity of this constitution, coupled with the resolve to make the country an abode of best civilised people of the world, a dream place and a desired destination for the world people to cherish, to set a benchmark for the others to follow and achieve in their respective countries.

One important aspect of the preamble is

"Securing justice". We read out the preamble but one cherished promise it has made to the people is "securing justice" to them. This aspect directly relates to us as Judges. The concept of securing justice has to be realised and analysed by all of us, as we are meant for this sacred duty to be performed. As Judges we are directly concerned with Justice dispensation process.

Justice is a broad concept and should not be reduced to mere sitting in the court room and passing orders and Judgments. It is one aspect of it. Fact remains that in every sphere we are supposed to do justice. However, while sitting in the Court, people attach more hopes and reverence to the man sitting on the dais to dispense justice without fear or favour, affection or ill will. However, in my humble appreciation, either we are in the Court or in the Chamber, or doing administrative work or in our private capacities, everywhere the Judge is supposed to behave and conduct justly and fairly. His credentials must be above board. And in that context firstly I address myself and then my all fellow colleagues that to the best of our capacity and capability we must come up to match with the expectations of our people and deliver speedy and substantial justice, a justice which is not only being done, but seems to have been done, to earn full confidence and faith of the people in the Judicial institution, which is revered as temple of justice.

The third concept is in reference to the guiding words of Gandhi, the father of the nation, who changed the course of freedom struggle in a short span, after its arrival on the spectrum of freedom struggle of the country. His words go like this "where person shall feel that it is the country in whose making, they have an effective voice --- an India in which all communities shall live in perfect harmony".

I think this is the day when a fair analysis with regard to this message of the founding father needs to be made at all levels. I think more inclusive approach is the need of time to give full sense of security to every citizen to expand its wings to the fullest to fly high and keep flying high the flag of the nation.

– Mr. Tahir Khurshid Raina
Additional District Judge, Jammu

Appeal Against an Order of Interim Injunction : Power of the Appellate Court

While hearing appeal against the order of the trial court in an application for grant of temporary injunction the appellate court travels on a tight rope. Order of interim injunction or refusal thereof is an exercise of discretion within the settled parameters of law. Sometime the appellate court may find the order passed by the trial court in the application for grant of interim injunction to be a probable view but other view is equally probable, or sometimes the appellate court may find that view take by the trial court is not probable in the light of the facts and the law applicable.

It is now a well settled legal position that the appellate court should not normally interfere with the exercise of discretion by the court below and substitute its own discretion except where the discretion is shown to have been exercised by the trial court arbitrarily or capriciously or perversely or where the trial court has ignored the settled principal of law regulating grant or refusal of interlocutory injunction. Appellate court is not supposed to reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably probable. In other words, if the discretion has been exercised by the trial court reasonably and in a judicial manner, the fact that the appellate would have taken a different view cannot justify interference with the trial court's exercise of discretion.

Hon'ble Supreme Court of India in a case reported as 'Wander Ltd. v. Antos India (P) Ltd.', 1990 (Supp.) SCC 727, cautioned the appellate courts against interfering with the order of the trial court in exercise of discretion. This proposition of law was reiterated by the Hon'ble Supreme Court of India, in 'N.R. Dongre v. Whirlpool Corporation & Anr.' (1996) 5 SCC 714, and 'Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73. This legal proposition was again accepted and reiterated in a ruling handed down by a Bench comprising of three Hon'ble Judges of the Apex Court, in 'Skyline Education Institute v. S.L. Vaswani & Anr., (2010) 2 SCC 142, wherein the Hon'ble

Supreme Court of India while agreeing with the ratio of the law laid down in Wander's case, N.R. Dongre's case and in case of Cadila Health Care (supra), observed in paragraph 16 of its ruling, as under:

" 16. The ratio of above noted judgments is that once the Court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon the objective consideration of the material placed before the Court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity".

Therefore, when the appellate court is called upon to examine the legality or otherwise of discretionary order of granting or refusing interim injunction, it shall have to upheld the order of the trial court if the view taken is probable view that can be taken in the facts and circumstances of the case. The appellate court may take another probable view on the same facts and circumstances, cannot be a ground to reverse the order of the trial court. Only if the view taken by the trial court is perverse, arbitrary or capricious the appellate court would be justified in upsetting the order and substituting its own view.

– Mr. Jatinder Singh Jamwal
Additional District Judge, Kathua

(Guest Column)

Complete Justice is Constitutional Morality

Justice is the first promise of the Indian Constitution. There is one basic commandment: Justice cannot be rationed. The people are hungry. Therefore, the Constitution must ensure Justice. Justice in adulterated form cannot be served. When it comes to Justice, there is no compromise. The Magna-Carta, more than 8 centuries old ordains: Justice not to be sold, nor denied or delayed. Justice is the ligament which joins and binds all human beings.

The framers of the Constitution were truly visionary. Article 142 mandates the Supreme Court to pass such decree or make such order as is necessary for doing Complete Justice in any cause or matter. It is the summit court which alone has been trusted with this extra ordinary jurisdiction to do Complete Justice. It would be relevant to make reference to the Constituent Assembly (CA) Debates. Article 118 of the Draft Constitution became Article 142 of the present Constitution. No debate took place in the CA when Article 118 of the Draft Constitution was considered. It was referred (Article 118) to when Article 112 (now Article 136) of the Draft Constitution was debated. Pt. Thakur Dass Bhargava expressed his views as follows:

This Natural Justice in the words of the Privy Council is above law, and I should like to think that our Supreme Court will also be above law in this matter……. I beg to submit before the House that this is a very important Section and gives almost unlimited powers and as we have got political Swaraj, we have Judicial Swaraj certainly…… I should therefore think that the Supreme Court shall exercise these powers and will not be deterred from doing justice by the provision of any rule or law, executive practice or executive circular or regulation etc. Thus, the Supreme Court will be in this sense above law.

In the CA, Natural Justice and Complete Justice were equated. Both were considered and treated above law. This means that the statute cannot limit the scope of the two concepts. They are inter-woven. They both grow through judicial process. Both are flexible. Ever expanding. One supplements the other. Pt. Bhargava added:

At the same time, jurisdiction of the article is almost divine in its nature, because I understand that this Supreme Court will be able to deliver any judgment which does Complete Justice between states and between persons before it.

Alladi Krishnaswami Ayyar also referred to Complete Justice in the following terms:

If only we realize the plenitude of the jurisdiction under Article 112, if only, as I have no doubt, the Supreme Court is able to develop

its own jurisprudence according to its own light, suited to the conditions of the country, there is nothing preventing the Supreme Court from developing its own jurisprudence in such way that it could do Complete Justice in every kind of cause or matter.

These two views unfold the minds of the framers of the Constitution, why the concept of Complete Justice was introduced in the Constitution. Complete Justice has been described as 'almost divine' in its nature. Secondly, the framers believed that Supreme Court will develop its own jurisprudence of Complete Justice in every kind of cause or matter.

A clear reading of Article 142 would leave nothing to doubt that no limitations had been prescribed while mandating the Supreme Court to do Complete Justice. This position would also be evident from what was debated in the CA. This article has existed in the Constitution right from the beginning (1950). During the last 7 decades, the summit court of the country has exercised its jurisdiction of doing Complete Justice in variety and varied situations. The apex court has invoked this jurisdiction reasonably frequently. Its scope and ambit has also been the serious concern of even the Constitution Benches. The basic controversy which continues is, whether the top court while doing Complete Justice is restricted by the statutory provisions or not. The normal constitutional rule is justice according to law. It is a historic fact that justice according to law is not necessarily always the best kind of justice. There is every possibility of space and gap between law and justice. In the first instance, if the Supreme Court was bound by the statutory provisions while doing Complete Justice, there was no rationale or reasonable justification to introduce the concept of Complete Justice. In fact, the basic recipe is: justice according to law is sufficient. If the framers thought it prudent to introduce the concept of Complete Justice, obviously it was something more than justice according to law. It is important to add that the normal rule is to do justice as per the statute. The Complete Justice jurisdiction arises in extra ordinary situations. It is totally understandable that the Parliament while enacting the law cannot possibly envisage all possible situations which may arise in future to be dealt within the ambit of law. It is true of every legislation. If there was no Article 142, even the Supreme Court was bound to do justice within the strict letter of law unless the Supreme Court had found that the law itself was unconstitutional. Therefore, the summit court would have been handicapped to do Complete Justice in many of the situations which may not have been envisaged within the ambit of a particular law. It was precisely because of this context that Alladi Krishnaswami Ayyar had categorically expressed his view in the CA that there is nothing preventing the Supreme Court from developing its own jurisprudence of doing Complete Justice in every kind of cause or matter. Thus, this leaves nothing to doubt. In Re: Cognizance For Extension of Limitation (2020), the Supreme Court exercised its jurisdiction under Article 142 read with Article 141 of the Constitution and extended the limitation period of appeals on account of Corona Virus (COVID-19) situation. In order to ensure that lawyers/litigants do not have to come physically to file petitions/applications/ suits/appeals/all other proceedings in respective Courts/Tribunals across the country including the SC, the apex court directed: "a period of limitation in all such proceedings irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended w.e.f. 15th March, 2020 till further orders to be passed by this court in present proceedings". Two points need to be noticed. Inspite of the specific statutory provisions of limitation, yet the SC under Article 142 passed a blanket order extending the limitation period keeping in view the extra ordinary situation because of COVID-19. If the statutory limitation period had to be taken to be binding, Complete Justice could not have been done in this kind of extra ordinary situation. People across the country would have suffered injustice. Secondly, the SC also directed that this order shall be binding on all Courts/ Tribunals/Authorities under Article 141. This, in fact, is the beauty of Article 142 of doing Complete Justice. If Article 142 was not in the Constitution, it would have become a difficult

situation to deal within the strict statutory provisions. Therefore, in extra ordinary situations, even the statutory provisions would not be a hindrance in doing Complete Justice in exercise of its jurisdiction under Article 142.

Article 142 is to do Complete Justice. This is the best recipe to cover silences in different statutory provisions. The letter of law may not be specifically covering certain situations. Coupled with this, there is no specific statutory bar either. Resultantly, it would be open to the summit court to fill in the silences by doing Complete Justice in such situations. The filling up of silences from time to time would make the law wholesome. In turn, such law would become wholesome in order to ensure Complete Justice in different situations.

Article 142 is unique jurisdiction. The framers have trusted the judges of the summit court to do Complete Justice. This jurisdiction has neither been given to the High Courts nor to the District courts. This is understandable. This trust could be reposed only in the apex court. The exercise of this jurisdiction would in due course of time give birth to new Jurisprudence of Complete Justice under the Constitution. A question of importance arises. Will this new Jurisprudence of Complete Justice be binding on all other courts and tribunals or not. So far, the view was that the cases under Article 142 decided by the summit court cannot be treated as precedents to be followed by the High Courts and other courts and tribunals. Even this view would not be justified. In the matter relating to limitation, the SC exercised its jurisdiction under Article 142 read with Article 141. Therefore, Complete Justice done in extra ordinary situations would be precedents to deal with similar/such extra ordinary situations by all other courts. The advantage of this would be that one will not be required to wait till the matter is taken to the apex court to ensure Complete Justice. There is of course, a danger whether the precedent has been rightly followed or not by other courts. Similar danger is in regard to the law laid down in all other situations as well. There is a system of checks and balances. If the District Court decides a matter as per the precedent laid down by the summit court under Article 142, the appeal would come before the High Court. Similarly, the matter decided by the High Court, the appeal would lie before the SC. Consequently, the law laid down by the SC would be followed by all other courts in the country. The benefit of this would be that the new jurisprudence of Complete Justice would percolate across the country through the medium of different courts and tribunals. It would be good for the health of doing Complete Justice. The High Courts under Article 226 mould the relief keeping in view the statutory provisions and the facts and circumstances of each case. Lot of flexibility has been used in issuing writs in the nature of habeas corpus…….. The High Courts are not hampered by the strict principles of each writ. Therefore, the High Courts under Article 226 would further be able to mould relief. Keeping in view the new Jurisprudence developed under Article 142.

There is still another aspect. If the apex court feels that within the provisions of the statute, it is not possible to do Complete Justice, what are the options open to the court? Article 142 is the mandate of the Constitution. Therefore, the statutory provisions cannot restrict the constitutional mandate. Obviously, it is the Constitution which prevails over the statute. In Delhi Judicial Service Association (1991) matter, the Supreme Court took the view:

Under the constitutional scheme this Court has a special role, in the administration of justice and the power conferred on it under Articles 32, 136, 141 and 142 form part of Basic Structure of the Constitution. The amplitude of the power of this Court under these Articles of the Constitution cannot be curtailed by law made by Central or State Legislature.

Thus, in exceptional cases where the Supreme Court finds that the statutory provision hampers the doing of Complete Justice, such statutory provision would be liable to be declared unconstitutional. The top court has equated Article 142 with Articles 32, 136 and 141. Consequently, such a provision would be liable to be declared invalid. The general principle is that a legislation is considered to be constitutional unless it is found otherwise. The

same principle would be applicable in the case of Article 142 also. The statute must meet the test of Article 142. After all, the doing of Complete Justice is the Constitutional mandate. However, it is added that if Article 142 is found to be in conflict with a Fundamental Right under the Constitution, it cannot be declared to be unconstitutional. The two provisions of the Constitution will have to be harmoniously interpreted. The Constitution is one wholesome organic document. Therefore, different provisions must be read together harmoniously.

It would be equally important to exercise Jurisdiction under Article 142 where there is no legislation. The court had in Vishaka case (1997) issued guidelines providing the protection of women from sexual harassment at the workplace in the absence of any enacted law. Once these directions are issued, they are binding till the legislation is enacted. Article 141 leaves nothing to doubt. It reads: The law declared by the Supreme Court shall be binding on all courts within the territory of India. Under Article 142, the Supreme Court cannot make an exception. Article 141 is loud and clear. It does not accept any exception.

It needs to be acknowledged that the Judiciary plays a productive role. Both in the field of Constitution and the other laws. It infuses life and blood into the provisions of the Constitution and the laws. It creates a living organism to meet the changing and challenging needs of the people. It prevents ageing of the Constitution and the laws. Article 142 is a specific example itself. How innovatively and creatively Article 142 has been invoked under different challenging situations including Corona-19. It has become an exportable item, Article 187 of the Constitution of Pakistan, 1973 and Article 104 of the Bangladesh Constitution, 1972 are materially the same as Article 142 of the Indian Constitution. In Article 88(2) of the Constitution of Nepal, 1990, the expression Full Justice has been used in place of Complete Justice. If the framers had not included Article 142, it is difficult to imagine, how the summit court would have dealt with extra-ordinary situations.

A new Jurisprudence of Complete Justice is emerging. It would not be wrong to say that Article 142 is yet to bloom fully. As visioned by the framers of the Constitution. Complete Justice is a Constitutional plant. It is rooted in Constitutional Morality. It is hoped that the apex court will continue to manure it well.

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Can a victim or his lawyer be allowed to conduct prosecution in a criminal case?

The provisions of Sections 225, 301 and 302 are in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. Constructing a right to prosecute a person during trial, will defeat the purpose sought to be achieved by Article 21 of the Constitution of India. It is in larger public interest that the prosecution is conducted by an independent person like the Public Prosecutor. The role of the Public Prosecutor is very important in criminal trial, when Public Prosecutor works under Section 24 of Code of Criminal Procedure, 1973 for conducting prosecution, appeal or other proceeding on behalf of the Government, as the case may be under Section 301 Cr. P. C. the Public Prosecutor or the A.P.P. in charge may appeal and plead without any written authority before any Court in which that case is under inquiry, trial or appeal, it further states that if in any such case any private person instructs a pleader to prosecute any person in any court, the pleader so instructed shall act under the directions of the Public Prosecutor or Asst. Public Prosecutor and may with the permission of the Court, submit written arguments after the evidence is closed in the case.

The underlying object of enacting Section 301 of Code of Criminal Procedure, 1973 appears to be that when the State undertakes a case, the rights to the complainant become subordinate to that of the State so that the counsel appearing on behalf of the complainant has no right to audience, unless permitted in that behalf by the Public Prosecutor appearing for the State. With the permission of the Court he may submit written arguments to the Court, irrespective of arguments of the Public

Prosecutor or his consent in this behalf. Section 301 Cr. P. C. thus reads as under:

"**301. Appearance by Public Prosecutors**.—(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case."

What is mentioned above is applicable to all cases in general, i.e., cases which are triable by Sessions Court as well as in Magistrate Courts.

However, there is a more liberal provision in Section 302 of Code of Criminal Procedure, 1973 relating to cases which are pending for inquiry or trial in a Magistrate court (i.e., this provision is not applicable to Sessions Court trials):

"**302. Permission to conduct prosecution**.—(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a Police Officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no Police Officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader."

Thus, for a trial pending in a Magistrate Court, the victim / complainant or his lawyer can be allowed to conduct prosecution, if the Magistrate Court permits him to do so. In such a situation, if such permission is granted, the prosecution will be conducted completely by the victim or his lawyer. And, this can happen even in cases which are instituted on the basis of a charge sheet filed by police; but, the limitation is that the case should be triable by a Magistrate (and not Sessions Court) and that the Magistrate should permit it.

Section 301 of Code of Criminal Procedure, 1973 came to be interpreted in a number of cases. In **"Thakur Ram & Ors. Vs. State of Bihar", AIR 1966 SC 911,** the Hon'ble Supreme Court ruled that in a case which has proceeded on a police report, a private party has no locus standi. It further ruled that, barring a few exceptions, in criminal matters, the aggrieved party is the State, which is the custodian of the social interests of the community at large, and so it is necessary for the State to take all steps necessary for bringing the person who has acted against the social interests of the community, to book.

In **"Kuldip Singh Vs. State of Haryana", 1980 Cri LJ 1159 (P&H),** the Hon'ble Punjab & Haryana High Court held that, the Court has no role to play as regards a person engaging her own pleader, since the pleader's role is confined to briefing the Public Prosecutor. The Court further held that it only has a say in the matter, if the pleader so engaged by the party, wishes to make a written submission.

In **"Praveen Malhotra Vs. State", (1990) 41 DLT 418 (Del),** a third party sought to intervene in the matter and present oral arguments against a petition for bail filed by the accused. The Petitioners relied on the Judgment of the Hon'ble Supreme Court in Arunachalam v. P. S. R. Sadhanantham, (1979) 2 SCC 297, where the Hon'ble Supreme Court had ruled that under Article 136 of Constitution of India, it can entertain appeals against Judgments of acquittal by the Hon'ble High Court at the instance of private parties also, as Article 136 does not inhibit anyone from invoking the Court's jurisdiction. The Court, in the present case, distinguished this case and said that the ruling made by the Hon'ble Supreme Court in the context of Article 136 of Constitution of India cannot be relied upon in the context of a third party seeking to intervene in a bail application filed by the accused under Section

439 of Code of Criminal Procedure, 1973, exercising powers under Section 482. The second decision relied upon by the Petitioners was Manne Subbarao Vs. State of A.P., (1980) 3 SCC 140, where the issue was whether a third party, who is neither the complainant nor the first informant, can appeal to the Hon'ble Supreme Court, against an order of acquittal by the High Court, if the State does not prefer an appeal. The Court ruled that there is no black-letter law that permits the same. However, the Criminal Justice System supports the view that a wrong done to anyone is a wrong done to oneself. Justice is outraged when a guilty person is allowed to get away unpunished. It held that access to Justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as Public Interest Litigation, class action and pro bono proceedings are. The Court, in **Praveen Malhotra** again distinguished this case and said that it applied only to Article 136 of Constitution of India. It further stated that both the cases cited involved situations where a third party had sought to go on appeal and that the present case was one where the matter concerned opposition to an application for bail. Therefore, it stated that the ratio of the two cited cases could not be applied. Keeping this limited view in mind the Court referred to the case of "**Indu Bala Vs. Delhi Admn.", 1991 Cri LJ 1774 (Del),** wherein the Hon'ble Delhi High Court took the position that there was no provision in Cr. P. C allowing a complainant or a third party to oppose the application for grant of bail or anticipatory bail. Hence, the Court ignored two decisions of the Hon'ble Supreme Court and chose to rely on the decision given by a Single Judge of the Delhi High Court. The Court also dismissed the plea of the Petitioner to exercise inherent powers under Section 482 of Code of Criminal Procedure, 1973 to permit intervention, on the ground that Section 482 of Code of Criminal Procedure, 1973 cannot be used to circumvent the law and to go against the settled law. It added that Section 482 of Code of Criminal Procedure, 1973 cannot be used as broadly as Article 136. It is interesting to see that the Court did not go into the question of whether intervention could be allowed under Sections 301 and 302 Cr. P. C, in this case.

In the case of **"P. V. Narashimharao Vs. State", 1997 Cri LJ 3117 (Del),** the Petitioner sought to intervene in an appeal filed by the accused against the order of the trial court. The Hon'ble Delhi High Court ruled that there was no provision in Cr. P. C analogous to Order 1 Rule 10 of the Civil Procedure Code. It further stated that a reading of the section shows that a private party has no role in a proceeding instituted by the State. Hence, the application of the Petitioner to intervene was rejected.

In **"All India Democratic Women's Assn. Vs. State & Ors.", 1998 Cri LJ 2629 (Mad),** the Hon'ble High Court of Madras stated that Section 301 (2) Cr. P. C gives a third party only a right to assist the prosecution. The prosecution of the criminal proceedings, the Court held, is primary responsibility of the State, and if third parties are allowed to intervene, then there will be a number of associations to represent one party or the other in criminal proceedings, and this would give rise to confusion and chaos.

In this regard, it is pertinent to point out that in the case of "***Shiv Kumar* Vs. *Hukam Chand & Anr.*", (1999) 7 SCC 467**, the Supreme Court held that:

"From the scheme of the Code the legislative intention is manifestly clear that prosecution in a Sessions Court cannot be conducted by anyone other than the Public Prosecutor. The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused in a Sessions Court. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of

the court if it comes to his knowledge. A private counsel, if allowed a free hand to conduct prosecution would focus on bringing the case to conviction even if it is not a fit case to be so convicted. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor."

The Supreme Court observed that it is not merely an overall supervision which the Public Prosecutor is expected to perform in such cases when a privately engaged Counsel is permitted to act on his behalf. The role which a private Counsel in such a situation can play is, perhaps, comparable with that of a Junior Advocate conducting the case of his Senior in a Court.

However, the above Judgment was in respect of a private lawyer assisting the Public Prosecutor under Section 301 (2) of the Code of Criminal Procedure, 1973, which is mostly relevant for the trials in the Sessions Court.

For a trial in a Magistrate Court, Section 302 of Code of Criminal Procedure, 1973 may additionally come into play.

For example, in the case of "***J.K. International* Vs. *State (NCT of Delhi) & Ors"*, (2001) 3 SCC 462**, referring to Section 302 of Code of Criminal Procedure, 1973, the Supreme Court held that when the trial is before a Magistrate's Court, the scope of any other private person intending to participate in the conduct of the prosecution is still wider. Explaining the provisions of Section 302, Code of Criminal Procedure, 1973, the Supreme Court further observed that:

"The private person who is permitted to conduct prosecution in the Magistrate's Court can engage a Counsel to do the needful in the Court in his behalf. It further amplifies the position that if a private person is aggrieved by the offence committed against him or against anyone in whom he is interested he can approach the Magistrate and seek permission to conduct the prosecution by himself. It is open to the Court to consider his request. If the Court thinks that the cause of Justice would be served better by granting such permission the Court would generally grant such permission. Of course, this wider amplitude is limited to Magistrates' Courts, as the right of such private individual to participate in the conduct of prosecution in the Sessions Court is very much restricted and is made subject to the control of the Public Prosecutor. The limited role which a private person can be permitted to play for prosecution in the Sessions Court has been adverted to above. All these would show that an aggrieved private person is not altogether to be eclipsed from the scenario when the criminal court takes cognizance of the offences based on the report submitted by the police. The reality cannot be overlooked that the genesis in almost all such cases is the grievance of one or more individual that they were wronged by the accused by committing offences against them."

In "***Dhariwal Industries Ltd.* Vs. *Kishore Wadhwani & Ors."*, (2016) 10 SCC 378**, the Supreme Court approvingly referred to the above ***J.K. International*** case to the effect that a private person can be permitted to conduct the prosecution in the Magistrate's Court and can engage a Counsel to do the needful on his behalf, and that when permission is sought to conduct the prosecution by a private person, it is open to the Court to consider his request. It was observed that in that case, the Court had stated that the Court has to form an opinion that cause of Justice would be best sub-served and it is better to grant such permission, and, it would generally grant such permission.

Recently, in the case of "***Amir Hamza Shaikh* & Ors. Vs. *State Of Maharashtra & Anr."*, (2019) 8 SCC 387**, the Supreme Court further clarified this issue by observing that though the Magistrate is not bound to grant permission at the mere asking but the victim has a right to assist the Court in a trial before the Magistrate. The Magistrate may consider as to whether the victim is in a position to assist the Court and as to whether the trial does not involve such complexities which cannot be handled by the victim. On satisfaction of such facts, the Magistrate would be within his jurisdiction to grant permission to the victim to take over the inquiry of the pendency before the Magistrate.

The scheme envisaged in the Code of Criminal procedure, 1973 indicates that a person who is aggrieved by the offence

committed, is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge sheet was laid by them. Even the fact that the Court had taken cognizance of the offence is not sufficient to debar him from reaching the Court for ventilating his grievance. Even in the Sessions Court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code of Criminal Procedure, 1973, a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial.

The private person who is permitted to conduct prosecution in the Magistrate's Court can engage a Counsel to do the needful in the Court in his behalf. It further amplifies the position that if a private person is aggrieved by the offence committed against him or against any one in whom he is interested he can approach the Magistrate and seek permission to conduct the prosecution by himself. It is open to the Court to consider his request. If the Court thinks that the cause of Justice would be served better by granting such permission the Courts would generally grant such permission. Of course, this wider amplitude is limited to Magistrates Courts, as the right of such private individual to participate in the conduct of prosecution in the Sessions Court is very much restricted and is made subject to the control of the Public Prosecutor. They are the '**gate keepers**' of criminal justice, insofar as without their initiative there cannot be the prosecution and repression of crimes. Prosecution services are, in fact, society's principal means of pursuing punishment of criminal behaviour and its interface with the adjudicative power.

In all prosecutions, the State is the prosecutor and a proceeding is always treated as proceeding between the State and the accused. The anxiety of the State to secure peace and security and a right to prosecute. The complainant has no independent right to have guilty person punished. It is felt necessary in the larger public interest to save the people from prosecution by a private party. Once the offence is committed, it is not against the individual but is against the entire society. Thus, of the outcome of a trial, it is not the complainant, who is interested but it is the public at large, who is concerned. It has taken human civilization centuries to reach this stage when the modern State has come to acquire a monopoly to adjudicate and use force when fights between the private individuals take place. This is why Justice is represented by scales of sword. The Society has realized that the privilege of the prosecution should be of the State alone because it is neutral interceptor as it never loses and never wins. The Court call for expertise and hence the conduct of the prosecution is entrusted to the prosecutors appointed by the State Government. This saves innocent persons from vexatious prosecution and also harassment during the trial The complainant has also been given limited right to speak during trial by way of submitting written arguments under Section 301 (2) of the Code of Criminal Procedure, 1973 and assist the Public Prosecutor through private Counsel with the permission of the Court. The scope and relief provided under sub-section (2) of Section 302 of Code of Criminal Procedure, 1973 gives an ample opportunity and sufficient role to the private person interested in the cause to submit his case through the agency of the Public Prosecutor. Although, a limited secondary role to the victim prosecution is envisaged under Section 301 of Code of Criminal Procedure, 1973, it imbibes necessary checks and balance providing sufficient scope and opportunity for victim's participation and to check the arbitrariness of the prosecution agency.

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