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Contents

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From the Editor's Desk

While India resolutely battled the unprecedented crisis triggered due to the Covid-19 pandemic, rather than giving in to the crisis that nearly upended the justice delivery system of the country, the Indian Judiciary picked up the gauntlet and chartered its own unique trajectory, showing remarkable resilience by adopting virtual hearings and e-filing of cases. The judiciary's timely and calibrated response to the pandemic induced lockdown, turned the crises into an opportunity and helped in both disposal of pending cases and seamless hearing of new ones.

The Judiciary has long been in the process of digitization of proceedings especially since 2007 when the E-Courts Project was launched on the basis of the National Policy and Action Plan for Implementation of Information and Communication technology in the Indian Judiciary (2005). While some rudimentary facilities had already existed in most High Courts for virtual hearings under the aforementioned project, the existing infrastructure was greatly augmented & extended to almost all the lower courts during the pandemic.

Even though a full-fledged system of online courts cannot replace the existing system of physical hearings, with proper implementation it can help the judiciary in a significant way. It is now being advocated that virtual hearings be continued even in post-pandemic India as an attractive solution to reduce the footfall in courts.

However, there are still miles to go before we can guarantee to every Indian, access to justice via the online route. However, with the cooperation of all the stakeholders, the bench, bar & the litigants, virtual hearings may soon provide the much needed panacea that Indian Judiciary has been yearning for. Several steps can be taken for seamless conduct of ODR (Online Dispute Resolution). The use of technology should be stepped up, especially in lower courts which are battling the actual brunt of the backlog of cases. Steps need to be taken for recording of evidence, filing of written submissions, allocation of time slots in the lower courts via virtual means. The litigants and advocates need to be made aware & encouraged to use e- services.

To conclude, virtual courts are one of the myriad ways in which we can ease the access to justice for an aggrieved citizen, while simultaneously easing the burden of physical hearings in conventional courts. This initiative bears testimony to the promise made in the preamble of social and economic justice to all. In the longer term, it can be seen becoming a general practice and not just an exceptional circumstance.

LEGAL JOTTINGS

"What is the true role of a Judge trying a criminal case? Is he to assume the role of a referee in a football match or an umpire in a cricket match, occasionally answering, as Pollock and Maitland [Pollock and Maitland: *The History of English Law]* points out, the question 'How is that', or, is he to, in the words of Lord Denning 'drop the mantle of a Judge and assume the robe of an advocate?' [Jones v. National Coal Board, (1957) 2 All ER 155:(1957) 2 WLR 760] Is he to be a spectator or a participant at the trial? Is passivity or activity to mark his attitude? If he desires to question any of the witnesses, how far can he go? Can he put on the gloves and 'have a go' at the witness who he suspects is lying or is he to be soft and suave?"

O. Chinnappa Reddy, J. In Ram Chander v. State of Haryana, (1981) 3 SCC 191, para 1

CRIMINAL

Supreme Court Judgments

Criminal Appeal No. 448 of 2021
Sudha Singh v. The State of Uttar Pradesh & Anr.
Decided on: 23 April, 2021

In the criminal appeal filed against the order of the Allahabad High Court granting bail to the accused who had been arrested with respect to the offence punishable under Section 3 (1) of the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, a three Judge Bench of Supreme Court comprising Justice S.A. Bobde, Justice A.S. Bopanna & Justice Ramasubramanian ,while re-stating the considerations regarding the grant of bail also underlined that it is necessary for Courts to consider the impact on the witnesses or victims in a criminal case while granting bail to the accused. Factually, the appellant is the wife of a deceased victim namely Rajnarain Singh who was allegedly murdered by the accused (Respondent No. 2) in conspiracy with others. A First Information Report bearing Case Crime Number 200 of 2015, P.S.-Sodhari, Distt.- Azamgarh, was registered in that regard and a charge sheet for offences under Sections 120-B and 302 of the Indian Penal Code, 1860 and Sections 3 and 25 of the Arms Act, 1959 was filed against the accused. The accused is alleged to be a contract killer and a sharpshooter. In fact, previously, the accused has been prosecuted in fifteen cases for serious offences including murder, attempt to murder and criminal conspiracy. By the order impugned in this criminal appeal, the Allahabad High Court granted bail to the accused on liberal terms ignoring the antecedents of the accused and the potential to repeat his acts by organising his criminal activities. It was observed that the High court has overlooked several aspects, such as the potential threat to witnesses, forcing the trial court to grant protection. Apex Court pointed out that in cases of this nature, it is important that courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question. It is necessary for courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims. Hon'ble Court revisited the Supreme Court decision in *Neeru Yadav vs. State of U.P.* wherein it was held that when a stand was taken that the accused was a history sheeter, it was imperative for the High Courts to scrutinise every aspect and not capriciously record that the accused was entitled to be released on bail on the ground of parity. It was also observed in *Ash Mohammad vs. Shiv Raj Singh* that when citizens were scared to lead a peaceful life and heinous offences were obstructions in the establishment of a well-

ordered society, the courts play an even more important role, and the burden is heavy. It emphasized on the need to have a proper analysis of the criminal antecedents of the accused. In *Prasanta Kumar Sarkar vs. Ashis Chatterjee and Another*, it was held that this Court ordinarily would not interfere with a High Court's order granting or rejecting bail to an accused. Nonetheless, it was equally imperative for the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the ratio set by (2014) 16 SCC 508 ; (2012) 9 SCC 446 ; (2010) 14 SCC 496 ; LL 2021 SC 229 of decisions of this Court. The factors laid down in the judgment were: (i) *Whether there was a prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of accusations; (iii) severity of the punishment in the event of a conviction; (iv) danger of the accused absconding or fleeing, if granted bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of repetition of the offence; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger of justice being thwarted by grant of bail. 12. There is no doubt that liberty is important, even that of a person charged with crime but it is important for the courts to recognise the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail*. With these observations, while allowing the appeal, the Hon'ble Court set aside the order of the Allahabad High Court granting bail to the accused.

CRL NO. (S) 1/2017
In re: To issue certain guidelines regarding inadequacies and deficiencies in criminal trial v. The State of Andhra Pradesh & ors.
Decided on: 20 April, 2021

A three Judge Bench of Hon'ble Supreme Court comprising Justice S.A. Bobde, Justice L. Nageswara Rao & Justice S. Ravindra Bhat observed that there are common deficiencies which occur in the course of criminal trials and certain practices adopted by trial courts in criminal proceedings as well as in the disposal of criminal cases and causes relatable to the manner in which documents (i.e. list of witnesses, list of exhibits, list of material objects) referred to are presented and exhibited in the judgment, and the lack of uniform practices in regard to preparation of injury reports, deposition of witnesses, translation of statements, numbering and nomenclature of witnesses, labelling of material objects, etc. These very often lead to asymmetries and hamper appreciation of evidence, which in turn has a tendency of prolonging proceedings, especially at the appellate stages. It was also pointed out that the Court had noticed that on these prominent aspects, rules appeared to have been formulated by certain High Courts, whereas many other High Courts have not framed such rules.By way of order dated 30.03.2017,Hon'ble Court noted various salient aspects and flagged inadequacies in the practices and rules of High Courts by taking a cue from existing rules in some High Courts and after noticing about 13 issues, the Hon'ble Court issued notice to the Registrar Generals of all High Courts, Chief Secretaries and Administrators of States and Union Territories as well as Advocates General, Additional Advocates Generals and Senior Standing Counsel of all states and Union Territories and by a later order dated 07.11.2017, the Court appointed Mr. Sidharth Luthra and Mr. R. Basanth, Senior Advocates as amici curiae. On 20.02.2018, Mr. K. Parameshwar, learned counsel was also appointed as amicus curiae to assist the senior counsels who were earlier appointed as amici curiae. After considering the suggestions made during the colloquium, the amici curiae submitted the "Draft Rules of Criminal Practice, 2020" for the consideration of court. Hon'ble Court opined that while furnishing the list of statements, documents and material objects under Sections 207/208, Cr. PC, the magistrate should also ensure that a list of other materials, (such as statements, or objects/ documents seized, but not relied on) should be furnished to the accused so as to ensure that in case the accused is of the view that

such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under the CrPC for their production during the trial, in the interests of justice. It was also opined by the Apex Court that whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence, the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal.

Hon'ble Court was also of opinion that the view in Bipin Shantilal Panchal v. State of Gujarat & Anr (AIR 2001 SC 1158) should not be considered as binding and modified the practice while observing that the presiding officer should decide objections to questions, during the course of the proceeding, or failing it at the end of the deposition of the concerned witness. This will result in decluttering the record, and, what is more, also have a salutary effect of preventing frivolous objections. In given cases, if the court is of the opinion that repeated objections have been taken, the remedy of costs, depending on the nature of obstruction and the proclivity of the line of questioning, may be resorted to. Hon'ble Court was of the opinion that the courts in all criminal trials should, at the beginning of the trial, i.e. after summoning of the accused, and framing of charges, hold a preliminary case management hearing. In this hearing, the court should consider the total number of witnesses, and classify them as eyewitness, material witness, formal witness (who would be asked to produce documents, etc) and experts. At that stage, the court should consider whether the parties are in a position to admit any document (including report of experts, or any document that may be produced by the accused, or relied on by her or him). If so, the exercise of admission/ denial may be carried out under Section 294, Cr. PC, for which a specific date may be fixed. The schedule of recording of witnesses should then be fixed, by giving consecutive dates. Each date so fixed, should be scheduled for a specific number of witnesses. However, the concerned witnesses may be bound down to appear for 2-3 consecutive dates, in case their depositions are not concluded. Also, in case any witness does not appear, or cannot be examined, the court shall indicate a fixed date for such purpose. The recording of deposition of witnesses shall then be taken up, after the scheduling exercise is complete. The Apex Court issued the following directions:

(a)All High Courts shall take expeditious steps to incorporate the said Draft Rules, 2021 as part of the rules governing criminal trials, and ensure that the existing rules, notifications, orders and practice directions are suitably modified, and promulgated (wherever necessary through the Official Gazette) within 6 months from the date of order. If the state government's co-operation is necessary in this regard, the approval of the concerned department or departments, and the formal notification of the said Draft Rules, shall be made within the said period of six months.

(b)The state governments, as well as the Union of India (in relation to investigating agencies in its control) shall carry out consequential amendments to their police and other manuals, within six months from date. The appropriate forms and guidelines shall be brought into force, and all agencies instructed accordingly, within six months from date. The criminal appeal was accordingly disposed of.

Writ Petition (CRL) NO. (S) 2/2020
Re: Expeditious trial of cases under section 138 of N.I. Act 1881

Ordered on: 16 April, 2021

A full Bench of Hon'ble Supreme Court comprising Justice S. A. Bobde, Justice Nageswara Rao, Justice B. R. Gavai, Justice A. S. Bopanna & Justice S. Ravindra Bhat issued a set of directions to expedite the trial of cheque dishonour cases under section 138 Negotiable Instruments Act, 1881 .The Hon'ble court observed that the gargantuan pendency of complaints filed under Section 138 of the Act has had an adverse effect in disposal of other criminal cases. The situation has not improved as Courts continue to struggle with the humongous pendency of complaints under Section 138 of the Act. Seven major issues were identified by the amice curiae from the responses filed by the State Governments and Union Territories viz: a) Service of summons b) Statutory amendment to Section 219 of the Code c) Summary trials d) Attachment of bank accounts e) Applicability of Section 202 of the Code f) Mediation g) Inherent jurisdiction of the Magistrate .The Hon'ble Court gave the following directions :1) The High Courts were requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial. 2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court. 3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses. 4) Recommendation was made for suitable amendments to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code. 5) The High Courts were requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction. 6) Judgments of the Court in Adalat Prasad vs Rooplal Jindal & Ors (2004) 7 SCC 338 and Subramanium Sethuraman (2004) 13 SCC 324 have interpreted the law correctly and it was reiterated that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint. 7) Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in Meters and Instruments Pvt Ltd & Anr vs Kanchan Mehta &Ors (2018) 1 SCC 560 do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/ recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of the Court dated 10.03.2021. 8) All other points, which have been raised by the Amici Curiae in their preliminary report and written submissions and not considered herein, shall be the subject matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee.

J&K High Court Judgments

CRM(M) No.137/2021
Gh. Mohammad Lone & Anr v. Union Territory of J&K and Ors
Decided on: 27 April, 2021

In a quashment petition by the petitioners directed against FIR, registered by Anti Corruption Bureau, Srinagar, it was held by the Hon'ble High Court that given the nature of allegations contained in the questionnaire served upon the petitioners, it is necessary that an in depth investigation in the matter is made and truth is

unravelled and therefore, at this stage, the petition is grossly premature. Hon'ble Court referred to the legal position with regard to the scope of Section 482 Cr.P.C exposited by the Supreme Court in a recent judgment in *M/ S Neeharika Infrastructure Pvt. Ltd v. State of Maharashtra and others (Criminal Appeal No. 330/2021 decided on 13.04.2021)*. Paragraph 23rd of the judgment, which contains the conclusions of three Judge Bench are as under:-

"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge sheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal 8 proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation.

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court; xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/ complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are

required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no 10 coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge sheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

*xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order. xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."*Hon'ble High Court also explained the legal position with regard to the effect of registration of FIR on the promotion avenues of an employee and referred to *Union of India v. K. V. Jankiraman, 1991 (4) SCC 109*, in which it has been authoritatively held that mere registration of FIR against an employee is no ground to deny him promotion. It is only where the charge sheet has been presented and the charges have been framed, the employer 11 may defer the promotion case of delinquent and resort to sealed cover procedure. Accordingly, the petition was dismissed.

CRMC No.194/2018
Masooda Begum & anr v. Mohammad Ashraf Dar
Decided on: March 03, 2021

Hon'ble High Court while deciding the petition, wherein the petitioners have challenged the order dated 24.03.2018, passed by learned Judicial Magistrate, Bandipora, whereby the learned Magistrate has returned the petition filed by the petitioners before the said Court under Section 488 of Jammu and Kashmir Code of Criminal Procedure seeking maintenance from the respondent, held that when a Chief Judicial Magistrate transfers a petition or a complaint to a Magistrate subordinate to him, the said subordinate Magistrate is conferred with the jurisdiction to entertain and try such complaint or petition. Hon'ble High Court referred to the statutory provisions of Section 488(8) of the Jammu and Kashmir Code of Criminal Procedure which is in parimateria with Section 126(1) of the Central Cr. P. C, which postulate that the proceedings for maintenance can be filed by a wife against her husband either in the district where she resides or in the district where the husband resides. Alternatively, she can also file a petition in the district where she had last resided with her husband. It was observed that Section 192 of the J&K Cr. P. C gives jurisdiction to a Chief Judicial Magistrate to transfer any case of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him. Hon'ble Court took notice that the petition was pending in the Court of learned Judicial Magistrate for about six months where after it was returned citing lack of jurisdiction as the reason there by putting the hapless

petitioners in a precarious position. If at all there was any ground for returning the petition to the petitioners, the same should have been done at the very first hearing, not after proceeding with the case for more than six months, that too in a case where a destitute lady had approached the learned Magistrate for grant of maintenance. Holding that the impugned order suffers from grave illegality, the same was

"A Judge should never feel, that the individuals who constitute the society as a whole, is imperceptible to the exercise of discretion. He should always bear in mind, that erroneous and fallacious exercise of discretion is perceived by a visible collective."

Dipak Misra,J. In Raj Bala v. State of Haryana, (2016) 1 SCC 463, para 16

CIVIL

Supreme Court Judgments

CA NO. 1659-1660 of 2021
Rahul S Shah v. Jinendra Kumar Gandhi
Decided on: 22 April, 2021

A three Judge Bench of Hon'ble Supreme Court comprising Justice S. A. Bobde, Justice L. Nageshwar Rao & Justice S. Ravindra Bhat while considering an appeal arising out of an execution proceeding pending for over 14 years, observed the agony of a decree holder caused on account of inordinate delay in the process of execution of a decree. Hon'ble Court while issuing directions to reduce delays in the execution proceedings observed that an Executing Court must dispose of the Execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay. The Bench asked the High Courts to reconsider and update all rules relating to Execution of Decrees, made under exercise of its powers under Article 227 of the Constitution of India and section 122 of CPC, within one year of the Order. Till such Rules are brought into existence, the following directions shall remain enforceable:

1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.
2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.
3. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joiner of cause of action in the same suit.
4. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as *custodialegis* for proper adjudication of the matter.
5. The Court must, before passing the decree, pertaining to delivery of possession of a property ensures that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.
6. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.
7. In a suit for payment of money, before settlement of issues, the defendant may

be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

8. The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertain ingany such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.
9. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.
10. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.
11. Under section 60 of CPC the term "…in name of the judgment- debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.
12. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.
13. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.
14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts.

It was observed that *" execution proceedings which are supposed to be handmaid of justice and sub-serve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice."*

It was also observed that *"The general practice prevailing in the subordinate courts is that invariably in all execution applications, the Courts first issue show cause notice asking the judgment debtor as to why the decree should not be executed as is given under Order XXI Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgement debtor sometimes misuses the provisions of Order XXI R2 and Order XXI Rule 11 to set up an oral plea, which invariably leaves no option with the Court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely. This is anti-thesis to the scheme of Civil Procedure Code, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial. Order I and Order II which relate to Parties to Suits and Frame of Suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common questions of and facts could be decided at one go."*

2021 SCC Online SC 233
Government of Maharashtra v. Borse Brothers Engineers & Contractors Pvt Limited
Decided on: 19 March, 2021

A three Judge Bench of Hon'ble Supreme Court comprising Justice RF

Nariman, Justice BR Gavai & Justice Hrishikesh Roy held that given the object of speedy disposal sought to be achieved both under the Arbitration and Conciliation Act, 1996 and Commercial Courts Act, 2015, for appeals filed under section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or section 13(1A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, *is to be condoned by way of exception and not by way of rule*.

However, *"in a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or latches."*

Resultantly, the Court has overruled last year's judgment in *N.V. International* v. *State of Assam*, (2020) 2 SCC 109 , wherein it was held that any delay beyond 120 days in the filing of an appeal under Section 37 from an application being either dismissed or allowed under Section 34 cannot be allowed. It was further, clarified that the said period of 120 days, comprises of a grace period of 30 days under Section 5 of the Limitation Act added to the prescribed period of 90 days. The Court said that merely because sufficient cause has been made out in the facts of a given case, there is no right in the appellant to have delay condoned.

"Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression "sufficient cause" is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression "sufficient cause" is not itself a loose panacea for the ill of pressing negligent and stale claims."

Hon'ble Court also explained that from the scheme of the Arbitration Act, condonation of delay under section 5 of the Limitation Act has to be seen through the prism of the object of speedy resolution of disputes,

"... the main object of the Arbitration Act requiring speedy resolution of disputes would be the most important principle to be applied when applications under section 5 of the Limitation Act are filed to condone delay beyond 90 days and/or 30 days depending upon whether Article 116(a) or 116(b) or 117 applies. As a matter of fact, given the timelines contained in sections 8, 9(2), 11 (4), 11(13), 13(2)-(5), 29A, 29B, 33(3)-(5) and 34(3) of the Arbitration Act, and the observations made in some of this Court's judgments, the object of speedy resolution of disputes would govern appeals covered by Articles 116 and 117 of the Limitation Act."

J&K High Court Judgments

WP(C) No. 669/2021
Zahoor Ahmad Bhat & Irshad Hussain Munshi v. Government of JK and Union Territory of JK & Ors.
Decided on: 29 April, 2021

In two writ petitions, challenge was made to circular bearing No. RTO/K/ Estt/85-95 dated 27.03.2021, issued by respondent No. 3- RTO, Kashmir, in terms whereof, the vehicle owners, who have purchased their vehicles from outside Jammu and Kashmir Union Territory bearing outside registration mark, were asked to apply for a new registration mark as per the provisions of Sections 47 and 50 of Motor Vehicles Act, 1988 read with Rule 54 of Central Motor Vehicle Rules 1989 within 15 days from the date of Circular/ notification viz. 27.03.2021. The Division Bench of Hon'ble High Court quashed the Circular issued by RTO, Kashmir and observed that the circular does not meet the requirement of Section 47 of the Motor Vehicles Act and unnecessarily affects vehicles entering the UT. The Court observed that the impugned circular is unnecessary, as being without authority to the extent of warning the "genuine owners" of the vehicles having outside registration and making entry in the Union Territory of J&K, for their assignment of new registration mark compulsory.

Section 47 of the Act provides that provides that when a motor vehicle

registered in one State has been kept in another State, for a period exceeding 12 months, the owner of the vehicle shall apply to the Registering Authority, within whose jurisdiction the vehicle then is, for the assignment of a new registration mark. While quashing the impugned circular to the extent of asking the petitioners to have their vehicles registered for assignment of new registration mark, without their declaration in tune with the mandate of Rule 54 of Central Motor Vehicles Rules, 1989 and without providing any mechanism, the Hon'ble Court also clarified that its order will not take away the powers of the Central Government/ Government of Jammu and Kashmir to deal with the eventuality of screening, scrutinizing, verifying the validity/ genuineness of documents of a vehicle, having outside registration and making entry in the Union Territory of J&K for whatever purpose be as a tourist, businessman or employee etc.

"We feel it also necessary to make it clear to the respondents that mere quashment of the impugned circular does not take away the authority of the respondents from dealing with the cases of those vehicle owners, who have got their vehicles registered outside the Union Territory of JK, but after making entry in the Union Territory of JK and remained for a period exceeding 12 months, requires assignment of new registration mark in tune with the application of Section 47 but for that some mechanism as agreed by the Principal Secretary to Government, Transport Department is to be placed in vogue with due adherence to compliance of Section 47 of the Motor Vehicles Act"."

The Hon'ble High Court also observed that a lifetime tax that is levied at the point of registration of a vehicle in terms of Section 3 read with Part A5 of the schedule to the Act, cannot be levied on a vehicle registered outside the Union Territory of JK, which remains in the Union Territory of J&K for a period exceeding twelve months.

CFA No. 202/2007
Qazi Arshid Hussain and Anr v. Farooq Ahmad Wani and Anr.
Decided on: March 24, 2021

In an appeal directed against the judgment and decree dated 25.07.2005 passed by the District Judge, Anantnag whereby the suit of the respondents has been decreed against the appellants, Hon'ble High Court observed that, *"From the above, it is clear that the suit has been decreed by the learned Trial Court only because statements of the witnesses produced by the plaintiffs in exparte have remained un-rebutted and because the defendant shave not chosen to participate in the proceedings***."** It was observed that the plaint and the documents attached thereto itself showed that the suit involved serious disputed questions of fact and it also involved interpretation of the terms of the covenant of the agreement which formed the basis of the claim of the plaintiffs which were not considered by the Court and it proceeded almost blindly to pass a decree in favour of the plaintiffs because the defendants did not participate in the proceedings. The Hon'ble High Court held that whether or not the defendants contest the suit, unless the averments in the plaint are specifically admitted by the defendants, the plaintiff has to prove each and every vital fact, which entitles plaintiff to a decree by leading cogent and convincing evidence.

Hon'ble Court referred to the definition of "Judgment" as defined under Section 2(9) of the Civil Procedure Code which means the statement given by the Judge of the grounds for a decree or order. It observed as follows*" What a judgment should contain is indicated in Order 20 Rule 4(2) of the CPC, which provides that a judgment shall contain a concise statement of the case, the points for determination, the decision thereon and reasons for such decision. Thus, a judgment should be a self-contained document, from which it should appear as to what were the facts of the case and what was the controversy, which was tried to be settled by the Court and in what manner. The process of reasoning, by which the Court came to ultimate conclusion and decreed the suit, should be reflected clearly in the judgment."***.**With these observations, the impugned judgment and decree was held to be unsustainable in law and the

same was set aside.

OWP No. 196/2015 (O&M)
National Insurance Company Limited v. Marayum Bee and others
Decided on: March, 2021

In two writ petitions which were filed by the petitioner-company challenging the award dated 06.12.2014 passed in claim petition titled, Mst. Maryam Bi and others vs National Insurance Company Limited andanother and award dated 06.12.2014 passed in claim petition, titled, Abdul Majid and others vs. National Insurance Company Limited and others which were passed in the National Lok Adalat, held on 06.12.2014 in District Kargil, on the ground of maintainability taking the plea that in the first case , the deceased was himself driving the vehicle rashly and negligently and met with an accident whereas the other claim petition the deceased was travelling as a gratuitous passenger in a vehicle that met with an accident. It is also contended that the Branch Head appeared before the learned Lok Adalat at the venue in the matter on 06.12.2014 and settled the matter on his own without any authority, as such, the petitioner-company on 07.12.2014 informed the Branch Head, Leh that he has compromised the cases without any permission vide email dated 07.12.2014. Hon'ble High Court referred to Section 19(3) of the Legal Services Authority Act, 1997 and observed that ,"*The petitioner-company has not challenged the manner of reference of the claim petitions to the Lok Adalat for settlement. So, whenever any reference is made to the Lok Adalat, the Lok Adalat is supposed to make an effort so as to enable the parties to arrive at a compromise or settlement between the parties*". Further, as per the decision of the Apex Court in "***Bhargavi Constructions v. Kothakapu Muthyam Reddy, reported in (2018) 13 SCC 480",*** It was held that the only remedy available with the aggrieved person was to challenge the award of the Lok Adalat by filing a writ petition under Article 226 or/ and Article 227 of the Constitution of India in the High Court and that too on very limited grounds. Hon'ble High Court observed that any award made by the Lok Adalat is binding upon all the parties to the dispute and is final in nature and further no appeal has been provided against the award. It is only when the consent for compromise/settlement has been obtained by the other party by way of fraud, misrepresentation, coercion, collusion or undue influence, in that eventuality only the challenge can be thrown to an award by way of a writ petition and there must be a material on record to demonstrate that but for the fraud, misrepresentation, coercion and undue influence, the other party would have never consented to the settlement/ compromise. Hon'ble High Court dismissed the petitions by holding that petitioner/ company has nowhere stated that its consent for settlement was obtained by the respondents by way of fraud, misrepresentation, coercion or undue influence and once the settlement was signed by the authorized representative of the petitioner-company, subsequently the petitioner/company cannot turn around and say that the person representing the company in the Lok Adalat was not authorized to enter into settlement. Also held that the petitioner-company cannot pick and choose and claim that in few matters the Branch Manager had authorization and in other matters he had no authorization.

MA No. 14/2020
Cecil Pharmaceutical Pvt. Ltd and Anr v. State Bank of India and Anr.
Decided on: 18 December, 2020

Hon'ble High Court while deciding an appeal filed under Section 18-B of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, challenging order dated 20.03.2020 passed by District Judge, whereby the Court dismissed the application filed under Section 17-Aof the Act by the appellants herein, wherein inter-alia amongst other multiple reliefs, quashment of e-auction sale notice dated 07.12.2018 had been sought. Hon'ble High Court observed that so as to be the successful bidder, there is a pre-requisite of highest bidder and in absence of multiple bids; single bidder cannot be

regarded as a "Highest bidder". Hon'ble Court explained the expression "Successful bidder" by referring to the interpretation of the term by the Hon'ble Division bench of the Himachal Pradesh High Court in case titled ***Anil Kumar Thakur versus State of H.P &Ors*** *"It is admitted position of law, Rules and Regulations occupying the filed that minimum bidders are essential and one bidder cannot be held to be a successful bidder."* Hon'ble Court also reiterated the statutory mandate that the right of appeal conferred under Section 18(1) is subject to the conditions laid down in the second proviso therein which postulates that no appeal shall be entertained unless the borrower has deposited 50% of the amount of debt due from him as claimed by the secured creditors or determined by DRT, whichever is less. The third proviso enables DRAT, for reasons to be recorded in writing, to reduce the amount of deposit to not less than 25%. *It was observed that "Keeping in mind the decisions of the Apex court in* ***"Narayan Chandra Ghosh Vs. UCO Bank & Others"(*****2011 (4) SCC 548)*** *and* ***"Union Bank of India Vs. Rajat Infrastructure Private Limited & Others"*****(2020 (3) SCC 770)***, *the short interesting question for determining the issue of maintainability of the appeal would rest on determination of the question as to which amount is to be taken into consideration by this court whilst determining the amount of pre-deposit that ought to have been deposited as 25% by appellants herein under Section 18-B, before this court while preferring the instant appeal. Would it be the amount of Rs. 2,77,36,827/= reflected in the OTS of 2018, or amount of Rs. 51431890.42/= as on 02.10.2011 as reflected in the e-auction notice dated 07.12.2018 or else the amount of Rs. 8,82,28,271/= worked out by respondent bank due from the appellants as on 17.10.2020 [minus the amount deposited by the appellant with respondent bank i.e. 1,65,00,000/ =]."*Observing further, the Hon'ble High Court explained the expression "debt" as defined in Section 2 sub Section 1 and clause [(ha)] of the Act of 2002 as being a liability (inclusive of interest which is claimed as due from any person via bank or a Financial Institution during the course of any business activity undertaken by any such bank or Financial Institution under any law for the time being in force in cash or otherwise, whether secured or unsecured or assigned or whether payable under a decree or order of any Civil Court or any Arbitration award or otherwise or under a mortgage and subsisting on and legally recoverable on the date of the application. Qua the maintainability of the appeal, while referring to catena of judicial pronouncements relevant to the meaning of the terms "entertain" and "admit", it was held that *," In Wharton's Law Lexicon, the word "appeal" is defined as the judicial examination of the decision by a higher court of the decision of an inferior court. The appeal is the judicial examination; the memorandum of appeal contains the grounds on which the judicial examination is invited. For purposes of limitation and for purposes of the rules of the court it is required that a written memorandum of appeal shall be filed. When the proviso speaks of the entertainment of the appeal, it means that the appeal such as was filed will not be admitted to consideration unless there is satisfactory proof available of the making of the deposit of admitted tax."* Further, *"The appellants even qua the said amount seemingly have failed to comply with the requirement of pre-deposit of 25% as mandated by Section 18-B of the Act and in compliance to the order passed by this court dated 24.08.2020. The said non-compliance, therefore, can indisputably be said fatal to the maintainability of the instant appeal."* Resultantly, the appeal was held not maintainable and accordingly dismissed.

Webinar on "Use of Information and Communication Technology (ICT) for efficient Docket Management"

The resurgent wave of COVID-19 necessitated and entailed technology enabled learning resources as a viable mode of resuming academic activities. J&K Judicial Academy has also endeavoured to utilize Web and App based virtual communication platforms for resumption of training and learning programmes. Conducting Webinars involving Judicial Officers for the purpose of Qualitative Capacity enhancement is one such step in the direction.

On April 24, 2021, J&K Judicial Academy conducted a webinar on "Use of Information Technology for efficient Docket Management" guided by Justice Sunil Ambwani, Former Chief Justice, Rajasthan High Court, Former Chairman, E-Committee, Supreme Court of India.

In his eloquent discourse, the resource person elaborated on the genesis and evolutionary growth of the information technology in the Judicial System of India. In his presentation, the resource person educated the virtual gathering about the constitution of an e-committee as a first response for achieving the objective of formulating a National Policy on computerization of Indian Judiciary. The e-Court project which was a part of National e-Governance Plan for Indian Judiciary ambitiously aimed at ICT enablement of Indian Judiciary as to develop; install and implement decision support systems promote transparency, accessibility to Information and to enhance Judicial productivity.

The resource person educated the participants regarding the Unified Case Information System (CIS) which was development by National Informatics Centre in Phase-I, on Operating System based on Ubuntu. As a part of change management exercise undertaken by e-Committee, all Judicial Officers and most of court staff were trained in the Use of Ubuntu-Linux Operating System and CIS and for that purpose 218 Master Trainers were trained for imparting trainings. The participants were also informed about the operationalisation of Integrated Case Management System (ICMIS), which has integrated the Supreme Court an all 24 High Courts across the Country.

It was emphasized by the Resource Person that Phase II of e-Courts project was launched for implementing cloud computing concepts provided by NIC. With the object of moving from less paper courts to paperless court, the current phase aims at providing 30 citizen centric services including Websites, SMS-Pull, e-Service delivery of summons etc. With major thrust on unification of metadata moving on to online e-filing. The participants were elaborately explained the working of NJDG and the procedure of Case Record Number (CRN) as a provision for assessing the case status and all other information related to the case; digitally signed certified copies of Orders on -line with bar coding, e-payment gateways etc.

The participants were also made aware about the challenges that lie ahead and the effective way forward. Judicial Officers had an interactive session with the vastly experienced resource person who ably responded to the doubts and queries raised by the participating officers.

Public Interest Litigation and Social Transformation

Public Interest Litigation or Social Interest Litigation was introduced by Justice P.N. Bhagwati to secure Justice to under privileged and socially dis-advantaged parties. After 1979 on the grounds of social interest litigation Apex Court began permitting cases to secure public interest. Its absolute court's privilege to entertain such petitions to demonstrate availability of Justice to socially disadvantageous parties. Justice Bhagwati in '***S.P Gupta v. Union of India' on 30.12.1981*** heralded a new era of PIL movement.

Broadly speaking a PIL can be defined as litigation in the interest that nebulous entity. Before 1980, only aggrieved person could personally knock the doors of Justice and no proxy for the victim or the aggrieved party was permitted but it is only due to bold initiatives of Justice P.N. Bhagwati a way was paved for non-affected persons without any locus standi to fight for the cause of others and subsequently due to tremendous efforts of both Hon'ble Justices V.R. Krishna Iyer and Hon'ble Justice P.N. Bhagwati the entire scenario gradually changed while enhancing scope of access to Justice by people through radical changes and alteration. Justice Iyer actually sown seeds of PIL initially in the year 1976 in case of ***Kamagar Sabha V/s Abdul Thai 1976(3) SCC 832*** through this landmark judgment.

Justice Bhagwati did a lot to ensure that concept of PIL's was clearly enunciated.

A PIL has been interpreted by courts to consider the intent of public at large for betterment of society.

It is significant to note that social interest litigants gives a quiet wide description to the right to **equality**, **life** and **personality** which is guaranteed under part third of Indian Constitution thereby brings a **radical change** in the social Transformation of the society and only public spirited individuals, social action groups for the enforcement of legal/constitutional rights to aggrieved persons are allowed to file such type of petitions under articles 32/226 of Indian Constitution in Hon'ble Supreme Court as well as Hon'ble High Court's.

The first reported case of PIL was '***Hussain Ara Khatoon v. Union of India 1979 AIR 1369***'. Where in-human conditions of prisons were highlighted and to curb them 40 thousand under-trial prisoners were released where the court recognized the callousness of the legal system and unjustified deprivation of personal liberty.

However the development of PIL has also its drawbacks and pitfalls. Many PIL activists are misusing the same as a **handi tool** of harassment as some frivolous cases could be filed without investment of heavy court fees.

A bonafied litigant of India has nothing to fear. Only those PIL activists who prefer to file frivolous complaints will have to pay compensation to the opponents. Infact overuse and abuse of PIL can only make it stale and in-effective. It is an extraordinary remedy available at cheaper costs but it ought not to be used by all litigants as a substitute for ordinary ones as a measure to file frivolous complaints. Infact PIL requires complete restructuring.

Social Interest Litigation/PIL is declared by courts of record and the petitioner must prove basic ingredients that the petition serves the public interest and not for monetary gain. Even the then CJI Sh. S.H. Kapadia has held that substantial fines should be imposed on litigants filing frivolous petitions and this was detailed in ***"Kalyaneshwari v. Union of India"(2011) 3***

SCC 287, where a PIL was filed in the Gujarat High Court seeking closure of Asbestos units stating that the material was harmful to humans which came to be subsequently dismissed as the same was held to be filed at the behest of rival industrial groups, who wanted to promote their products as asbestos substitutes and in a similar petition filed before Hon'ble Supreme Court 'a fine of rupees one lac was imposed while dismissing the petition. ' Precisely it can be said that frivolous petition ought to be discouraged for negating **oblique** motives on the basis of wild and reckless allegations made by individual. For entertaining PIL's, the credentials, the motive and the objective of the petitioner had to be patently above board. Otherwise the same is liable to be dismissed at the threshold. Thus as a matter of caution this is a **sine-qua-non** to see the beautiful '**veil**' of public interest, and ugly private vested interest or publicity seeking is not lurking and the courts should not allow its process to be abused for oblique consideration by masked phantoms who monitor at times from behind the scene.

There are many instances of landmark PIL cases those have certainly brought social transformation for upliftment of working women as well as for Healthy and Safe environment for citizens of India. Cases of **Vishakha v. State of Rajasthan AIR (1997) 6 SCC 241 and M.C. Mehta v. Union of India AIR 1987 965** are fittest examples of Social Interest Litigations. Similarly PIL filed by **Dravyavati River Committee** for protection of public properties is an another example of PIL where '**State Human Rights Commission**' took cognizance's of the transition to water in the year 2001 and subsequently every endeavour was made to bring river in its original form and consequently in light of PIL 18 hundred plants and 65 thousand square meters Green areas developed under this project and **Dravyavati River Bank** became a refreshment in the city.

There are many other PIL's were filed to protect our Green Gold, natural resources, and to prevent deforestation. Even strenuous efforts were made to protect **'Yamuna River Bed'** from illegal construction and for improvement of quality of water in Yamuna. Even suo-motu cognizance on 13th of January w.r.t. deterioration of quality of fresh water which has a direct co-relation with the quality of public health was taken. Even suo-motu PIL was also registered by '**Delhi Jal Board**' and Hon'ble Apex Court put center on notices while directing states to ensure access to clean drinking water which is included in Right to Life.

It is pertinent to note that in the year 1996, Hon'ble Supreme Court banned the use of Coal and Coke in the industries located in the '**Taj Trapezium Zone**'-the area of 10,400/- square kilometre around the monument to protect it from environment pollution as the century old white marble monument has developed green and blue patches due to environment pollution.

So it can be safely said that matters like Environmental Pollution, Disturbance of Ecological Balance, Non-payment of minimum wages to workers and Exploitation of Casual workers, Neglected Children, Cases of Atrocities on Women can be taken up through PIL which is need of jour to bring social revolution in the society and radical transformation for betterment of the society and for clean and sustainable environment.

Author's View: Social Interest Litigation a potent tool for transformation of society.

-Bala Jyoti
District & Sessions Judge
H.J.S (Presiding Officer)
Industrial Tribunal/Labour Court J&K
Srinagar/Jammu

9. Resume of a few other aspects pertinent to the question of grant of bail.

Although an effort has been made to advert to almost all the provisions of the sections 436 to 439 of Cr.P.C., both inclusive, which deal with the issue of grant of bail yet before parting, I find it apt, proper and in fitness of things to briefly advert to a few other aspects, of crucial significance, pertinent to the question of grant/refusal of bail , as under:

i) Interim bail

Since the Magistrate and Courts of Sessions have jurisdiction to grant ultimate relief of bail, they have also the jurisdiction to grant limited relief , short of grant of bail, by releasing accused on personal bond for a short period as an ancillary or incidental relief. As soon as accused surrenders before a court, he submits to the jurisdiction of the court and right of the police to arrest him does not exist thereafter. When an accused surrenders and is released on personal bond, he remains in the custody of the Court. Release on personal bond is just a release on temporary bail, pending the final disposal of bail application in order to make the remedy effective and efficacious. (See 'Issma Vs State of UP', as reported in 1993 Cr.L.J. 2432, Haji Peer Mohd. Vs State of UP' as reported in 1993 Cr.L.J 3574, and 'Smt. Amaravati Vs State ' as reported in 2005 Cr.L.J 755).

ii) Transitory Bail.

Sections 80 and 81 of Cr.P.C. 1973 govern the field of 'transitory bail'. As per Section 80 (supra), when a person is arrested, in pursuance of execution of the warrant of arrest, outside the district in which it was issued, the person arrested, unless the Court which issued the warrant is within 30 km of place of the arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police, within the local limits of whose jurisdiction, the arrest was made, or unless security is taken under section 71 of Cr.P.C. 1973, such person shall be produced before such Magistrate or District Superintendent of Police or Commissioner of Police. Section 81 of Cr.P.C. 1973 empowers the Executive Magistrate or District Superintendent of Police or Commissioner of Police to order the removal of such arrested person to the Court which issued the warrants of arrest, in custody. However, if the offence is bailable, or a direction has been endorsed under Section 71, such Executive Magistrate or District Superintendent of Police or Commissioner of Police shall take such bail or security , as the case may be, and forward the bond to the Court which issued the warrant. However, in case the offence is non-bailable one, it shall be lawful for the Chief Judicial Magistrate (Subject to provision of Section 437), or the Sessions Judge, of the District in which the arrest is made ,to grant bail after considering the information and documents referred to Sub section (2) of section 78 of Cr.P.C.

iii) Successive applications

There is nothing wrong or illegal in making successive applications for bail. An order with regard to grant, refusal or cancellation of bail is interlocutory in character. Therefore, successive bail applications do lie and order refusing the plea for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different considerations. (See AIR 1989 SC 2292; and 1989 Cr.L.J. 2317). The subsequent/ successive applications should be placed before the same judge who passed the earlier order. (AIR 1987 SC 1613).

iv) Maximum period for which an under-trial prisoner can be detained.

Section 436-A of Cr.P.C. provides that when

a person has , during the period of investigation, inquiry or trial under the Code, of an offence under any law, which does not carry punishment of death , as under gone detention for a period of extending up to one-half of the maximum period of imprisonment specify for that offence under that law, he shall be released by the court on 29 his personal bond with or without sureties. However, this is not an absolute or indefeasible right of the accused and the Court after hearing the Public Prosecutor and for the reasons to be recorded in writing , order to continue detention of such person for a period longer than one half of the said period or release him on bail instead of personal with sureties. But no such person shall in any case be detained for more than maximum period of imprisonment provided for the said offence. It is worthy of being noticed here that for the purpose of computing the period of detention under this section, for granting the bail, the period of detention passed due to delay in proceedings caused by the accused shall be excluded.

v) Bail to an approver

Clause (b) of Sub-section (4) of section 306 of Cr.P.C stipulates that an approver, if he is not on bail when he is granted pardon , shall be kept in custody till the termination of trial. The dominant object of requiring an approver to be detained in custody till termination of the trial is not intended to punish the approver for having agreed to give evidence in support of the prosecution but to protect him from possible indignation, rage and resentment of his associates in a Crime whom he has chosen to expose as well as with a view to prevent him from the temptation of saving his one time friends and companions after he is granted pardon and released from custody. The settled legal position is that Section 439 Cr.P.C. cannot override the special provision of Section 306 (4)(b).

However, an Hon'ble Full Bench of the High Court of Delhi released an approver on bail after his evidence was recorded in the Sessions trial on the ground that his further detention during the remaining part of the trial would not serve the object of section 306(4) (b). (See 'Prem Chand Vs State ', as reported in 1985 Cr.L.J 1534). Similarly, the Hon'ble Supreme Court of 30 India, in : " Suresh Chandra Bahri Vs State of Bihar and Ors Ors", as reported in AIR 1994 SC 2420 , has ruled that release of an approver on bail , if illegal may be set aside by a Superior Court , but such a release would not have any effect on the validity of 'pardon' once validly granted to an approver.

vi) Bail in case of failure to complete the investigation within the statutory period provided under Section 167 of Cr.P.C.

a) Section 167(2) of Cr.P.C deals with the powers of the Judicial Magistrate, whether he has or has not the jurisdiction to try the case, to remand the accused to custody, from time to time, and to authorize his detention in such custody, as the Magistrate thinks fit , for a term not exceeding 15 days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to the Magistrate having such jurisdiction ;

b) It further provides that the Magistrate can authorize the detention of the accused person, other than in the custody of police, beyond the period of 15 days, if he is satisfied that adequate grounds exists for doing so, but no Magistrate shall authorize the detention of the accused person for a period of more than 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for not less than 10 years; and 60 days where the investigation relates any

other offence;

c) It is further provided that on expiry of the said period of 90 or 60 days , as the case may be , the accused persons shall be released on bail if he is prepared to and does furnish the bail, and every person released under this sub -section shall be deemed to be so released under the provisions of chapter XXXIII;

d) Under section 167(2) only the Magistrate who has jurisdiction to try the case or commit it for trial, can grant bail and if he has no jurisdiction to try 31 the case then he has no power to admit the arrested person to bail (See AIR 1959 MP 147).

e) An order for release of bail under section 167(2) may be appropriately termed as an 'order on default' if the Investigating agency fails to file the charge sheet before the expiry of 60/90 days, as the case may be. The accused in custody should be released on bail and the merits of the case are not to be examined. (See AIR 1990 SC 71);

f) An order of bail granted under section 167 (2) can only be cancelled under section 437 (5) or under section 439 (2) of Cr.P.C. (See AIR 1987 SC 149);

g) The period of 60 days and 90 days mentioned in the proviso (a) to section 167 (2) of Cr.P.C commences from the date of the first remand and not from the day the accused is arrested.(See' Chaganti Satyanarayana Vs State of Andhra Pradesh', as reported in AIR 1986 SC 2130).

h) The right under section 167(2) of Cr.P.C. to be released on bail on default if the charge-sheet is not filed within 60/90 days from the date of first remand is not an absolute or indefeasible right as the said right would be lost if the charge-sheet is filed and would not survive after the filing of charge-sheet. In other words, if an application for bail is filed within 90 days, but before the consideration of the same and before being released on bail, if the charge sheet if filed , the said right to be released on bail would be lost. After the filing of charge sheet if the accused is released on bail, it can be only on merits. This is evident from the Constitution Bench decision of the Hon'ble Supreme Court of India in ' Sanjay Dutt Vs State ', as reported in (1994) 5 SCC 410 and has been reiterated in the following decisions:

i) 'State of MP Vs Rustam and ors' , as reported in 1995 Supp.(3) SCC 221; 32

ii) 'Dinesh Dalmia VS CBI ', as reported in (2007) 8 SCC 770;

iii) 'Mushtaq Ahmed Mohd Isak and ors VS State of Maharashtra', as reported in (2009) 7 SCC 480; and

iv) 'Pragyna Singh Thakur Vs State of Maharashtra', as reported in (2011) 10 SCC 445.

10. Concluding remarks.

To conclude , as already noticed, whilst personal liberty of an individual is of crucial significance and , therefore, grant of bail is a rule and refusal thereof is an exception but at the same time it needs no emphasis to observe that the right, to grant of bail, of an individual, who is alleged to have committed non-bailable offence, is not an absolute right and discretion conferred on the Court/s on that behalf is regulated by the limitations imposed in the relevant provisions of the Code of Criminal Procedure and the legal position as enunciated by the Hon'ble Supreme Court of India and various (Hon'ble) High Courts, which has been succinctly adverted to and discussed here before. Court is required to balance the sanctity of individual liberty enshrined under the constitution on one hand and interest of the society and public loath against crime on the other.

- Sh. Jatinder Singh Jamwal
Special Judge, CBI,
Srinagar