



J&K JUDICIAL ACADEMY

e-NEWSLETTER

Official Newsletter of Jammu & Kashmir Judicial Academy

Volume 4

Monthly

November 2021

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Editor

Sanjay Parihar
Director

Composed by:
Vishali Razdan
Computer Operator

From the Editor's Desk

The protection of "Intellectual property" is essential for supporting innovation. Businesses and individuals would not realize the full benefits of their discoveries if ideas were not secure. Dozens of industries across the economic front rely on the adequate enforcement of their patents, trademarks, and copyrights, while consumers use IP to ensure they are purchasing safe, guaranteed products. As the rights of a common man are refurbished, the IPR has materialized as an entitlement under the broad spectrum. The risk of an innovation getting infringed without the knowledge of the inventor stands very high. With the increase in the importance of IP, instances of IP violations have become the part and parcel of the digitized era sometimes even leading to failure of businesses. In India, IPR is on its way to be recognized as the most essential source of security for intangible property. With consistent efforts of Judicial institutions especially the Hon'ble High Court of Delhi, India is laying precedents that acknowledged the importance of a strong system in support of IP rights protection that aids the development of industry and commerce. The next step should include structured legal awareness that informs citizens, especially future entrepreneurs, of the rights they are guaranteed and the procedures that lawfully establish their ideas as legal entities. IPR is at the heart of global trade and of all its related activities. Such rights enhance the creative environment by providing acknowledgment and financial advantages to the creator or innovator, but lack of understanding of IPR and its inadequate enforcement may stymie the country's economic, technological, and sociological progress. As a result, the biggest demand as well as the best decision for any country is the dissemination of IPR information and its appropriate execution. The use of awareness programs will bring us closer to this goal. The creation of an exclusive division for Intellectual Property by the Delhi High Court is a clear acknowledgement of the importance and value of intellectual property (IP) in our Economy in the recent times.

LEGAL JOTTINGS

“(…) Court while acting as a sentinel on the qui vive to protect fundamental rights guaranteed to the citizens of the country must try to strike a just balance between the fundamental rights and the larger and broader interests of society, so that when such a right clashes with the larger interest of the country it must yield to the latter.”

**S. Murtaza Fazal Ali, J. In Pathumma v. State of Kerala,
(1978) 2 SCC 1, para 5**

CRIMINAL

Supreme Court Judgments

Criminal Appeal Nos. 1269-127020 of 21 Sripati Singh v. State of Jharkhand Decided on: October 28, 2021

Hon’ble Supreme Court Bench comprising Justice MR Shah and Justice AS Bopanna in a case where it was argued before the Court that an offence under Section 138 of the Negotiable Instruments Act was not made out as the dishonourment alleged is of the cheques which were issued by way of ‘security’ and not towards discharge of any debt, held that a cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance and that there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. The Hon’ble Court explained that ‘security’ in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound.

“If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the

loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.”

Criminal Appeal No. 1285 Of 2021 Mitesh Kumar J. Sha v. The State Of Karnataka & Ors. Decided on: October 26, 2021

Hon’ble Supreme Court Bench comprising Justice Abdul Nazeer and Justice Krishna Murari reiterated that cloaking a civil dispute with a criminal nature in a bid to get quicker relief is an abuse of the process of law which must be discouraged. It was observed that a civil suit must not be given a colour of criminal suit as a tool of harassment. The Hon’ble bench further observed that a breach of contract cannot be termed as a criminal offence. This appeal was preferred against the judgment and order passed by the High

Court of Karnataka at Bengaluru filed by the Appellants under Section 482 of the Code of Criminal Procedure challenging the FIR implicating the appellants for offences under Section 420 read with Section 34 IPC and to quash the proceedings before VI Additional CMM, Bengaluru, initiated pursuant to charge sheet against the appellants for offences punishable under Sections 406, 419, 420 read with Section 34 of IPC. The High Court vide order impugned had dismissed the same. It was observed “46. *Recently, this Court in case of Randheer Singh Vs. The State of U.P. & Ors. has again reiterated the long standing principle that criminal proceedings must not be used as instruments of harassment. The court observed as under:-* “33. *...There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.*” Accordingly, the appeal was allowed.

Criminal Appeal No. 1827 Of 2011
State of Madhya Pradesh v. Mahendra
Decided on: October 25, 2021

Hon'ble Supreme Court Division Bench comprising Surya Kant and Hima Kohli, JJ distinctly explained the terms “preparation”

and “attempt” in a case where the accused had lured minor girls and molested them. It was held that these acts were deliberately done with manifest intention to commit the offence of rape and were reasonably proximate to the consummation of the offence. The Court held that since the acts of the respondent exceeded the stage beyond preparation and preceded the actual penetration, he was guilty of attempting to commit rape as punishable within the ambit and scope of Section 511 read with Section 375 IPC as it stood in force at the time of occurrence in the year 2005. The Court also drew the distinction between ‘Preparation’ and ‘Attempt’ to commit rape and explained the three stages of commission of a crime.

1. *Mens Rea* (intention to commit),
2. preparation to commit it, and
3. attempt to commit it.

If the third stage, that is, ‘attempt’ is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law still punishes the person for attempting the said act. “*Attempt’ is punishable because even an unsuccessful commission of offence is preceded by mens rea, moral guilt, and its depraving impact on the societal values is no less than the actual commission.*” It was further explained that the stage of ‘preparation’ consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission of the offence. ‘Attempt’ is the execution of mens rea after preparation. “*The ‘preparation’ or ‘attempt’ to commit the offence will be predominantly determined on evaluation of the act and conduct of an accused; and as to whether or not the incident tantamounts to*

transgressing the thin space between 'preparation' and 'attempt'." The Hon'ble Court relied upon *Aman Kumar v. State of Haryana*, (2004) 4 SCC 379, *Koppula Venkat Rao vs. State of A.P.*, (2004) 3 SCC 602, *Madan Lal vs. State of J&K*, (1997) 7 SCC 677 to establish the point. It was subsequently held that there was overwhelming evidence on record to prove the respondent's deliberate overt steps to take the minor girls inside his house; closing the door(s); undressing the victims and rubbing his genitals on those of the prosecutrices. As the victims started crying, the respondent could not succeed in his penultimate act and there was a sheer providential escape from actual penetration and hence offence of attempt to rape was committed.

Criminal Appeal No. 1068 of 2021
Gimpex Private Limited v. Manoj Goel
Decided on: October 08, 2021

Hon'ble Supreme Court Bench comprising of Dr. DY Chandrachud, Vikram Natha and BV Nagarathna, JJ in a bid to curb the worrying trend of parallel proceedings for complaints under Section 138 of the NI Act, has held that a complainant cannot pursue two parallel prosecutions for the same underlying transaction. The Bench observed "*Once a settlement agreement has been entered into by the parties, the proceedings in the original complaint cannot be sustained and a fresh cause of action accrues to the complainant under the terms of the settlement deed.*" In the case at hand, a set of cheques were dishonoured, leading to filing of the first complaint under Section 138 of the NI Act. The parties thereafter entered into a deed of compromise to settle the matter. While the first complaint was

pending, the cheques issued pursuant to the compromise deed were dishonoured leading to the second complaint under Section 138 of the NI Act. Both proceedings were pending simultaneously and the Hon'ble Apex Court decided the issue whether the complainant can be allowed to pursue both the cases or whether one of them must be quashed and the consequences resulting from such quashing. Expressing concerns over the worrying trend of parallel proceedings for complaints under Section 138 of the NI Act, the Hon'ble Court observed "The pendency of court proceedings under Section 138 of the NI Act and the multiplicity of complaints in which a cause of action arising from one transaction is litigated has dampened the ease of doing business in India, impacted business sentiments and hindered investments from investors." The Court noticed that the introduction of a criminal remedy has given rise to a worrying trend where cases under Section 138 of the NI Act are disproportionately burdening the criminal justice system. The Hon'ble Court explained in para 39 that a contrary interpretation, which allows for the complainant to pursue both the original complaint and the consequences arising out of the settlement agreement, would lead to contradictory results. *First*, it would allow for the accused to be prosecuted and undergo trial for two different complaints, which in its essence arise out of one underlying legal liability.

Second, the accused would then face criminal liability for not just the violation of the original agreement of the transaction which had resulted in issuance of the first set of cheques, but also the cheques issued pursuant to the compromise deed. *Third*,

instead of reducing litigation and ensuring faster recovery of money, it would increase the burden of the criminal justice system where judicial time is being spent on adjudicating an offence which is essentially in the nature of civil wrong affecting private parties. A complainant enters into a settlement with open eyes and undertakes the risk of the accused failing to honour the cheques issued pursuant to the settlement, based on certain benefits that the settlement agreement postulates. The benefits may include – higher compensation, faster recovery of money, uncertainty of trial and strength of the complaint, among others. Accordingly, the complaint was quashed.

High Court of Jammu & Kashmir and Ladakh Judgments

CRM(M) 134/2019

**Tanveer Hussain Khan v. State of J&K &
Anr.**

Decided on: October 21, 2021

Hon'ble High Court of J&K and Ladakh in a petition u/s 561-A of the J&K CrPC for quashing Challan pending disposal before the Court of Judicial Magistrate Ganderbal (Trial Magistrate), in pursuance of F.I.R. in Police Station Ganderbal, for offences u/s 323 & 498 -A RPC, while exercising inherent powers and quashing the challan arising therefrom observed that allowing the trial to proceed against the husband, initiated at the instance of wife, when both are now living together peacefully, would be sheer abuse of the process of law and would do no good to anybody. It was observed" *06/ In the case of Gian Singh versus State of Punjab (2012) 10 SCC 303, a constitution Bench of the Hon'ble Supreme Court has observed that Compounding Powers should be exercised by the Court considering the social impact of the*

crime in question vis-à-vis its individual impact, as a decisive criteria to exercise quashing power by the High Court. It is thus trite that even if the offences are not compoundable u/s 320 Cr.PC, yet this Court, in exercise of its inherent jurisdiction and with a view to render complete justice, may quash the criminal proceedings, particularly, in the matters which are private in nature and do not impact the society at large. In the instant case, due to the estrangement between husband and wife, the wife lodged a criminal complaint. The two later realized that for the welfare of their children, it would be advisable for both of them to stay together and give their relationship a second chance. With a view to iron out all the creases that had crept in their relationship, it was decided to bury the hatchet and withdraw from all litigations, civil as well as criminal"

CrLM No. 1242/2021

Ranjit Singh v. Union Territory of J&K

Decided on: October 20, 2021

Hon'ble Single Bench of High Court of Jammu & Kashmir and Ladakh dismissed the bail application of an accused charged with abetment of suicide and sexual assault on a minor girl. Hon'ble Court refused to consider the general contention made by the accused-petitioner that there is no direct evidence connecting him with the commission of the alleged offence. The petitioner had filed the petition seeking bail in FIR registered at Police Station, Arnia, for commission of offences punishable under Sections 305/376 IPC read with Section 3/4 of the POCSO Act. It was the prosecution's case that a 16-year-old minor girl had died in otherwise than under normal circumstances, which allegedly had attributed reasons thereof to the petitioner-

accused while divulging the same to her mother-Satya Devi, during the last hours of her life on the way to the hospital as also allegedly having written the same in her diary. Based on the statement of the mother, a case was registered under Sections 376/306 IPC. Later on, during the investigation, the accused was found to have committed an offence under Sections 305/376 IPC read with 3/4 of the POSCO Act. The Hon'ble bench refused to consider the general contention made by the accused-petitioner that there is no direct evidence connecting him with the commission of the alleged offence and referred to *Neeru Yadav vs. State of Uttar Pradesh and Another* (2014) and *Anil Kumar Yadav Vs. State (NCT of Delhi)* (2018). It was observed "13. *The general contentions and grounds urged by the accused/petitioner herein that he did not commit the alleged offence and that there is no direct evidence connecting him with the commission of alleged offence or that the case of prosecution is based on circumstantial evidence cannot alone be taken into account at this stage, either LatestLaws.com 10 discarding or else overlooking the evidence collected by the prosecution during the investigation being part of the charge sheet against the accused/petitioner herein and same in view of the principles laid down by the Apex court in the judgements supra particularly regarding nature of accusation, severity of punishment in case of conviction and nature of supporting evidence as also reasonable apprehension of tampering with witness or apprehension of threat to complainant, have to be considered before grant of bail*" The Hon'ble Court on the plea for applicability of Section 29 of the POCSO Act as urged by the respondents, noted that it has paled into insignificance and need not be

addressed. Accordingly, the bail application was dismissed.

CRMC No.58/2019

Aditya Raj Kaul & Ors. v. Naeem Akhter

Decided on: October 13, 2021

In a petition challenging the complaint filed by the respondent before the Court of Chief Judicial Magistrate, Srinagar, alleging commission of offences under Section 499 and 500 RPC, as also the order whereby cognizance of the offences has been taken and process has been issued against the petitioners as well as order passed by learned Chief Judicial Magistrate, Srinagar, whereby bailable warrants for securing attendance of the petitioners have been issued, Hon'ble Single Bench of High Court of J&K and Ladakh observed that in a case where allegations made in the complaint and evidence collected in support of the same do not disclose commission of any offence and make out a case against the accused, the High Court can exercise its powers under Section 482 of Cr. P. C to quash the proceedings against an accused. The inherent powers cannot be, however, exercised to stifle or impinge upon the proceedings. Hon'ble Court reiterated the ratio laid down by the Supreme Court in its various judgments to put across that issuing a process in a criminal complaint against an accused is a serious business and it cannot be done in a casual and mechanical manner, particularly in cases relating to defamation. 47) *As already noted, in the case of complaints alleging commission of offence of defamation, the responsibility of a Magistrate to examine the material on record is of a higher degree.* Accordingly, the petition was allowed and the complaint pending before the Court of Chief Judicial Magistrate,

Srinagar, and the proceedings emanating therefrom were quashed.

CM(M) No.142/2021

Bilal Ahmad Ganai & ors. v. Sweety Rashid & ors.

Decided on: October 11, 2021

In a petition filed under Article 227 of the Constitution of India before Hon'ble High Court of J&K and Ladakh challenging the order of the learned Additional Sessions Judge whereby the Ld. Court has decided the Criminal Appeal filed under Section 29 of the Protection of Women from Domestic Violence Act, 2005, and set aside the order passed by the learned Judicial Magistrate, 1st Class (Sub-Judge), Chadoora, whereby the trial Magistrate had dismissed the complaint on the ground that it did not have the territorial jurisdiction to entertain the complaint, Hon'ble Single Bench has observed that there is no bar in entertaining a petition under Article 227 of the Constitution in matters under Domestic Violence Act, 2005 even in orders passed by criminal courts. The condition laid down is that there must be manifest miscarriage of justice occasioned, and that power is not to be exercised to correct a mistake of fact and of law. In the matter, the petitioners had challenged the orders dated 29.04.2021 and 07.09.2021 - the first having been passed by the learned Additional Sessions Judge, Budgam, in the appeal and the other one in an application made about 04 months and 22 days thereafter. The Hon'ble Bench relied on *Radhey Shyam v Chhabi Nath*, wherein the hon'ble Supreme Court has observed that under Article 227 of the Constitution, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has

been occasioned and that such power is not to be exercised to correct a mistake of fact and of law. While referring to caselaw *Hari Singh Mann v Harbhajan Singh Bajwa, (2001) 1 SCC 169*, It was also observed that Once the learned Additional Sessions Judge finally decided the appeal and directed the trial Magistrate to hear and decide the complaint on the issue of territorial jurisdiction after inviting oral and documentary evidence from the parties of the complaint and after hearing both sides afresh and thereafter pass appropriate orders as the situation would demand, the appellate court became functus officio. It was held that the petition is not for correction of a mistake of fact or of law; it is a petition for undoing the miscarriage of justice caused by the impugned order in as much as the learned Additional Sessions Judge, Budgam, has entertained the miscellaneous application long after disposal of the main appeal, when there was no lis concerning the matter pending before it and under the garb of the doctrine of merger, the learned Additional Sessions Judge has converted itself into an executing court for the orders passed by the trial Magistrate which course is neither permissible under law, nor referable to any provision of the Code or the DV Act. Accordingly, while partly allowing the petition, directions were issued to the parties for appearance and the trial Court for the conduct of proceedings within stipulated period.

CRMC no.56/2019

Branch Head, J&K Bank Ltd. and another v. Arjmand Shafi

Decided on: October 08, 2021

In a petition preferred under Section 561-A of the Code of Criminal Procedure, seeking quashment of complaint pending before the court of Forest Magistrate, Srinagar, the Hon'ble Single Bench of the High Court of J&K and Ladakh observed that the order of the Magistrate summoning accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. It was observed thus" 9. *As can be seen in Pepsi Foods Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749, summoning of an accused in a criminal case is a serious matter as criminal law cannot be set into motion as a matter of course. It is not that complainant has to bring only two witnesses to support his allegations in a complaint to have criminal law set into motion. The order of the Magistrate summoning accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the*

Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. The Hon'ble Court reiterated that the Supreme Court has cautioned that Magistrate should carefully scrutinize as to whether allegations made in the complaint meet basic ingredients of the offence alleged and whether the accused is really required to be summoned. With these observations, this petition was allowed and complaint was dismissed and order issuing the process as also summons against petitioners was set aside.



“Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking there lies a juristic principle. It is the duty of the court to ascertain that principle and implement it.”

**K.S. Hegde,J. In Raj Narain v. Indira Nehru Gandhi ,(1972)
3 SCC 850, para 19**

CIVIL

Supreme Court Judgments

Civil Appeal No. 6494 of 2021
Jithendran v. The New India Assurance Co.
Decided on: October 27, 2021

Hon'ble Supreme Court Bench comprising of Justice R. Subhash Reddy and Justice Hrishikesh Roy reminded the Courts that the Motor Vehicles Act is in the nature of social welfare legislation and its provi-

sions make it clear that the compensation should be justly determined, having regard to the realities of life, both in terms of assessment of the extent of disabilities and its impact including the income generating capacity of the claimant.

Factually, the appellant who was 21 years old suffered serious injuries when the motorcycle, where the appellant was riding pillion, was hit by a car resulting in severe head injuries to the appellant resulting in severe impairment of cognitive power with hemiparesis and total aphasia and the prognosis for him is 69% permanent disability. The claimant was earning around Rs.4,500/- per month from jewellery work when he suffered the accident. The Tribunal ascertained the compensation at Rs 5, 74,320/- which was revised to Rs 14, 31,752 by the Kerala High Court. Hon'ble Court noticed that while the permanent disability as certified by the doctors stands at 69%, the same by no means, adequately reflects the travails the impaired claimant will have to face all his life. *"A person therefore is not only to be compensated for the injury suffered due to the accident but also for the loss suffered on account of the injury and his inability to lead the life he led, prior to the life altering event."*

The Court held that in cases wherein the claimant is suffering severe cognitive dysfunction and restricted mobility, the Courts should be mindful of the fact that even though the physical disability is assessed at 69%, the functional disability is 100% in so far as claimant's loss of earning capacity is concerned. Hon'ble Court hence held,

"... the impact on the earning capacity for the claimant by virtue of his 69% disability must not be measured as a proportionate loss of his earning capacity. The earning life for the

appellant is over and as such his income loss has to be quantified as 100%. There is no other way to assess the earning loss since the appellant is incapacitated for life and is confined to home."

The Court, hence, enhanced the compensation to Rs. 27,67,800 to be paid within six weeks.

Civil Appeal No. 5110 of 2021
Sughar Singh v. Hari Singh (Dead)
Through Lrs. & Ors.
Decided on: October 26, 2021

The Hon'ble Supreme Court Division Bench comprising justice M.R. Shah and Justice Aniruddha Bose reiterated that specific performance under the Specific Relief Act, 1963 is no longer a discretionary relief. The Apex Court observed that where the agreement's execution, part payment of consideration, and plaintiff's willingness are proven in cases dating prior to the 2018 amendment of the Specific Relief Act, the court should exercise its discretion in favour of the plaintiff to enforce specific performance of the agreement. The observation was made in an Appeal under Section 100 of the Code of Civil Procedure, 1908 filed against judgment and order dated passed by the High Court of Judicature at Allahabad in Second Appeal by which the High Court has allowed the said Second Appeal under Section 100 of the Code of Civil Procedure, 1908 and has quashed and set aside the judgment and decree for specific performance of the Agreement confirmed by the First Appellate Court. It was observed *"For the aforesaid, even amendment to the Specific Relief Act, 1963 by which section 10(a) has been inserted, though may not be applicable retrospective-*

ly but can be a guide on the discretionary relief. Now the legislature has also thought it to insert Section 10(a) and now the specific performance is no longer a discretionary relief. As such the question whether the said provision would be applicable retrospectively or not and/or should be made applicable to all pending proceedings including appeals is kept open. However, at the same time, as observed hereinabove, the same can be a guide." Accordingly, the appeal was allowed.

Civil Appeal No(S).6141 of 2021

Korukonda Chalapathi v. Korukonda Annapurna Sampath Kumar,

Decided On: October 10, 2021

Hon'ble Supreme Court Division Bench comprising Justice K.M Joseph and Justice S. Ravindra Bhat, held that an unregistered family settlement document is admissible to be placed "in" evidence if it does not by itself affect the transaction though the same cannot be allowed "as" evidence. It was observed that *"Merely admitting the Khararunama containing record of the alleged past transaction, is not to be understood as meaning that if those past transactions require registration, then, the mere admission, in evidence of the Khararunama and the receipt would produce any legal effect on the immovable properties in question."*

The Hon'ble Court was dealing with the impugned order of the Telangana High Court, whereby the High Court had set aside the order passed by the Trial Court by holding that the unregistered and unstamped family settlement "Khararunama" and receipt of Rs. 2,00,000 by the respondent were not admissible in evidence. Analysing the provision under Section 49(1) (a) of the Registration Act, a compulsorily registrable document, which is not registered, cannot produce any effect on the rights in immovable property by way of creation, declaration, assignment, limiting or

extinguishment. Thus, observing that Section 49(1) prevents an unregistered document being used 'as' evidence of the transaction, which affects immovable property, it was held that the Khararunama may not attract Section 49(1)(a) of the Registration Act. *"If the Khararunama by itself, does not 'affect' immovable property, being a record of the alleged past transaction, though relating to immovable property, there would be no breach of Section 49(1)(c), as it is not being used as evidence of a transaction effecting such property."* Resultantly, the Appeal was allowed.

Civil Appeal No. 6223 of 2021

Estate Officer v. Colonel H.V. Mankotia

Decided on: October 07, 2021

Hon'ble Supreme Court Division Bench comprising Justice MR Shah and Justice AS Bopanna, in a case where the members of the Lok Adalat, Madhya Pradesh High Court had entered into the merits of the writ petition and had dismissed it on merits, observed that once there is no compromise and/or a settlement between the parties before the Lok Adalat, as provided u/s 20(5) of Legal Services Authorities Act, 1987, the matter has to be returned to the Court from where the matter was referred to Lok Adalat for deciding the matter on merits by the concerned Court. After analyzing the provisions of the Legal Services Authorities Act, 1987 and placing reliance upon case law *State of Punjab and Ors. vs. Ganpat Raj*, the Apex Court observed that the jurisdiction of the Lok Adalat would be to determine and to arrive at a compromise or a settlement between the parties to a dispute and once the aforesaid settlement / compromise fails and no compromise or settlement could be arrived at between the parties, the Lok Adalat has to return the case to the Court from which the reference

has been received for disposal in accordance with law. It was held that "Once there is no compromise and/or a settlement between the parties before the Lok Adalat, as provided in sub-section (5) of Section 20, the matter has to be returned to the Court from where the matter was referred to Lok Adalat for deciding the matter on merits by the concerned court." Accordingly, the Apex Court allowed the appeal and restored the Writ Petition to the file of the High Court for its decision on merits and in accordance with law.

Civil Appeal No. 7017 of 2009
Prabhagiya Van Adhikari Awadh Van Prabhag v. Arun Kumar Bhardwaj
Decided on: October 05, 2021

Hon'ble Supreme Court Division Bench of Justice Hemant Gupta and Justice V. Ramasubramanian, held that revenue record is not a document of title and mere mentioning of name in revenue records will not create any right, title or interest over forest land. It was also observed that it would be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries for notification under Section 4 of the Forest Act and specific details are not required. The observation was made in an appeal against the order passed by the High Court of Judicature at Allahabad whereby the writ petition was allowed and the High Court had set aside the order dated passed by the Deputy Director of Consolidation, Lucknow, wherein, the revenue entry of certain Khasras was ordered to be corrected in the name of Department of Forest and the claim of rival claimants were set aside arising out of notification under Section 4 of the U.P. Zamin-dari Abolition and Land Reforms Act, 1952 which was published in U.P. Gazette dated 18.10.1952 to the effect that an area of 162

acres in Village Kasmandi Khurd shall not vest with the Gaon Samaj. It was observed that :*"Even if the name of the lessee finds mention in the revenue record but such entry without any supporting documents of creation of lease contemplated under the Forest Act is inconsequential and does not create any right, title or interest over 12 bighas of land claimed to be in possession of the lessee as a lessee of the Gaon Sabha."*

Civil Appeal No.4557 of 2012
Dipali Biswas v. Nirmalendu Mukherjee
Decided on: October 05, 2021

Hon'ble Supreme Court Division Bench comprising Justice Hemant Gupta and Justice V. Ramasubramanian while dismissing a half a century old litigation which started in 1971 and witnessed five rounds of litigation at the stage of execution of a simple money decree, held that res judicata is applicable on execution proceedings and the judgment debtor cannot be allowed to raise objections in instalments. The Hon'ble Bench made this observation while rejecting a new objection raised by a judgment-debtor against the auction-sale proceedings on the ground of irregularities in the sale proclamation. The appellants-judgment debtor had challenged the impugned order whereby the High Court had confirmed the order of the Executing Court dismissing their application under Section 47 of the Code of Civil Procedure, 1908. It was the contention of the appellants that Order XXI, Rule 64 casts not discretion, but an obligation, to sell only such portion of the property as may be sufficient to satisfy the decree. Noticing that the objection relating to Order XXI, Rule 64 had been raised by the appellants-judgment debtor for the first time in the 5th round of litiga-

tion in execution, and that the 2nd round was kickstarted with a suit for a declaration that the auction sale was void despite the express bar of a separate suit, under Section 47(1) of CPC, the Bench remarked, “...the appellants have now exhausted almost all provisions available to a judgment debtor to stall execution and the case on hand is fit to be included in the syllabus of a law school as a study material for students to get equipped with the various provisions of the Code relating to execution.” The Bench held that the appellants could not be allowed to raise the issue relating to the breach of Order XXI, Rule 64 for the following reasons:

1. A judgment debtor cannot be allowed to raise objections as to the method of execution in instalments. After having failed to raise the issue in four earlier rounds of litigation, the appellants could not be permitted to raise it;
2. The original judgment debtor himself filed a petition under Section 47, and what was on hand was a second petition under Section 47 and, hence, it was barred by *res judicata*. The Bench explained that post insertion of Explanation VII under Section 11 of CPC by Act 104 of 1976 the provisions of *res judicata* will apply to a proceeding for the execution of a decree;
3. The observations of the High Court that, “none of the parties shall have any claim whatsoever as against the applicant in respect of the purchased property which shall be deemed to be his absolute property on and from the expiry of 15th December, 1980”, had attained finality;
4. Section 65 of the Code says that, “where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the

sale becomes absolute”.

5. The sale of a property becomes absolute under Order XXI, Rule 92(1) after an application made under Rule 89, Rule 90 or Rule 91 is disallowed and the court passes an order confirming the same, hence, the Court has to grant a certificate under Rule 94 indicating the date and the day on which the sale became absolute.
6. “...a conjoint reading of Section 65, Order XXI, Rule 92 and Order XXI, Rule 94 would show that it passes through three important stages (other than certain intervening stages). They are, conduct of sale; (ii) sale becoming absolute; and (iii) issue of sale certificate. After all these three stages are crossed, the 4th stage of delivery of possession comes under Rule 95 of Order XXI.

With these observations, the appeal was dismissed.

High Court of Jammu & Kashmir and Ladakh Judgments

CM(M) No.127/2021

Mohammad Yaqoob Lone and others v. Hamidullah Lone and others

Decided on: October 05, 2021

In a writ petition filed before Hon’ble High Court of J&K and Ladakh wherein the petitioners sought setting-aside of the Order dated 23.08.2021, passed by the court of Principal District Judge, Kulgam in a Civil Miscellaneous Appeal by which the Order dated 17.06.2021, passed by the court of Sub Judge, Kulgam, dismissing the interim application of the respondents, has been set-aside, the Hon’ble Single Bench observed that grant of temporary injunction is not to put an end to the litigation, but it is a beginning of

the litigation and grant of the temporary injunction is aiming at preserving the property, which is in dispute in the suit because if the temporary injunction is refused to be granted, it would pave way for either of the parties before the Court to alienate, sell, dispose of and/or change the nature of the property, which is in dispute in the suit and in such situation the purpose of litigation would be futile and/or endless for both the parties. Hon'ble Court referred to case law *Wander Ltd vs. Antox India P. Ltd, 1990 Supp (1) SCC 727; Gujarat Bottling Co. Ltd. v. Coca Cola Co. and ors, AIR 1999 SC 2372 and Maharwal Khewaji Trust (Regd.) Faridkot vs. Baldev Dass (2004) 8 SCC 488*.

It was observed "19. *Grant of an order of injunction is intended to preserve and maintain in status quo the rights of the parties and to protect the plaintiff, being the initiator, of the action against the incursion of his rights and for which there is no appropriate compensation being quantified in terms of damages.*" while holding that the Appellate Court, in the present case, has been right to set-aside the Trial Court order and grant interim injunction in favour of plaintiff/respondent. the writ petition was dismissed.

CONSW No. 55/2012

Shahzad Khalid v. State of J&K and ors.

Decided on: October 04, 2021

In a review petition filed before the Hon'ble High Court of J&K and Ladakh, the Hon'ble Bench reiterated the scope of powers exercisable by a court in its review jurisdiction. Hon'ble referred to case law, *Thungabhadra Industries Ltd. v. Govt. of A.P., AIR 1964 SC 1372; Parsion Devi and Others v. Sumitri Devi and Others, (1997) 8 SCC 715, Board of Control for Cricket, India and another v. Netaji Cricket Club and others, AIR 2005 SC 592* and other precedents on the point that under Or-

der 47 Rule 1 CPC, the review will be maintainable upon i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him; ii) Mistake or error apparent on the face of the record; iii) Any other sufficient reason. In the case at hand, the petitioner was seeking review of the judgment and order dated 09.10.2012. on the ground that in the writ petition, the petitioner was not made a party respondent and further that the writ petitioners had not specifically questioned the order of appointment of the petitioner. The Hon'ble Court further observed that the judgment and order dated 09.10.2012, in regard to which, the review petition has been filed, it can be seen that the directions are general in character and in case, the impugned judgment and order was prejudicial to the interest of the petitioner, in any manner, then the right remedy for the petitioner to avail was to file an LPA after seeking leave in that regard, which has not been done.

It was observed that "The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self-evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise". Hon'ble Court observed that the judgment and order impugned, on the face of it, does not suffer from any error apparent on the face of the record and therefore was found to be without any merit and accordingly dismissed.



ACTIVITIES OF THE ACADEMY

One Day Special Orientation Programme on “Powers and Jurisdiction of Special Judge under NDPS Act, search, seizure and link evidence; Provisions relating to Bail with special reference to Section 37 of NDPS Act and Default Bail in terms of Section 167(2) CrPC”

J&K Judicial Academy organized One Day Special Orientation Programme on “Powers and Jurisdiction of Special Judge under NDPS Act, search, seizure and link evidence; Provisions relating to Bail with special reference to Section 37 of NDPS Act and Default Bail in terms of Section 167(2) CrPC” for District Judges on 13th October, 2021.

Hon’ble Mr. Justice Mohammad Yaqoob



Mir, Former Chief Justice, High Court of Meghalaya in his opening remarks laid the foundation of the programme by thought provoking and inspiring address. His lordship laid stress on the implementation of the NDPS Act and stated that the Act is commonly known as NDPS Act and came into force on 14th November 1985. But with the passage of time and development, the practice turned into illicit drug trafficking. Also, India is signatory to UN Conventions on Narcotic Drugs which prescribes for the controlled and limited use of these narcotic drugs and psychotropic substances. Therefore, the legislation is framed with the objective of using these narcotic drugs and psychotropic substances in controlled manner for

medicinal and scientific purpose without violating the obligations to UN Conventions. His Lordship further stated that The NDPS Act regulates and controls the abuse of drug



trafficking through its stringent provisions. It empowers the competent authority for the supervision of the operation related to narcotics drugs and psychotropic substances. The NDPS Act prescribes stringent punishment, hence a balance must be struck between the need of the law and the enforcement of such law on the one hand and the protection of citizens from oppression and false implication.

The programme was divided into two Working Sessions presided over by Hon’ble Mr. Justice Mohammad Yaqoob Mir, Former Chief Justice, High Court of Meghalaya. The sessions were mostly interactive wherein the Participants interacted and deliberated on the subject topics.

The programme concluded with vote of thanks by Sh. Sanjay Parihar, Director, J&K Judicial Academy who expressed his gratitude to the visiting Resource Person and participants and hoped that the deliberations and discussion in the programme will be enriching and act as a catalyst in pursuit of justice.

One Day Workshop on “Gender Sensitization in Crimes against women, Imparting training to eliminate Social bias”

J&K Judicial Academy organized One Day Workshop on “Gender Sensitization in Crimes against women, Imparting training to



eliminate Social bias” for Judicial Officers, Public Prosecutors/APPs, Medical Officers and Police Officers overseeing/supervising investigation of Kashmir province on 23rd October, 2021.

“The imbalance of power equality among women and men has resulted in the patriarchy in history but in the modern human society half of the population can't be made invisible, marginalized and discriminated. Modern society which lays emphasis on human rights, freedom, justice and equality can't accept discrimination and crimes against women” said Judge, High

Court of Jammu & Kashmir and Ladakh, and Chairman, Committee for Judicial Education & Training, Justice Dhiraj Singh Thakur in a workshop on Gender Sensitization in Crimes against Women-imparting training to eliminate social bias. He highlighted the role of judiciary in ensuring justice to victims of domestic and workplace crimes and sexual harassment.

The programme was attended by Former Judge, Panjab & Haryana High Court and Member, Punjab State Human Rights Commission, Justice Nirmaljit Kaur; Director Prosecution Kashmir, Nisar Hussain Drabu; HoD, Department of Social Work, University of Kashmir, Dr Shazia Manzoor; District and Session Judges of various districts, Public Prosecutors, police officers, medical officers and others.

On the occasion, Former Judge, Nirmaljit Kour presented a detailed overview during which she talked about crime cases against women of different nature, upbringing of boy and girl children equally in family, Empowerment of women, befitting conduct of officers, POCSO Act and issues.

Dr Shazia while presenting opening remarks said that Gender Sensitization in



crimes against women is a very sensitive and fragile issue that is very close to our heart where the society in its composite genesis needs to find the root causes of crimes against women and address the stereotypes existing in the society. She too made a PowerPoint Presentation on gender sensitization wherein she highlighted that this is not “Man versus Woman” but men and women have to work together on this issue.

While presenting opening remarks of the workshop, Sh. Nisar Drabu said that crimes against have been seen at Home, Road and workplace. He said that there is increase in the domestic violence which includes burning and divorce. However, he said that the cases of crime against women at workplaces mostly sexual harassment at workplace have decreased due to the implementation of stringent laws.

Director Judicial Academy, Sh. Sanjay Parihar give a detailed Power Point Presentation on the issues related to gender discrimination, stereotypes, social myths,

crimes and measures to address such problems in the society by play our own role in individual capacity and social institution.

Later two working sessions were held during which participants deliberated and discussed necessary behavioural change of every human being, responsibility of Police, judiciary, NGO's, religious and social institutions, influencers, implementation of laws, need for counselors, rehabilitation, compensation, punishment, rehabilitation centres and other related prospects.

The programme concluded with vote of thanks by Sh. Sanjay Parihar, Director, J&K Judicial Academy and hoped that the deliberations and discussion in the programme will be enriching and act as a catalyst in pursuit of justice.



JUDICIAL OFFICERS' COLUMN

VICTIMOLOGY AND RIGHTS OF VICTIMS

Victims is one who suffers, injury loss or harm as a result of act or omission against which the accused person. Unfortunately Rights of victims are not considered as one of the major component of the criminal justice system in India. Crime victims are integral to the Criminal Justice system in India. A victim of crime is one who triggers the criminal Process.

Victimology can be regarded as a more holistic approach than criminology, acknowledging the injustice that may lead victims to become perpetrators themselves. In law victims those have suffered harm are just entitled compensation for the damages,

that they have suffered through civil law and the accused is held responsible for such compensation.

Plight of victims can be **addressed** in laws in place i.e under “victims compensation scheme” under free legal Aid Scheme and also by providing of Amicus Curie. **Pro-bono aids** is also given to victims in certain matters.

A **poor slob** who is at the end of the stick, the victims, the passivist needs attention. Major components of rights of victims of crime are (i) **Access to justice & fair treatment.** (ii) **Restitution.** (iii) **Compensation.** (iv) **Rehabilitation.** (v) Right to be treated with **compassion &**

respect for the dignity, Mechanism of justice and to prompt **redressal**, right to be informed of victims right including right to information with respect to proceedings and their role in it. Basic criminal Justice system is concerned with criminals. Be it their **conviction treatment**, reformation or rehabilitation.

But sadly a person who has been injured attacked, robbed or killed by someone else. Victim mentality is a self-pity. A person who has suffered physical or emotional harm or injury needs to be compensated to commensurate with injury.

Victims have Constitutional Rights as well. Victims do not have to be notified of court proceedings. Section 357 CRPC provides ideas of payment of compensation by the offenders under the provisions of "Victims Compensation Scheme". There is a victims Compensation scheme for rehabilitation of victims (CVCF) which is for frontline professionals towards securing justice for victims

A crime victims and their families be given the right to be present during Criminal Justice proceedings and their right is very important to victims who often want to see the Criminal justice process actually at work but a victims right to attend the trial is often limited in cases where the victims is also a **witness** in the Criminal case. Today there is sea change and progress in securing rights, protection and services for victims and today they have a right to recognition as persons before the law. Basically victims' rights are **Human Rights** and are afforded to **victims of crime** as well. These may include the right to restitution, right to victim's advocate, **right to compensation**. They have absolute right to adequate response to their needs. Having **victims voice** in the criminal justice system adds a valuable alternative perspective in Justice Dispensation System.

Due to fear of victimization by the perpetrators the victims often fail to provide information regarding the crime inflicted upon them.

Today it is a need of the hour to strike a balance between **Pardons, Remissions and Sentencing. Articles 72 and 61** of Constitution of India deals with power of pardoning. Power of pardon is absolute unfettered and not subject to any judicial review as power of pardon exists to prevent to injustice and connotes forgiveness and Articles 20 & 21 of Constitution of India deals with remission of sentence keeping in view good conduct of prisoners while serving sentence. And while talking about **sentencing** in criminal Justice system a judge will decide on appropriate punishment during the sentencing phase of a criminal case. A sentence is enhanced or reduced keeping in view factors specific to the crime and the accused and all the basic principles of the sentencing are kept in mind as aim of punishment is to protect society from criminals and **reformation**.

Role of Judiciary in Ensuring Rights of Victims is sine-qua-non; therefore meaning of justice needs to be expanded. Every Endeavour must be to inspire the confidence of the witnesses for conviction of the guilty and particularly the victims of the crime.

Author's View:-There is a dire need to shift our focus from the offenders to the victims who have suffered substantially and we need to put ourselves into "**victims shoes**".

*-Contributed by:
Ms. Bala Jyoti
Presiding Officer
Industrial Tribunal & Labour Court
Jammu*