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Topic of the Month

"As repositories of the rights of the people, courts rest on the bedrock of public confidence and faith. Judges, therefore, must make all efforts to maintain this confidence. A Judge who is arrogant would soon lose his credibility. Sobriety in behaviour is the hallmark of a Judge. I refer to courteous demeanour as a gift because often, it is difficult for those reposed with great responsibility and power to refrain from 'wielding the sword' of that power in places where it would be better to sheath it. The demeanour of a Judge includes patience, decency, decorum and other like traits. The conduct of the Bench towards society in general, towards the Bar, and towards litigants and court staff, is significant. All must be treated with courtesy and respect. The Bench should command respect from others and not demand it. Since no human is alike, it is difficult to gauge the framework of courtesy, because for one, consideration for the feelings of others may be an inherent part of his personality, and for another, it may have to be imbued and practised untill it is firmly welded into routine behaviour. An offensive demeanour often leaves the receiver with a sourness that greatly affects his faith in the person, as well as the system at large. All who approach the doors of the court must feel relaxed and at ease at once, and Judges in particular have a great role to play in advancing this, for with a superciliousness of manner , a Judge can easily destroy the serenity of the courtroom. In the words of Lord Macmillan, in Law and Other Things, which he penned in 1937, "Courtesy and patience must be more difficult virtues to practice on the Bench than might be imagined, seeing how many otherwise admirable Judges have failed to exhibit them; yet they are essential if the courts are to enjoy public confidence".

It must be remembered that the greatest social service that a judge renders to society is the maintenance of social equality and removal of social injustice. Most litigants appearing before the courts are lambs threatened by the lion. Thus, while hearing these people, a Judge must be extremely patient and courteous towards them, while at the same time showing firmness to maintain the decorum of the court. He must appear, at all times, to be serene. In the words of Devlin, in his reflective work The Judge, "The Judge who gives the right judgment while appearing not to do so may be thrice blessed in heaven, but on earth he is no use at all."

. *('Taken from Shri Mahaveer Chand Bhandari memorial Lecture, 2007 delivered by Hon'ble Shri Justice K.G. Balakrishnan, Chief Justice, Supreme Court of India reported as (2008)3 SCC J-13.)*

ACADEMY NEWS

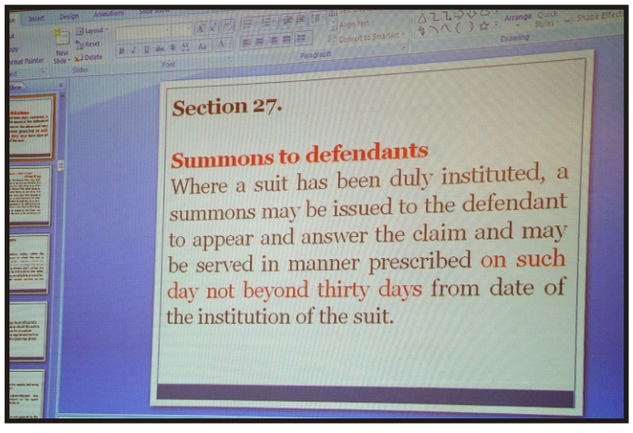
Workshop on 'Importance of Procedural Law in Speedy disposal of civil cases with special emphasis on Civil Laws Amendment Act, 2009', second in the series, was held in the Judicial Academy at Jammu on 14th of February, 2010, for the Judicial Officers of 2nd batch of the rank of Sub-Judges and Munsiffs from Jammu province.

Hon'ble Shri Justice Hakim Imtiyaz Hussain
while addressing the Judicial Officers in the Workshop

Hon'ble Shri Justice Hakim Imtiyaz Hussain presided over the workshop. The purpose of conducting the workshop on the said topic was to devise ways and means for speedy and effective disposal of civil cases pending in different courts, and for that purpose to press into service the different provisions of Code of Civil Procedure and in particular the amended provisions of the Code. The workshop was conducted in such a way that every officer took active role in the deliberation.

Workshop in Session

Justice Hakim Imtiyaz Hussain gave a Power Point Presentation comprising of more than hundred slides, on the topic. This audio-visual medium of presentation was very effective and was appreciated a lot by the participating officers. The participants highlighted the difficulties which they face in the speedy and effective trial of civil cases in their respective courts. Hon'ble Shri Justice Hakim Imtiyaz Hussain guided them by referring to different provision of the Code of Civil Procedure which can prove helpful for expeditious disposal of civil cases.



A view of Power Point Presentation

Hon'ble Shri Justice Hakim Imtiyaz Hussain also told the participants as to what necessiated the passing of the Civil Laws Amendment Act, 2009. The participants were told by His Lordship that by invoking the relevant provisions of the Code of Civil Procedure and by carrying into effect the procedural law in letter and spirit, the goal of substantial and speedy justice will be achieved. Hon'ble Shri Justice Hakim Imtiyaz Hussain while dealing with the topic, apprised the participants as to what needs to be done at different stages viz, filing, process, recording of the evidence, arguments and delivery of judgments.

Workshop in Session

The participants also gave vent to their difficulties which they face day in and day out while dealing with the civil cases. The participants were also told that the Civil Laws Amendment Act, 2009 has facilitated the use of latest technology relevant to the judiciary for speedy and effective disposal of civil

cases. During the workshop, provisions of the Civil Laws Amendment Act, 2009 were gone through and Hon'ble Shri Justice Hakim Imtiyaz Hussain told the participants as to how these provisions can help in speedy and effective disposal of cases, as according to His Lordship dead line for filing of written statement etc. has been provided in the Code. The evidence is to be produced in the shape of affidavit and can be on commission. Participants were also told that the times are gone when the arguments were not heard for months and years together, as the deadline has been provided in the Code regarding arguments and the delivery of judgment. In this way, according to His Lordship, delay in disposal of civil cases is unimaginable and if still the justice is delayed, the faith of people in the judicial institution will be eroded. His Lordship impressed upon the officers to make best use of the amended provisions and provide substantial, effective and speedy justice to the litigants.

Workshop in Session

At the conclusion of the workshop, the officers participating in the workshop felt tremendously benefitted and their confidence in themselves has been further strengthened which will be helpful in deciding the civil suits pending in the courts of participating Judicial Officers as expeditiously as possible.

LEGAL JOTTINGS

Case No: Civil Appeal No. 5339 of 2002
Daya Singh & anr. V. Gurdev Singh (Dead) by L.Rs. & ors.
Date of Decision : 07.01.2010.
Judge(s): Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Aftab Alam.

Subject Index: Limitation Act, 1963 - Article 58 - limitation period - High Court dismissed the second appeal filed by the appellants on the ground that the suit for declaration and injunction filed by the appellants was barred by limitation which could only be filed within three years from the date when the cause of action arose - Whether the suit for declaration and injunction could be held to be barred by limitation as the same was filed after 18 years of the alleged compromise between the parties - Held that the right to sue accrued when a clear and unequivocal threat to infringe the right, given by the defendants, when they refused to admit the claim of the appellants, i.e. only seven days before filing of the suit. Thus, suit was filed by the appellants within 3 years from the date of infringement. High Court not justified in holding that mere existence of a wrong entry in the revenue records does not, in law, give rise to a cause of action within the meaning of Article 58 of the Act - Impugned order of the High Court on the question that suit barred by limitation set aside - Appeal allowed.

(Case No: Criminal Appeal No. 28 of 2010)
Harinarayan G. Bajaj v. State of Maharashtra & Ors.
Date of Decision : 06.01.2010.
Judge(s): Hon'ble Mr. Justice V.S. Sirpurkar and Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Criminal Procedure Code, 1973 - Section 319 - Power to proceed against another person appearing to be guilty of offence - Complaint filed against the accused persons for offence u/s 406 and 411, IPC, witnesses were cross-examined, on the application of the appellant, Trial Court arrayed respondent No. 5 as a co-accused in the proceedings. Trial Court split the trial of respondent No. 5 and other accused persons and ordered to commence the proceedings qua the 5th respondent from the stage of inquiry and allowed cross-examination of the witnesses of the prosecution at the stage of evidence before charge. High Court affirmed the order of the trial Court to commence de novo proceedings against respondent No. 5. Appeal - Held that if right to cross-examine under Section 244, CrPC not given to the newly joined accused then there would be a complete denial to such accused of an important right of cross-examination of the witnesses before the framing of the charge and the accused would have no opportunity to show to the Magistrate that the allegations are groundless and that there is no scope for framing a charge against him - No interference to the judgment of the High Court confirming the orders of the trial Court. Appeal dismissed.

(Case No: Cr. Appeal No. 1241 of 2003 with Cr. Appeal No. 1242 of 2003)
Sunil Kumar & anr. v. State of U.P.
Date of Decision : 6.01.2010.

Judge(s): Hon'ble Mr. Justice V.S. Sirpurkar and Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Indian Penal Code, 1860 - Sections 147, 149 and 304-II - Rioting, unlawful assembly and culpable homicide not amounting to murder. Trial Court convicted the accused/appellants for guilty of forming an unlawful assembly with common object to commit murder of the victim and inflicted injuries on the person with lathis/dandas causing his death. High Court affirmed the orders of the trial Court - Appeal - Held the absence of motive irrelevant, where evidence of 3 eye-witnesses available. Post-mortem examination found the death was due to coma as a result of the head injuries caused by blunt weapons. All the 3 eye-witnesses specifically deposed the presence of the accused persons and their individual acts in assaulting the deceased Salim on his head. No interference to the conviction/sentence orders of the High Court. Appeals dismissed.

(Case No: Cr. Appeal No. 451 of 2007)
Boddella Babul Reddy v. Public Prosecutor, High Court of A.P.
Date of Decision : 6.01.2010.
Judge(s): Hon'ble Mr. Justice V.S. Sirpurkar and Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Indian Penal Code, 1860 - Sections 147, 148, 324, 326, 302 and 307 read with Section 149 - Explosive Substances Act - Sections 3 and 5 - Arms Act - Sections 25(1)(b) and 27 - Faction clashes between two groups on account of passage which was used by both the groups. As per the prosecution case, all the accused persons armed with dangerous weapons, spears and bombs attacked the persons of the other group and the appellant said to have hurled bomb on the chest of deceased, resulting in his instantaneous death - trial Court disbelieved the evidence of the prosecution and while acquitting all the accused held that the offence was not established as also the medical evidence was not consistent with the oral evidence on record - High Court confirmed the judgment in the case of other accused persons but held appellant guilty of hurling the bomb and convicted him u/s 302, IPC - Appeal - Evidence of prosecution witnesses No. 2 to 5 full of contradiction and omissions - proved that the FIR given with the consultation of the legal advisors and in the guidance of the local Member of Legislative Assembly who was inimical towards the appellant - High Court nowhere considered that there was no explosive substance found at the place where allegedly the bombs were exploded - Held that once the benefit of doubt has been given to the other accused the same advantage should have been given even to the appellant - Impugned judgment of the High Court set aside and that of the trial Court restored.

(Case No: Civil Appeal Nos. 1360-1361 of 2005 with Civil Appeal No. 1362 of 2005)
Skyline Education Institute (India) Pvt. Ltd. v. S.L. Vaswani & another
Date of Decision : 5.01.2010.
Judge(s): Hon'ble Mr. Justice G.S. Singhvi.

Subject Index: Civil Procedure Code, 1908 - Application filed by the appellants to grant temporary injunction for restraining the respondents from using the name `Skyline' as a part of their trading name & trademark in relation to their activities in the field of education - Plaintiff/appellants neither approved by AICTE nor affiliated with any university whereas the respondents have obtained the requisite recognition and affiliation from the concerned statutory bodies - Learned single judge opined that the word `Skyline' being neither an invented nor specific word, has to be considered a generic word more particularly when thousands of persons and institutions are using the same as a part of their trading name or business activities. Further held that even a prior user of the name `Skyline' by the plaintiff, would not confer upon it an exclusive right to use that name to the exclusion of others. Single judge partly allowed the application of the appellants & restrained the defendants from starting any new courses similar to the courses run by the appellants till the disposal of the suit. Division Bench observed that after having found that the appellant has failed to make out a prima facie case the Learned Single Judge was not justified in directing the respondents not to go ahead with the new courses & directed respondents to append a note in the advertisement that they are not related to the appellant. Appeal - Held, no interference to the well reasoned order of the Division Bench - Appeal filed by the appellants dismissed.

(Case No: Civil Appeal No. 11 of 2010)
Athar Hussain v. Syed Siraj Ahmed & others
Date of Decision : 5.01.2010.
Judge(s): Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice V.S. Sirpurkar.

Subject Index: Guardian and Wards Act, 1890 - Section 12 - CPC, 1908 - Order 39 Rule 1 and 2 - Application filed for interim protection of the persons and properties of the minor children and also restraining the appellant from interfering or disturbing the custody of two children till the disposal of the application filed under Sections 7, 9 and 17 of the Act - Family Court passed an ex parte interim order restraining the appellant from interfering with

the custody of the two children of the appellant - Appellant filed application for vacation of interim order of injunction passed against him - Family Court found the balance of convenience leaning in favour of the appellant and vacated the ad-interim order of temporary injunction - High Court set aside the order of the Family Court vacating the interim order of injunction - Appeal - Held - the question of custody distinct from guardianship. Further held that the personal law governing the minor girl shall dictate her maternal relatives. Her maternal aunt, shall be given preference, thus, no reason to override the rule of Mohammedan Law. Irreparable injury will be caused to the children if they, against their will, are uprooted from their present settings - Order of the High Court giving the interim custody of the minor children to the respondent till the disposal of the proceedings, modified to the extent of the visitation rights granted to the appellant and the order of the Family Court vacating its injunction order set aside - Appeal dismissed.

(Case No: Criminal Appeal No. 1301 of 2002)
Gangula Mohan Reddy v. State of Andhra Pradesh
Date of Decision : 05.01.2010.
Judge(s): Hon'ble Mr. Justice Dalveer Bhandari and Hon'ble Mr. Justice A.K. Patnaik.

Subject Index: Indian Penal Code, 1860 - Section 306 - Abetment of suicide - Trial Court convicted the appellant under Section 306, IPC and sentenced him to imprisonment for 10 years and fine of Rs. 10,000/- for harassing his agriculture labour and leveled allegation of theft of ornaments upon him, who after 2 days committed suicide - High Court upheld the appellant's conviction and reduced sentence of 10 years RI to 5 years - Appeal - Held that without a positive act on the part of the accused to instigate or intentionally aiding in committing suicide, conviction cannot be sustained - Appeal allowed - Appellant acquitted.

(Case No: Criminal Appeal No. 125 of 2009)
Vijay Kumar Arora v. State Govt. Of NCT of Delhi
Date of Decision : 13.01.2010.
Judge(s): Hon'ble Mr. Justice Harjit Singh Bedi and Hon'ble Mr. Justice J.M. Panchal.

Subject Index: Indian Penal Code, 1860 - Section 302 - Punishment of murder - Trial Court on the basis of circumstantial evidences, convicted and sentenced appellant to R.I. for life and fine of Rs. 2,000/- for setting ablaze his wife and burning her to death - High Court affirmed the conviction and sentence orders of the trial Court - Appeal - No suicidal note written by the deceased was found after she received burn injuries, no other article lying nearby was damaged due to the burns, the evidence of prosecution witnesses established beyond pale of doubt that when the deceased was removed to the hospital, her clothes and her body were smelling of kerosene, the CFSL report on the record shows that kerosene oil stove was found in normal working order. As per the Panchnama report, a gas cylinder and a gas stove were available in the kitchen. Therefore, the use of kerosene stove by the deceased was highly improbable and doubtful. Held - the facts of the case indicate that kerosene oil stove was planted at the site in a fake attempt to hide the homicidal death, thus, prosecution proved beyond pale of doubt that the deceased had died of a homicidal death and not due to an accident, on account of bringing insufficient dowry and appellant having extra-marital affairs. No interference to the orders of the Trial Court or the High Court in convicting the appellant under Section 302 IPC for committing murder of his wife - appeal dismissed.

NEWS AND VIEWS

Courts cannot interfere with electoral rolls : SC

The Supreme Court has ruled that the courts cannot interfere with the electoral rolls, which is the job of the Election Commission of India.

A Bench comprising Mr. Justice D.K. Jain and Mr. Justice H.L. Dattu while dismissing the appeal of a defeated candidate from Meerut Assembly constituency noted, It is clear from the above discussion that the courts cannot decide any issue relating to issuance or revision of an electoral rolls".

The court said the remedy lay in the procedures laid down in the prescribed rules. There is only scope for challenging the contents of the electoral rolls.

However, once the electoral rolls is finally published, it becomes final. Then no court can interfere with it.

Justice Dattu, writing a 43-page judgment for the bench, also noted that the boundaries of a constituency can be changed or altered only by the Delimitation Commission and the Election Commission had no power to change the electoral rolls of the constituency.

The Apex Court also noted that the power of the Election Commission will not extend to changing the boundaries or areas or extent of any constituency.

According to the Apex Court, the geographical extent of the Assembly constituency cannot be changed nor can any area be added or excluded by any authority other than the Delimitation Commission.

The Apex Court was deciding the petition of Laxmi Kant Bajpai, who had challenged the election of Hazi Yaqoob on the ground that 21 locality continued to be included in the Assembly Constituency despite the new order of the Delimitation Commission saying that these 21 colonies will form the part of new constituency and 23, 431 votes from these localities have been illegally included.

Yaqoob was declared elected by a margin of 1089 votes on May 11, 2007.

The Apex Court also took note of the fact that the new Delimitation order has not been implemented and therefore, no cause of action had arisen in the election petition which was rightly rejected by Allahabad High Court on May 12, 2008.

(UNI / 28.12.2009)

No regularization of services if illegally recruited : SC

The Supreme Court has held that those inducted without following due process of recruitment have no right to claim regularization of services.

A Bench comprising Justices V.S. Sirpurkar and Mukundakam Sharma, while allowing the appeal of Karnataka, noted, "As it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 (read with Article 16) of the Constitution.

Therefore, consistent with the scheme for public employment, this court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee".

Justice Sharma, while writing nine page judgment for the Bench, also relied on the three judge Bench judgment of the Apex Court and noted,, "Appointments made in violation of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 with impunity shall encourage the political set up and bureaucracy to violate the soul of Article 14 and 16 of the Constitution of India.

Those who could pull strings in the power corridors at the higher and lower levels managed to get the big slice of public employment by trampling over the rights of other eligible and more meritorious persons registered with the employment exchanges. A huge illegal employment market developed in different parts of the country and rampant corruption afflicted the whole system".

The Apex Court set aside the judgments of Karnataka High Court and Karnataka Administrative Tribunal which directed the State Government to consider the cases of the respondents (daily wagers in plantation, watchman, wireless operators or helpers) for regularisation of their service on merits.

(UNI/25.01.2010)

CASE COMMENTS

Kashi Math Samsthan & Anr.
v.
Srimad Sudhindra Thirtha Swamy & Anr.
AIR 2010 SC 296

It is settled principle of law that for grant of temporary injunction the party seeking the same is required to show to the Court, existence of prima facie case and balance of convenience in his favour and also that in the event of refusal of temporary injunction it shall suffer an irreparable loss or injury. All the three requirements should co-exist. If there is lack of any of the three elements, the party seeking the temporary injunction is not entitled to the same. This principle of law came to be considered by the Hon'ble Supreme Court in the above noted case. The Hon'ble Supreme Court has made the following observations in this regard:

"13. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted……"

(Sunit Gupta)
Excise Magistrate, Jammu

General Manaager, Telecom
v.
M. Krishnan & Another
AIR 2010 SC 90

In this case, the Hon'ble Supreme Court held that dispute with regard to the telephone bills don't come within the jurisdiction of Consumer fora.

In this case, telephone connection of the Respondent No. 1 was disconnected for the non-payment of the telephone bill. Against the said disconnection, Respondent No. 1 filed a complaint before the District Consumer Disputes Redressal Forum. The complaint of the complainant was allowed by the consumer Forum. The matter was taken to the Hon'ble High Court of Kerela where the Learned Single Judge upheld the order of Consumer Forum which was also ratified by the full Bench of the Hon'ble High Court of Kerala. Against which order matter came before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the special law overrides the general law. Hon'ble Supreme Court based its finding while interpreting Section 7B of the Indian Telegraph Act and rules 413 and 443 of the Telegraph Rules. The Hon'ble Supreme Court has also based its decision on a case reported as (1995)2 SCC 479 wherein it was held that National Commission has no jurisdiction to adjudicate upon claims for compensation arising out of Motor Vehicles Accidents.

(Kamlesh Pandita)
Sub-Judge, Katra

Sharief Ahmed & Ors.
v.
State (NCT of Delhi)
AIR 2009 SC 2691
and
Krishan Lal v. Dharmendra Bafna & Anr.
AIR 2009 SC 2932

Of the myriad unsettled propositions of the law, power of the court is one, which often engages the mind of a student of law. The point is no more res-integra that the police have a statutory right and power to investigate the circumstances of an alleged cognizable offence without requiring a judicial authorization. Section 156 CPC makes position clear. The functions of the judiciary and the police are complementary, not overlapping. The job of police ends with the presentation of report at the conclusion of the investigation. The court's function begins when a charge is preferred before it. There is a general judicial consensus at the highest level that the courts don't have power to change the course of an investigation, nor can they order its focus on a particular direction. However, at times a cleavage in the views at the apex level becomes discernable.

The Hon'ble Supreme Court has, on various occasions, examined the point and in the following cases made the view known :-

AIR 1970 SC 786, AIR 1980 SC 326, AIR 1945 PC 18, AIR 1976 SC 1672, AIR 2001 SC 2721, AIR 2008 SCW 309, 2008 AIR SCW 3340, 2009 SCW 3484 and lately in the above captioned cases. Much of the controversy stems from the reading of sub-sec (8) of 173 CPC. This sub-section gives power to the investigating agency to have further investigation in respect of an offence in spirt forwarding a report to the Court u/s 173(2) of Code of Criminal Procedure. Though not mentioned specifically they can do it on their own or a court may trigger it. A distinction has been made between 'further investigation' and the 'reinvestigation' to make the point that while as former may be permissible for the court to order the latter is not. It is true that both stand on different footing. The investigating officer may exercise his statutory power of further investigation when new facts come to his notice or certain aspects of the matter have not been considered by him. Apart from that a Magistrate or the superior court can direct further investigation if it is found to be tainted, unfair or it is otherwise necessary in the ends of justice. "Direction of a re-investigation is forbidden in law, no superior Court would ordinarily issue such a direction" (See Krishanlal case captioned above). Nevertheless, in 2008 AIR SCW 309 Shakiri Vasu v. State of U.P. Hon'ble Apex Court while dealing with powers of the court to direct registration of FIR u/s 156 CrPC has observed that the Magistrate has also a duty to see that the investigation is carried out in a fair manner. However, in Krishanlal's cases the Hon'ble Apex Court has doubted the correcteness of this observation. (See last part of para 9). The doubt was expressed on the view taken in Mitha Bhai Pashabai Patel & Ors. v. State of Gujrat (2009(7) SCALE 559) and 2008 AIR SCW 5469. In the former case, the Hon'ble Apex Court refused direction for re-investigastion and in the latter it was held that u/s 173(8) CrPC the police has a right to further investigate but not fresh investigation or reinvestigation. In Sharief Ahmad's case (captioned above) the Hon'bl;e Apex Court has endorsed AIR 1980 SC 326 and clarified the issue by stating that High Court cannot direct the investigating agency to submit a report that is in accord with its views as that would amount to unwarranted interference with the investigation by inhibiting the exercise of statutory

power by the investigating agency.

Sometimes further investigation may lead to unraveling of certain facts and circumstances, surrounding the alleged crime, which may have escaped the attention of an Investigating Officer who has filed the charge sheet. Won't it entail reappraisal of the whole matter which, in common parlance, means reinvestigation ? In that event, where does a distinction lie between the further investigation and re-investigation. The matter indeed requires a re-look at the highest judicial level so that lower courts are adequately guided.

(B.L. Saraf)
Member
State Consumer Commission
District & Sessions Judge (Retd.)

Dilip Premnarayan Tiwari & Anr.
v.
State of Maharashtra
with
Sunil Ramashray Yadav
v.
State of Maharashtra
2009 AIR SCW 7592

Hon'ble Supreme Court in the above titled Judgment has reiterated the following principles of law:

1. Omission of names of some of accused in the FIR is not of much importance, in the circumstances where the informant was in a state of shock on seeing dead bodies of her family members.
2. When the evidence of the witness is natural, no attempt had been made by the witness to implicate anyone else than accused, evidence is not exaggerated and Medical evidence also supports her evidence, the same could not be rejected only for certain omissions in the statement recorded by the Police.
3. When the ocular evidence is credible, absence of the name of an accused in the dying declaration would be of no help to the accused.

Apart from the above said legal principles, the Hon'ble Supreme Court also has laid down the considerations which should weigh in the mind of Court, while imposing Death Sentence. It has been held that nature of Crime is not the only consideration, background of criminal, his psychology, social status and mind set for committing offence, are also relevant.

(Ritesh K. Dubey)
Sub-Judge (Leave Reserve)

Manohar Singh v. D.S. Sharma & Ors.
AIR 2010 SC 508

Where the plaintiff has been directed to pay costs to the defendant, for seeking adjournment and causing delay, does the non-payment of costs by the plaintiff, entails the dismissal of the suit?

This question came up for discussion in the above mentioned case before their Lordships, and it was held that non-payment of costs, does not entail the dismissal of the suit. Order XVII rule (1) of the CPC provides that the court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or to any of them and may from time to time adjourn the hearing of the suit for the reasons to be recorded in writing. Rule (2) of this order provides that in every such case the court shall fix a day for the further hearing of the suit and shall make such order as to cost occasioned by the adjournment or such higher costs as the court deem fit.

Section 35 B, of CPC provides that if costs are levied on the plaintiff for causing delay, payment of such costs shall be a condition precedent on the next date of hearing, to the further prosecution of the suit by the plaintiff. On the other hand if defendant has been directed to pay for causing delay, payment of costs shall be a condition precedent on the next date of hearing to the further hearing to the further defence of the suit by the defendant.

The words "further prosecution of suit" and "further prosecution of defence" means that the defaulting party is prohibited from further participating in the suit. Such defaulting party will not be permitted to produce further evidence or address arguments. It is not the intention of the Legislature that the suit should be dismissed in case the plaintiff fails to pay costs or the defense should be struck off and suit be decreed if the defendant fails to pay costs. If the legislature intended such scheme of things they would have said so.

It cannot, therefore, be said that on non-payment of costs, the suit has to be dismissed. In such a situation, the right of the defaulting party to further participate in the suit is closed and the other party will be permitted to place his evidence and address arguments, and the court will then decide that matter in accordance with law.

(Sandeep Gandotra)
Munsiff, Kishtwar

Quote : After all, function of the Criminal Court is administration of Criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.
-Rajendra Prasad v. Narcotic Cell, (1996)6 SCC 110.

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