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Topic of the Month

"A judge has to be possessed of excellence not only from within but he should also visibly display the functional excellence which is necessary to fulfil the constitutional promise of justice by the judiciary as a whole. Four qualities are needed in a judge which are symptomatic of functional excellence. They are : (i) Punctuality (ii) Probity (iii) Promptness; and (iv) Patience.

Justice Hidayatullah has placed observance by judges of the punctuality of time on a very high pedestal. According to him a judge who does not observe punctuality of time does not believe in rule of law.

Probity is uprightness; moral integrity, honesty.

According to Justice V.R. Krishna Iyer the judges who do not pronounce judgment in time commit turpitude. He notes with a sense of sorrow - "It has become these days, for the highest to the lowest courts' judges, after the arguments are closed, take months and years to pronounce judgments even in interlocutory matters - a sin which cannot be forgiven, a practice which must be forbidden, a wrong which calls for censure or worse".

Lord Denning puts it mildly by way of terndering good advice for a new judge. He says that when judgment was clear and obvious it was for the benefit of the parties and the judge himself that judgment should be delivered forthwith and without more *ado*. Though, the art is difficult and requires great skills but practice can enable perfection. However, not all judgments can be delivered ex tempore; there are cases in which doubts are to be cleared, law has to be settled and conflicts are to be resolved either by performing the difficult task of reconciling or the unpleasant task of overruling. Such judgments need calm and cool thinking and deep deliberations. Such judgments must be reserved but not for an unreasonable length of time."

('Taken from Ist M.C. Setalvad Memorial Lecture delivered by Hon'ble Shri Justice R.C. Lahoti, Former Chief Justice of India delivered on 22-02-2005.)

SOME RECENT SUPREME COURT JUDGMENTS OF PUBLIC IMPORTANCE
(Delivered from 01-10-2009 to 31-12-2009)

1. On 9th October, 2009, a two Judges Bench in Revajeetu Builders and Developers v. Narayan Swamy and Son and Ors. [Civil Appeal No. 6921 of 2009] observed that while deciding applications for amendments, "the courts must not refuse bona fide, legitimate, honest and necessary amendments" but "should never permit mala fide, worthless and/or dishonest amendments".

The Bench held that the "first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the courts' discretion in grant or refusal of the amendment. The other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to other side".

"The Courts have very wide discretion in the matter of amendment of pleadings but court's powers must be exercised judiciously and with great care", said the Bench.

2. On 22nd October, 2009, a two Judges Bench in Alagarsamy and Ors. V. State by Deputy superintendent of Police [Criminal Appeal No. 1984 of 2008] held that "the FIR is not a be-all and end-all of the matter, though it is undoubtedly, a very important document".

"In most of the cases, the FIR provides corroboration to the evidence of the maker thereof. It provides a direction to the Investigating Officer and the necessary clues about the crime and the perpetrator thereof. True it is that a concocted FIR, wherein some innocent persons are deliberately introduced as the accused persons, raises a reasonable doubt about the prosecution story, however, a vigilant, competent and searching investigation can despoil all the doubts of the Court and on the basis of the evidence led before the Court, the Court can weigh the inconsistencies in the FIR and the direct evidence led by the prosecution. It is not a universal rule that once FIR is found to be with discrepancies, the whole prosecution case, as a rule, has to be thrown. Such can never be the law", the Bench said.

3. On 30th October, 2009, a two Judges Bench in Ms. Celina Coelho Pereira and Ors. V. Ulhas Mahabaleshwar Kholkar and Ors. [Civil Appeal No. 7258 of 2009] summarized the legal position on eviction of tenant on the ground of sub-letting as follows :-

(I) "In order to prove mischief of subletting as a ground for eviction under rent control laws, two ingredients have to be established, (one) parting with possession of tenancy or part of it by tenant in favour of a third party with exclusive right of possession and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.

(II) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to subletting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant.

(III) The existence of deed of partnership between tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.

(IV) If tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.

(V) Initial burden of providing subletting is on landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.

(VI) In other words, initial burden lying on landlord would stand discharged by adducing prima facie proof of the fact that a party other than tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted".

The Bench said that "if the purpose of constituting partnership by the tenant is ostensible and a deed of partnership is drawn to conceal the real transaction of subletting in a given case, the court may

be required to tear the veil of partnership to find out the real nature of transaction entered into by the tenant and in such circumstances the evidence let in by the landlord cannot be ignored on the ground that there is some variance between pleading and proof".

4. On 6th November, 2009, a two Judges Bench in Rasiklal Dalpatram Thakkar v. State of Gujarat and Ors. [Criminal Appeal No. 2041 of 2009] examined the question as to whether in regard to an order passed under Section 156(3) Cr.P.C., The police authorities empowered under Sub-Section (1) of Section 156 can unilaterally decide not to conduct an investigation on the ground that they had no territorial jurisdiction to do so. The Bench held that "the powers vested in the Investigating Authorities, under Sections 156(1) Cr.P.C., did not restrict the jurisdiction of the Investigating Agency to investigate into a complaint even if it did not have territorial jurisdiction to do so". "Unlike as in other cases, it was for the Court to decide whether it had jurisdiction to entertain the complaint as and when the entire facts were placed before it" said the Bench.

5. On 2nd December, 2009, a three Judges Bench in Dr. Gulshan Prakash and Ors. V. State of Haryana [Civil Appeal No. 7964 of 2009] examined the issue of reservation of seats for Scheduled Caste/Scheduled Tribe/Other Backward Class candidates in admission to educational institutions at the Post Graduates level. The Bench held that "the State Government is the best judge to grant reservation for SC/ST/Backward Class categories at Post Graduate level in admission". The Bench said that "every State can take its own decision with regard to reservation depending on various factors".

6. On 4th December, 2009, a two Judges Bench in Shabana Bano v. Imran Khan [Criminal Appeal No. 2309 of 2009] held that "even if a Muslim woman has been divorced, she would be entitled to claim maintenance from her husband under Section 125 of Code of Criminal Procedure after the expiry of period of *iddat* also, as long as she does not remarry". "The amount of maintenance to be awarded under Section 125 of the Code of Criminal Procedure cannot be restricted for the *iddat* period only", said the Bench.

7. On 10th December, 2009, a two Judges Bench in Ramraj @ Nanhoo @ Binhu v. State of Chattisgarh [Special Leave Petition (Criminal) No. 4614 of 2006], on a conjoint reading of Section 45 and 47 of the Indian Penal Code and Sections 432, 433 and 433-A of the Code of Criminal Procedure, held that "a convict awarded life sentence has to undergo imprisonment for at least 14 years".

"While Sections 432 and 433 of the Code of Criminal Procedure (CrPC) empowers the appropriate Government to suspend, remit or commute sentences, including a sentence of death and life imprisonment, a fetter has been imposed by the legislature on such powers by the introduction of Section 433-A into CrPC by the Amending Act of 1978. By virtue of the *non-obstante* clause used in Section 433-A Cr.P.C., The minimum term of imprisonment in respect of an offence where death is one of the punishments provided by laws or where a death sentence has been commuted to life sentence, has been prescribed as 14 years", said the Bench.

The Bench said that "in no case, with the possible exception of the powers vested in the President under Article 72 of the Constitution and the power vested in the Governor under Article 161 of the Constitution, even with remissions earned, can a sentence of imprisonment for life be reduced to below 14 years. It is thereafter left to the discretion of the concerned authorities to determine the actual length of imprisonment having regard to the gravity and intensity of the offence".

8. On 15th December, 2009 a two Judges Bench in Sharda v. State of Rajasthan [Criminal Appeal No. 699 of 2008] while elucidating the law on admissibility of dying declaration held that "it is not an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated". "The rule requiring corroboration is merely a rule of prudence", said the Bench.

9. On 17th December, 2009, a two Judges Bench in Dwarika Prasad v. Nirmala and Ors. [Civil Appeal No. 8407 of 2009] held that "in a suit for partition of the joint properties every defendant is also in the capacity of the plaintiff and would be entitled to decree in his favour, if it is established that he has the share in the properties". In the instant case, the Bench accordingly held that the "suit for partition of the joint properties, filed by the late father of respondent No. 1, could not have been dismissed as withdrawn without notice to another brother, who was also entitled to share in the properties".

(Source : Website of Supreme Court of India)

NEWS AND VIEWS

Two Addl. Judges of the High Court of Jammu & Kashmir sworn in as Permanent Judges

Hon'ble Shri Justice Sunil Hali and Hon'ble Shri Justice Muzaffar Hussain Attar, sworn in as

permanent Judges of the High Court of Jammu and Kashmir. Oath ceremony, in this behalf, was held in the High Court of Jammu and Kashmir at Jammu on 5th of March, 2010. Oath of office was administered by Hon'ble Shri Justice Barin Ghosh, Chief Justice, High Court of Jammu and Kashmir.

Hon'ble the Chief Justice while administering oath to Hon'ble Shri Justice Sunil Hali

The oath ceremony was attended among others by the sitting and former Judges of the High Court, Judicial Officers of the District Judiciary of Jammu, Members of the Bar and officers/officials of the High Court.

Hon'ble the Chief Justice while administering oath to Hon'ble Shri Justice Muzaffar Hussain Attar

With the appointment of Justice Sunil Hali and Justice Muzaffar Hussain Attar as permanent Judges of the State High Court, the strength of permanent Judges has risen to eight.

Justice Sunil Hali did his early education in C.M.S. Tyndale Bisco School, Srinagar. Passed B.Sc. and L.L.B. through Jammu University. Started practice in Jammu Courts and shifted to Srinagar in 1977. Started working in the office of Late Shri P.L.Handoo (Advocate) and established himself as good Lawyer particularly on the writ side. Elevated as Additional Judge of High Court of Jammu and Kashmir on 15.03.2008.

Justice Muzaffar Hussain Attar, did his graduation from Anantnag College in 1975 and LLB in 1977. Enrolled as pleader in 1977 and as Advocate in 1981. Appointed as Special Public Prosecutor in various cases. Remained Additional Advocate General from 1997 to 2002. Elevated as Additional Judge of High Court of Jammu and Kashmir on 05.11.2008.

Rape victim's testimony not always gospel truth : SC

The Supreme Court has held that in rape cases the testimony of the victim cannot be considered to be the gospel truth, though in normal circumstances her statement has to be relied upon.

A Bench of Justices H.S. Bedi and J. M. Panchal said, while primacy has to be given to victim's statement, there can be no presumption that she is telling the ultimate truth as the charge has to be proved "beyond reasonable doubt" as in any other criminal case.

(Times of India /14.02.2010)

Courts can order CBI probe without states' consent : SC

The Supreme Court upheld the constitutional validity of courts' powers to order CBI probe without the consent of state governments with a rider that this should be used cautiously and sparingly.

In a unanimous verdict, a five-judge Constitution Bench headed by Chief Justice K.G. Balakrishnan said such powers have to be exercised cautiously by the Apex court and the High Courts.

(Hindustan Times/17.02.2010)

No divorce in a hurry : SC

The Supreme Court snubbed a young and highly qualified couple for seeking quick annulment of their marriage and abusing the process of law by filing two parallel divorce proceedings in Gurgaon and Delhi.

A Bench of Justice Aftab Alam and Justice B.S. Chauhan dismissed their plea to waive the statutory six-month period to move the second motion for divorce by mutual consent. The husband had challenged a Delhi court's order refusing to do so.

(Hindustan Times/16.02.2010)

LEGAL JOTTINGS

Legal briefs from Supreme Court

(Case No: Cr. Appeal No. 1057 of 2002)
Darshan Singh v. State of Punjab & Anr.
Date of Decision : 15.01.2010.
Judge(s): Hon'ble Mr. Justice Dalveer Bhandari and Hon'ble Mr. Justice Ashok Kumar Ganguly

Subject Index : Indian Penal Code, 1860 - Sections 96, 97 and 100 - Right of private defence - dispute regarding partition of land between both the parties which led to the unfortunate incident resulting into death of the deceased when appellant fired from his licensed gun - the factum of the incident not denied by the accused and claimed right of private defence - Trial Court held - the presence of both eye-witnesses PW7 and PW8 at the time of alleged occurrence highly doubtful as no pellet recovered from the injuries of these witnesses and thus, the possibility of these injuries on their person having been fabricated at a later stage cannot be ruled out - Trial Court further held that the possibility of the injuries having been caused to deceased by the appellant in exercise of private defence cannot ruled out, thus, benefit given to the accused and acquitted him of all the charges - High Court reversed the trial Court's judgment of acquittal and convicted the accused - Appeal - Held - when a shot was fired from a 12-bore gun and if no pellet was recovered, then the trial court rightly concluded that the injuries were not caused by a fire arm. As per the facts of the case, the appellant had the serious apprehension of death or at least the grievous hurt when he exercised his right of private defence to save himself. The role attributed to the appellant fully covered by his right of private defence - impugned judgment of the High Court set aside and that of the trial Court restored - appeal allowed - Accused acquitted.

(Case No : Criminal Appeal No(s). 836 of 2005)
Aftab Ahmad Anasari v. State of Uttaranchal
Date of Decision : 12.01.2010.
Judge(s): Hon'ble Mr. Justice J.M. Panchal and Hon'ble Mr. Justice T.S. Thakur.

Subject Index: Indian Penal Code, 1860 - Sections 302, 376 and 201 - Rape, murder and causing disappearance of evidence - Trial Court convicted the appellant for commission of rape and murder of a minor girl aged 5 years and imposed penalty of death sentence under Section 302 R.I., for life under Section 376 with fine of Rs. 10,000 and R.I. for 7 years with fine of Rs. 5,000/- u/s 201, IPC - High Court affirmed the conviction of the appellant but modified the death penalty for the sentence to R.I. for life - Appeal - Not disputed that the deceased was subjected to rape and died a homicidal death, testimony of the PW2 satisfactorily proved that the appellant was found fleeing from near the place where the dead body was found lying, prosecution proved that the frock and underwear, recovered from the house of DW1 pursuant to the voluntary disclosure statement made by the appellant, belonged to the deceased. Held - the extra judicial confession made by the appellant before the Investigating Officer (PW5) and referred to by the prosecution witness as reliable - the chain of circumstantial evidence complete and conclusive in establishing the guilt of the appellant. Appeal dismissed.

(Case No: Criminal Appeal No. 1418 of 2004)
Bengai Mandal @ Begai Mandal v. State of Bihar
Date of Decision : 11.01.2010.
Judge(s): Hon'ble Mr. Justice V.S. Sirpurkar and Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Indian Penal Code, 1860 - Sections 302, 326, 452 read with 34 - Trial Court convicted appellant and sentenced him to imprisonment for life for throwing acid over the deceased which caused blisters and rashes on her body and later led to her death - High Court upheld the decisions of the trial Court - Appeal - Evidence of the prosecution witnesses corroborates the dying declaration of the deceased - Dying declaration on record clearly established that the appellant was present at the time and scene of the offence - Held - in absence of any active role played by the appellant or overt act being done by the appellant, it cannot be said that the appellant had accompanied the accused no.1 to the house of the deceased with a common intention to murder the deceased, thus, the appellant acquitted from charge u/s 302 but convicted u/s 326 for intending to cause injury and disfigurement of the deceased - Appellant underwent RI for 7 years, thus, quantum of sentence reduced to the period already undergone - Appeal partly allowed.

(Case No: Cr. Appeal No. 72 of 2010 with Cr. Appeal Nos. 73, 74, 75, 76, 77 and 78 of 2010)

M/s. Mandvi Co-op Bank Ltd. V. Nimesh S. Thakore

Date of Decision : 11.01. 2010.

Judge(s): Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Dr. Justice Aftab Alam.

Subject Index: Negotiable Instruments Act, 1881 - Section 145 - Evidence of affidavit - Complaint on Dishonoured cheque - Whether the right of the accused is limited to cross-examine any person giving evidence on affidavit or is it open to the accused to insist that notwithstanding the evidence earlier given on affidavit, on coming to the court the complainant or his witness should first depose in examination-in-chief before being cross-examined by him? Whether the provisions of sub-sections (1) and (2) of section 145 of the Act would apply to proceedings that were pending on February 6, 2003, the date on which those provisions were inserted in the Act? - Yes - Whether the right to give evidence on affidavit as provided to the complainant under section 145(1) of the Act is also available to the accused? - No - accused fully protected u/s 145(2) of the Act - Held that the affidavit of the person so summoned is already on the record is obviously in the nature of examination-in-chief. Hence, on being summoned on the application made by the accused the deponent of the affidavit can only be subjected to cross-examination as to the facts stated in the affidavit. Held - High Court not justified in holding that there was no express bar in law against the accused giving his evidence on affidavit, as it is not permissible for the court to make additions in the law and to read into it something that is just not there. Further held that in case of Dishonoured cheque, there may be likelihood that the defence would lead other kinds of evidence to rebut the presumption that the issuance of the cheque was not in the discharge of any debt or liability, therefore, wrong to equate the defence evidence with the complainant's evidence and to extend the same option to the accused as well - impugned order of the High Court allowing the accused to tender his evidence on affidavit set aside.

(Case No: Cr. Appeal No. 46 of 2010 with Cr. Appeal No. 47 of 2010)

Tameeshwar Vaishnav v. Ramvishal Gupta

Date of Decision : 18.01.2010.

Judge(s): Hon'ble Mr. Justice Altamas Kabir and Hon'ble Mr. Justice G.S. Singhvi.

Subject Index: Negotiable Instruments Act, 1881 - Sections 138 and 142 - Limitation period - Two cheques issued in favour of the respondent were dishonoured on the ground of insufficient funds - Respondent issued notices u/s 138(b) asking the Appellant to make payment of the cheque amounts within 15 days to which appellant not responded, second notice sent. No response received, the respondent filed 2 separate complaints u/s 142 - Magistrate issued process. High Court affirmed the orders of the Magistrate - Appeal - held that clause (c) of Section 138 provides that if the drawer of the cheque fails to make the payment of money to the payee within 15 days of receipt of the said notice, the payee or the holder of the cheque may file a complaint under Section 142 of the Act in the manner prescribed. Therefore, complaints were filed beyond the period of limitation. Order of the Magistrate and of the High Court set aside - Appeal allowed.

Legal briefs from High Court of J&K

[This new section is being added from this issue on the popular demand of Judicial Officers.]

1. Probate can be granted only to an executor of the Will as appointed by the testator. Where no exeucotr has been appointed, the beneficiers cannot seek the same from court. (Thoru Ram v. Rattan Lal & Ors., AIR 2010 J&K 1).

2. Eligibility fixed on basis of per chance qualification which depends upon fortune is illegal and bad in law. (Dr. Anuradha Bharti & anr. v. Sate of J&K & Ors., AIR 2010 J&K 3).

3. In a suit for damages on the basis of libellous statement published in newspaper, suit cannot be thrown out for the same having been filed in *forma pauperis*. Held - Respect and reputation of a person is dependent on how much wealth he has accumulated - such an assumption is unreasonable. (Mushtaq Ahmed Mir v. Akash Amin Bhat, AIR 2010 J&K 11).

4. Section 52 of the Transfer of Property Act, transfer of right in the immovable property during the pendency of the suit is barred under the principle of lis pendens. Any such transfer is non-est in the eyes of law. (Sunder Lal Bhatia v. Charan Lal Bhatia, AIR 2010 J&K 16).

5. Person obtaining Medical qualification granted by any medical institution in any country outside India, is required to undergo qualifying

screening test under the provisions of Section 13 (4-A) of Medical Council Act. (Mohd. Obaid & anr. v. Union of India & Ors., AIR 2010 J&K 18).

6. Memorandum of Appeal not accompanied by certified copy of decree sheet - appeal not maintainable. (Digvijay Singh v. Mahavir Gupta, AIR 2010 J&K 21).

7. Extension of time under Section 148 - Even though time originally permitted by the court to file amended plaint under Order 6 Rule XVIII has already expired, the same can be extended by court in its discretion. (Om Parkash v. Mata Vaishno Devi Shrine Board, Katra, AIR 2010 J&K 29).

8. Under Order 16 Rule 1 filing of list of witnesses within 15 days - word 'shall' mentioned in the provision is directory in nature and not mandatory. Court in its discretion, can extend time for production of list of witnesses if sufficient cause is shown. (Jai Krishan Basotra & Anr. v. Smt. Santosh Gupta, AIR 2010 J&K 32).

9. Framing of Issues - Issues are framed only where the parties are at variance. Where the defendants have already admitted the claim of plaintiff, there is no need of framing of Issues. (Ajesh Gupta v. Bupinder Singh, 2010 JKJ (HC)(1) 26).

10. General Power of Attorney authorizing - attorney to do all lawful act, deeds and things whatever shall be required, by the said Attorney from time to time in respect of certain land on the basis of said authorization the attorney holder would file a suit in the nature of mandatory injunction commanding the defendants to demolish the structure so raised on such land. (Shafat Ahmed Zaroo & Anr. v. Sharana Pal Singh, 2010 JKJ(HC)(1) 105).

11. Order 10 Rule 4 Code of Civil Procedure - Striking out defence - refusal or inability of Advocate to answer shall not entail striking out of defendants unless the court finds that there is a material question relating to suit that has to be answered by the said party or his Advocate, and the Advocate refuses or is unable to answer such question (Sandeep Kour v. Bajinder Singh, 2010 JKJ(HC)(1) 371).

12. Limitation Act Section 5 Condonation of delay - State is at par with an ordinary litigant, it cannot be given any preferential treatment. Provisions are not discriminatory and have to be applied uniformly. (State of J&K & Anr. v. Amir-ud-din Baba, 2010 JKJ(HC)(1) 376).

13. Section 204 CrPC Issuance of process Section presupposes that the Magistrate should be prima facie satisfied that the material before Magistrate discloses commission of an offence and once such satisfaction is recorded, the Magistrate is to proceed in the matter. (Gh. Nabi Shah v. Mohd. Amin Bhat, 2010 JKJ(HC)(1) 381).

14. Compassionate Appointment Rules - A person who seeks appointment on compassionate grounds cannot stake claim to the post of his choice. (Imtiyaz Ahmed Malik v. State & Ors, 2010 JKJ(HC)(1) 142).

15. Prevention of corruption Act - Employee of the cooperative society are public servants. (Mohd. Shafi Dar & Anr. v. State & Ors., 2010 JKJ(HC)(1) 603).

16. Restoration of appeal Revival of stay order Interim stay order is not automatically revived on restoration of appeal, especially when the interim order was specifically vacated by the Court on dismissal of appeal in default. (Kaki Devi v. Karan Singh & Ors. 2010 JKJ(HC)(1) 165).

17. Environment Protection Laws It is the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. (Mangu Ram & Ors. v. State & Ors. 2010 JKJ(HC)(1) 647).

18. Section 26 & 27 Evidence Act - Recovery of stolen goods - Disclosure statement - if the information leads to a discovery, only that much of information may be proved, which led to discovery, was, therefore, required to be independently proved. (Mohd. Sadiq v. State of J&K & Ors., 2010 JKJ(HC)(1) 298).

19. Registration Act Section 49 / Transfer of Property Act Section 138 - Neither under Transfer of Property Act nor under Registration Act, instrument by which there is surrender of tenancy, is required to be registered. (Kuldeep Singh & Anr. v. Prithipal Singh & Anr, 2010 JKJ(HC)(1) 308).

CASE COMMENTS

Alagarsamy Lagarsamy & Ors.
versus
State by Deputy Superintendent of Police
2010 Cr. L.J. 29

FIR is an important document, so far as the trial of criminal cases is concerned. It is foundation of the investigation and the trial. Whole lot of prosecution case depends on the nature and the contents of the FIR. An FIR is expected to contain sufficient details of the occurrence but does not require presentation of photographic image thereof.

Although an FIR bereft of requisite details is fatal for prosecution case, it is not required to contain every minute detail which may be ratified during investigation at later stage. Promptness in recording an FIR inspires confidence but delayed FIR with proper explanation for such delay, is equally valid document.

Hon'ble Supreme Court in the above mentioned case has examined the scope and nature of FIR. The observations of the Hon'ble Court are reproduced hereunder:

"17. The FIR is not a be-all and end-all of the matter, though undoubtedly, a very important document. In most of the cases, the F.I.R. provides corroboration to the evidence of the maker thereof. It provides direction to the Investigating Officer and the necessary clue about the crime and the perpetrator thereof. True it is that a concocted F.I.R., wherein some innocent persons are deliberately introduced as the accused persons, raises a reasonable doubt about the prosecution story, however, a vigilant, competent and searching investigation can despoil all the doubt of the Court and on the basis of the evidence led before the Court, the Court can weigh the inconsistencies in the F.I.R. and the direct evidence led by the prosecution. It is not a universal rule that once F.I.R. is found to be with discrepancies, the whole prosecution case, as a rule, has to be thrown. Such can never be law."

(Manjit Singh Manhas)
Sub-Registrar, Srinagar

Pannayar
versus
State of Tamil Nadu by Inspector of Police
AIR 2010 SC 85

In the order of examination of the witnesses, re-examination is also recognized as an important tool in the hands of the party producing the witness. Examination-in-chief and cross-examination of the witnesses is allowed as a routine but the same is not applicable to the re-examination. The party cannot ask for re-examination as a matter of right. Permission of Court is needed for re-examination. Court can permit re-examination of the witness if there is some doubt created in cross-examination which may be clarified through re-examination. Party cannot be allowed to fill up the lacunae in the examination-in-chief by resorting to re-examination. Only those things can be allowed to be asked in re-examination which have been introduced in cross-examination and have bearing on the matter in question, which were not expected at the time of examination-in-chief. Those questions which are totally un-connected with the facts introduced in cross-examination, cannot be asked in re-examination.

The Hon'ble Supreme Court, in the case under discussion, has made the following observations in this regard:

"10. …….. The purpose of re-examination is only to get the clarifications of some doubts created in the cross-examination. One cannot supplement the examination-in-chief by way of a re-examination and for the first time, start introducing totally new facts which have no concern with the cross-examination. ……"

(Yash Paul Sharma)
Munsiff, Mendhar

Abdul Rahim & Ors. v. SK. Abdul Zabar
AIR 2010 SC 211

The Hon'ble Supreme Court has laid down the principle regarding the requisite conditions to make a valid and complete gift under Muslim Law, in the case titled "Abdul Rahim & ors. v. Sk. Abdul zabar & ors." reported as "AIR 2010 SC 211". It is worthwhile to quote the observations of the Hon'ble Court.

"The conditions to make a valid and complete gift under the Muslim Law are as under:

(a) The donor should be sane and major and must be the owner of the property which is gifted.

(b) The thing gifted should be in existence at the time of hiba.

(c) If the thing gifted is divisible, it should be separated and made distinct.

(d) The thing gifted should be such property to benefit from which is lawful under Shariat.

(e) The thing gifted should not be accompanied by things not gifted; i.e. should be free from things which have not been gifted.

(f) The thing gifted should come in the possession of the donee himself, or of his representative, guardian or executor.

If by reason of a valid gift the thing gifted has gone out of the donee's ownership, the same cannot be revoked."

It has been further held by the Hon'ble Court that the transfer of constructive possession, of the gifted property, would subserve the requirement of law and there is no requirement of transfer of actual possession.

(Khalil Ahmed Choudhary)
Chief Judicial Magistrate, Rajouri

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