SJA NEWSLETTER

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Topic of the Month

"The principle of independence of the judiciary is not an abstract conception but it is a living faith which must derive its inspiration from the constitutional charter and its nourishment and sustenance from the constitutional values. It is necessary for every Judge to remember constantly and continually that our Constitution is not a non-aligned national charter. It is a document of social revolution which casts an obligation on every instrumentality including the judiciary, which is a separate but equal branch of the State, to transform the status quo ante into a new human order in which justice, social, economic and political will inform all institutions of national life and there will be equality of status and opportunity for all. The judiciary has therefore a socio-economic destination and a creative function. If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective.

Judges should be of stern stuff and tough fibre, unbending before power, economic or political, and they must uphold the core principles of the rule of law which says "Be you ever so high, the law is above you". This is the principle of independence of the judiciary which is vital for the establishment of real participatory democracy, maintenance of the rule of law as a dynamic concept and delivery of social justice to the vulnerable sections of the community. It is this principle of independence of the judiciary which must be kept in mind while interpreting the relevant provisions of the Constitution.

Independence of judiciary under the Constitution has to be interpreted within the framework and the parameters of the Constitution. There are various provisions in the Constitution which indicate that the Constitution has not provided something like a "hands of attitude" to the judiciary.

Undoubtedly judiciary, the third branch of the Government cannot act in isolation..... The judiciary like any other constitutional instrumentality has, however, to act towards attainment of constitutional goals.

(Taken from 'S. P. Gupta v. President of India', AIR 1982 SC 149.)

SOME RECENT SUPREME COURT JUDGMENTS OF PUBLIC IMPORTANCE (Delivered from 01-01-2010 to 31-03-2010)

1. On 20th January, 2009, a two Judges Bench in Jai Singh and Ors. v. Gurmej Singh [Civil Appeal No. 321 of 2009] summarized principles relating to inter-se rights and liabilities of co-sharers as follows:- (1) A co-owner has an interest in the whole property and also in every parcel of it; (2) Possession of joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession; (3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all; (4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies, that of the other; (5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment; (6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners and (7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition. The Bench held that "when a co-sharer is in exclusive possession of some portion of the joint holding he is in possession thereof as a co-sharer and is entitled to continue in its possession if it is not more than his share till the joint holding is partitioned. Vendor cannot sell any property with better rights than himself. As a necessary corollary when a co-sharer sells his share in the joint holding or any portion thereof and puts the vendee into possession of the land in his possession what he transfers is his right as a co-sharer in the said land and the right to remain in its exclusive possession till the joint holding is partitioned amongst all co-sharers."

2. On 21st January, 2009, a two Judges Bench in Ranveer Singh v. State of M.P. [Criminal Appeal No.115 of 2009] observed that "the right of private defence is essentially a defensive right circumscribed by the governing statute i.e. the IPC, available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed as a pretext for a vindictive, aggressive or retributive purpose of offence. It is a right of defence, not of retribution, expected to repel unlawful aggression and not as retaliatory measure. While providing for exercise of the right, care has been taken in IPC not to provide a mechanism whereby an attack may be a pretence for killing." "A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived", the Bench said.

3. On 2nd February, 2009, a two Judges Bench in State of M.P. v. Kashiram & Ors. [Criminal Appeal No. 191 of 2009] held that "the Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong." "The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should respond to the society's cry for justice against the criminal", the Bench said.

4. On 17th February, 2009, a two Judges Bench in Martin F. D' Souza v. Mohd. Ishfaq [Civil Appeal No.3541 of 2002] held that "the Courts and Consumer Fora are not experts in medical science, and must not substitute their own views over that of specialists". Observing that the "medical profession has to an extent become commercialized and there are many doctors who depart from their Hippocratic Oath for their selfish ends of making money", the Bench however held that "the entire medical fraternity cannot be blamed or branded as lacking in integrity or competence just because of some bad apples." "Sometimes despite their best efforts the treatment of a doctor fails. For instance, sometimes despite the best effort of a surgeon, the patient dies. That does not mean that the doctor or the surgeon must be held to be guilty of medical negligence, unless there is some strong evidence to suggest that he is", the Bench said.

5. On 24th February, 2009, a two Judges Bench in Vadiraj Naggappa Vernekar (D) Through Lrs. v. Sharad Chand Prabhakar Gogate [Civil Appeal No. 1172 of 2009] held that "the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been

recorded but to clear any ambiguity that may have arisen during the course of his examination." "If the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the Trial Court to permit recall of such a witness for re-examination-in-chief with permission to the defendants to cross-examine the witness thereafter", the Bench said.

6. On 3rd March, 2009, a two Judges Bench in Dilip Kumar Garg and another v. State of U.P. and others [Civil Appeal No.5122 of 2007] observed that "Article 14 of the Constitution should not be stretched too far, otherwise it will make the functioning of the administration impossible." The Bench held that the "administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions."

7. On 3rd March, 2009, a three Judges Bench in V. Laxminarasamma v. A. Yadaiah (Dead) & Ors. [Civil Appeal No. 1849 of 2002] held that the Special Tribunal/Special Court constituted under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 has the requisite jurisdiction to go into the question of adverse possession.

8. On 6th March, 2009, a two Judges Bench in Yumnam Ongbi Tampha Ibemma Devi v. Yumnam Joykumar Singh & Ors [Criminal Appeal No. 1600 of 2009] held that "having regards to the provisions of Section 68 of the Evidence Act and Section 63 of the Succession Act, a Will to be valid should be attested by two or more witnesses in the manner provided therein and the propounder thereof should examine one attesting witness to prove the will." "The attesting witness should speak not only about the testator's signature or affixing his mark to the will but also that each of the witnesses had signed the will in the presence of the testator", the Bench said.

9. On 6th March, 2009, a two Judges Bench in M.J. Jacob v. A. Narayanan and Ors. [Civil Appeal No.3611 of 2008] held that "election results should not be lightly set aside and the will of the electorate should ordinarily be respected."

10. On 20th March, 2009, a two Judges Bench in C. Elumalai & Ors. v. A.G.L. Irudayaraj & Anr. [Contempt Petition No. 118 of 2007] held that "punishing a person for contempt of Court is indeed a drastic step and normally such action should not be taken. At the same time, however, it is not only the power but the duty of the Court to uphold and maintain the dignity of Courts and majesty of law which may call for such extreme step." "If for proper administration of justice and to ensure due compliance with the orders passed by a Court, it is required to take strict view, it should not hesitate in wielding the potent weapon of contempt", the Bench said.

11. On 25th March, 2009, a two Judges Bench in Commissioner of Income-tax, New Delhi v. M/s Eli Lilly & Company (India) Pvt. Ltd. [Civil Appeal No. 5114 of 2007] held that "the TDS provisions in Chapter XVII-B relating to payment of income chargeable under the head "Salaries", which are in the nature of machinery provisions to enable collection and recovery of tax, forms an integrated Code with the charging and computation provisions under the Income Tax 1961 Act, which determines the assessability / taxability of "salaries" in the hands of the employee-assessee. Consequently, Section 192(1) has to be read with Section 9(1)(ii) read with the Explanation thereto. Therefore, if any payment of income chargeable under the head "Salaries" falls within Section 9(1)(ii) then TDS provisions would stand attracted."

(Courtesy : Website Supreme Court of India)

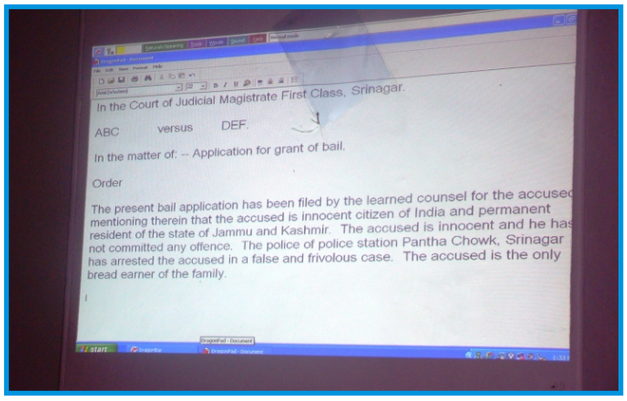
ACADEMY NEWS

Use of Computer and Information Technology is doing wonders in every sphere of life. Every organization is being benefitted by the extensive use of modern technology for its functioning. So far as Courts' working is concerned, there has been slow progress in use of modern tools and techniques which would facilitate the improvement of working conditions. Judiciary, under **e-courts** project, is working towards modernization by use of Information Technology.

Shri Manjit Rai while giving demonstration of Speech Software to the Judicial Officers

Speech technology is the latest facet of the Information Technology. This technology allows the user to communicate with computer by speaking to it. This substantially reduces dependence on external resources. It has two aspects : one being the control of

computer by voice command; second to write documents by dictating text to the computer. There are number of softwares available in the market which are based on speech technology. "Dragon Naturally Speaking" is one such software which has shown great results. Some of the Judges have been using this software to ease their judgment writing work. So far as J&K Judiciary is concerned, there are very few person who are effectively using this technology.



Presentation/demonstration of
Speech Software in progress

A programme was organized by the Jammu and Kashmir State Judicial Academy on 26th of May, 2010 at Srinagar, for the Judicial Officers posted at Head Quarter, Srinagar, to familiarize the Judicial Officers with speech technology and its utility in recording court orders and judgments.

Shri Manjit Rai, City Munsiff, Srinagar gave demonstration/presentation on the use of this software. Shri Rai himself has been using this software to write judgments, which has tremendously helped him to expedite the process of writing judgments and has reduced dependence on Steno-Typist substantially.

Judicial Officers attending the programme were wonderstruck to know the working of speech technology and the tremendous results it can produce in dispensation of justice. Judicial Officers showed keen interest in the use of speech technology. Some of the officers themselves tried it in the programme and came to know that by going through the training sessions, they can improve the speed and get perfection after regular use.

All the officers desired to have such Software which they could utilize for reducing time factor in dispensation of Justice.

Similar programmes will be organized by Academy in Jammu and other places to provide first hand experience to all the Judges about speech software.

NEWS AND VIEWS

Allahabad HC amends Rules regarding PILs

To keep a check on the frequent filing on Public Interest Litigations (PIL) in the Allahabad High Court and its Lucknow bench, the High Court has made an amendment in its rules, known as Allahabad High Court Rules, 1952.

After the amendment, sub rule 3-A in rule 1 of chapter 22 has been inserted, which mandates a petitioner to file an affidavit disclosing its credential among other things, while filing a PIL in the High Court.

Now, the petitioner, seeking to file a PIL will have to precisely and specifically state through an affidavit, to be sworn by him, giving his credentials and the public cause, he is seeking to espouse.

The petitioner will also have to give an affidavit that he has no personal or private interest in filing the PIL and also there was no authoritative pronouncement by the Supreme Court or High Court on the questions raised in the PIL. He would also say in the affidavit that the result of the litigation will not lead to any inducement to him or anyone associated with him or anyone undue loss to any person, body of persons or the state.

This amendment was made in the High Court rules, as the Supreme Court in its judgment delivered in the case of 'Uttaranchal versus Balwant Singh Chaufal' had observed that the court was frequently abused in the name of PIL. The Supreme Court, therefore, has directed all the High Courts to frame rules or prevent the same.

Amendments were made by the High Court on May 1 to achieve the objectives of the Supreme Court.

(UNI/14.05.2010)

SC directs Govt. to be firm against erring Public Officers

The Supreme Court has told the government to act firmly against public servants found negligent, callous and irresponsible in the discharge of their official duties and accountability must be fixed against such people and they must be brought to book.

A bench comprising Justices B Sudarshan Reddy and Swatanter Kumar, while directing the chairman of Allahabad Bank to take appropriate action against erring officers in accordance with the law, noted 'principle of public accountability' is applicable to such officers/officials with all its vigour.

'Greater the power to decide, higher is the

responsibility to be just and fair. The adverse impact of lack of probity in discharge of public duties can result in varied effects, not only in the decision making process but in the decision as well.

'Every public officer is accountable for its decision and actions to the public in the larger interest and to the state administration in its governance.

'It needs to be seen in effects and circumstances in this case, why and how the interest of the bank has been jeo-pardised, in what circumstances the loan was sanctioned and disbursed despite some glaring defects having been exposed in the appraisal report.' Justice Kumar, writing 56 page-judgment, further said, ' All these principles enunciated by the court over a passage of time clearly mandate that public officers are answerable for their inactions and irresponsible actions.

'What ought to have been done, if not done, responsibility should be fixed on erring officers, then alone the real public workers of an answerable administration would be satisfied.

'The doctrine of full faith and credit applies to the acts done by the officers and presumptive evidence of regularity of official acts done or performed, is opposite in faithful discharge of duties to elongate public purpose and to be in accordance with the procedure prescribed.' The apex court partly allowed the appeal of Eureka forbes Limited.

The copies of the judgment dated May 3, were made available to the media.

(UNI/06.05.2010)

State must pay compensation to land owners : SC

The Supreme Court has ruled that the state must pay compensation to the land owners expeditiously, whose land have been compulsorily acquired for public purpose.

A bench comprising Justices R V Raveendran and Swatanter Kumar also noticed ' An established maxim cast a duty upon the court to bring litigation to an end or at least ensure that if possible, no further litigation arises from the cases pending before the court in accordance with law.

This doctrine would be applicable with greater emphasis where the judgement of the court has attained finality before the highest court.

All other courts should decide similar cases, particularly covered cases, expeditiously in consonance with the law of precedents.

There should be speedy disposal of cases, particularly where the small land owners have been deprived of their small land holdings by compulsive acquisitions'.

Justice Kumar in his judgement for the bench further held that any unnecessary delay in payment of the compensation to them would cause serious prejudice and even may have adverse effect on their living.

The case was related to acquisition of 146 acres of land belonging to 419 claimants, for the constructions of Hemavethi Dam in Karnataka.

The Court fixed compensation at the rate at Rs 2,30,000 for wet/garden land and Rs 1,53,400 for the dry land.

The court also ruled that the land owners would be entitled to get statutory benefits on the enhanced compensation, expressing the hope that the state shall pay compensation to all the claimants without any further delay.

The court finally held 'Despite its might, state is expected to be a responsible and reluctant litigant as there is obligation upon the state to act fairly and for the benefit of the public at large and it will be in harmony with the principle of proper administration that state also takes decisions which would avoid unnecessary litigation.

(UNI/03.05.2010)

LEGAL JOTTINGS

Legal briefs from Supreme Court

(Case No: Cr. Appeal No. 186 of 2008 with Cr. Appeal No. 185 of 2008)

Ramesh Kumar versus State of Madhya Pradesh

Date of Decision : 07-05-2010.

Judge(s): Hon'ble Mr. Justice Harjit Singh Bedi and Hon'ble Mr. Justice C.K. Prasad.

Subject Index: Indian Penal Code, 1860 - Sections 342/34 and 302/34 - punishment of wrongful confinement and murder - conviction and sentence under - 4 accused including 2 appellants assaulted PW-4, PW-6 and the deceased with 'lathi' and 'danda' the injured victim died later on - the trial Court concluded that the prosecution had proved appellants' participation in the crime beyond all reasonable doubt. The High Court affirmed the said orders - appeal - Hon'ble Court observed that the injuries found on the person of the deceased do not indicate that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death. Further the weapon used for commission of the crime and the part of the body

chosen not being vital part of the body the conviction of the appellants under Section 302/34 is set aside and altered to Section 326/34 for causing grievous hurt by dangerous weapon in furtherance of their common intention - Sentenced to undergo imprisonment for a period of seven years - conviction & sentence under Section 342/34 maintained.

(Case No: Cr. Appeal No. 1020 of 2010)

Rangappa versus Sri Mohan

Date of Decision : 07-05-2010.

Judge(s): Hon'ble Chief Justice, Mr. Justice P. Sathasivam and Hon'ble Mr. Justice J.M. Panchal.

Subject Index: Negotiable Instruments Act, 1881 - Sections 138 and 139 - burden of proof in respect of dishonour of cheque - the accused requested the respondent-complainant for a hand loan the accused issued a cheque to the complainant for Rs. 45,000/- but the Bank handed over a return memo to the complainant stating that the `Payment has been stopped by the drawer' - the accused failed to honour the cheque within the statutorily prescribed period, thus, the complaint - the trial Court found some discrepancies in the complainant's version thus, acquitted the accused. However, the High Court reversed the trial court's decision. - Appeal - the defence of the appellant for the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the `stop payment' instructions to his bank. Furthermore, the instructions to `stop payment' had not even mentioned that the cheque had been lost Hon'ble Court held that there was a slight discrepancy in the complainant's version, as it was not clear whether the accused had asked for a hand loan, but the complaint discloses the prima facie existence of a legally enforceable debt or liability since the complainant has maintained that his money was used for the purpose for which loan was taken - Held no interference with the final orders of the High Court.

(Case No: Cr. Appeal No. 800 of 2007)

Utpal Das & Anr. versus State of West Bengal

Date of Decision : 07-05-2010.

Judge(s): Hon'ble Mr. Justice B. Sudershan Reddy and Hon'ble Mr. Justice Aftab Alam.

Subject Index: Indian Penal Code, 1860 Sections 376/34 - rape with common intention - conviction and sentence under - the trial Court held that prosecution failed to prove its case beyond reasonable doubt and accordingly acquitted all the accused of the charges framed against them. High Court reversed the acquittal orders. - Appeal - the contents of the FIR were never put to the victim and also the attention of the PW-14/prosecutrix had not been drawn to those parts of the FIR which according to appellants are not in conformity with her evidence the PW-6/rickshaw-puller stated that he was carrying a woman passenger in his rickshaw and on the way 4-5 young men at the point of knife directed him to divert his rickshaw and that one of them sat by the side of the girl in the rickshaw. Upon reaching near a house under construction he was asked by those men to leave the girl with them - Hon'ble Court held that the mere fact that no injuries were found on private parts of her body cannot be the ground to hold that she was not subjected to any sexual assault - the sequence of events apparent from the evidence, leading to the sexual assault completely rules out the possibility of consensual sex - the victim made no mistake in identifying the two appellants who committed rape on her on the fateful day appeal dismissed.

(Case No: Cr. Appeal No. 173 of 2007 with Cr. Appeal No. 174 of 2007)

Eknath Ganpat Aher & Ors. versus State of Maharashtra & Ors.

Date of Decision : 07-05-2010.

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

Subject Index: Indian Penal Code, 1860 Section 302 read with Section 149 - punishment of murder with unlawful assembly - conviction and sentence under a mob of about 75-100 persons came on the top of north side hill situated adjacent to the disputed land and the accused persons beat up the members of the complainant party with sticks, iron rods and swords and thereby seriously injuring two(deceased) and some other persons belonging to the complainant party - nine persons including four witnesses belonging to the complainant party, whereas as many as 14 accused persons received injuries including some who even suffered grievous injuries - a mob of 75-100 persons entered into a clash with the complainant party and not even a single witness including the injured witnesses specifically stated as to who had caused what injury either to the deceased or to the injured witnesses or to the accused - the Court below acquitted as many as 21 accused persons on the ground of no evidence against them in the offences alleged - Hon'ble Court held that the prosecution failed to produce evidence to specifically ascribe any definite role to any of the 14 appellants that they had inflicted any particular injury on any of the deceased or the injured witnesses - conviction/sentence orders of the Courts below set aside on the benefit of doubt.

(Case No: Cr. Appeal No. 963 of 2010 with Cr. Appeal Nos. 964-966 of 2010)

Damodar S. Prabhu versus Sayed Babalal H.

Date of Decision : 03-05-2010.

Judge(s): Hon'ble Chief Justice, Mr. Justice P. Sathasivam and Hon'ble Mr. Justice J.M. Panchal.

Subject Index: (A) Negotiable Instruments Act, 1881 - Sections 138/147 - compounding of the offence - the parties were involved in commercial transactions - dispute arose on account of the dishonour of five cheques issued by the appellant - the appellant prayed for the setting aside of his conviction by relying on the consent terms that have been arrived at between the parties - Hon'ble Court allowed the compounding of the offence and set aside the appellant's conviction. (B) Dishonour of cheques - Section 147 - the compensatory aspect of the remedy which should be given priority over the punitive aspect - no explicit guidance as to what stage compounding can or cannot be done and whether compounding can be done at the instance of the complainant or with the leave of the court - guidelines framed of imposing cost on parties for unduly delay in compounding of the offences.

(Case No: Civil Appeal No. 89 of 2010)

Vijay Kumar Sharma @ Manju versus Raghunandan Sharma @ Baburam & Ors.

Date of Decision : 01-05-2010.

Judge(s): Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice K.S. Radhakrishnan.

Subject Index: Civil Procedure Code, 1908 Order 7, Rule 11 - rejection of plaint - Arbitration and Conciliation Act, 1996 - Section 7 - Arbitration agreement - dispute between the parties for partition and possession of the portions of the suit premises respondent Nos. 2 and 3 filed an application u/s 8 of the Act, 1996 in relation to the declaration made by the deceased to resolve the dispute in connection with the Will through arbitration - trial Court dismissed the civil suits filed by the parties - appeal against the dismissal of civil suit, where as the first respondent filed an application for appointment of independent arbitrator - the designate of the Chief Justice allowed the said application and appointed an Arbitrator to resolve the disputes - appeal - no arbitration agreement u/s 7 of Act, 1996 between the parties validity of the Will is pending consideration in the two civil suits filed by the appellant and the first respondent - held that a unilateral declaration by a father that any future disputes among the sons be settled by an arbitrator named by him, cannot be considered as an arbitration agreement among his children who become parties to a dispute - impugned order appointing an Arbitrator set aside.

Legal briefs from High Court of J&K

(Case No. : CIMA No. 95/2005)

Janak Singh. v. State of J&K & Anr.

Date of Decision : 05-02-2010.

Judge(s): Hon'ble Mr. Justice Barin Ghosh, Chief Justice

Date of Decision : 05-02-2010.

Subject Index: Framing of charge - At the charge framing stage, the obligation of the Court is to see whether the allegations constitute an offence punishable and, if so, whether the same are supported by evidence sought to be relied in the charge sheet.

(Case No. : Cr. Revision No. 52/2000)

Mohd. Din v. Shabnam Akhtar

Date of Decision: 10.02.2010.

Judge(s): Hon'ble Mr. Justice Gh. Hasnain Massodi.

Subject Index: Section 488 Cr.P.C. - Appreciation of evidence - There is no rule of universal application that failure of a party to appear in the witness box must invariably lead to dismissal of the case set up by such party, irrespective of other evidence brought by such party on the file. The case set up by the party before the Court may succeed on the strength of evidence brought on the file even if the party himself /herself fails to appear in the witness box.

(Case No. : Cr. Revision No. 78/2004)

Gandharab Singh & Anr. v. State of J&K

Date of Decision: 10.02.2010.

Judge(s): Hon'ble Mr. Justice Gh. Hasnain Massodi.

Subject Index: Appreciation of evidence - The testimony rendered by prosecution witnesses cannot be held to be tainted with bias or partisan and discarded merely because prosecution witnesses are from a Government Department responsible to identify, apprehend and prosecute the offenders.

(Case No. : 561-A Cr.P.C. No.77/200)

Vikram Jamwal v. Geetanjali Rajput & Anr.

Date of Decision: 10.02.2010

Judge(s): Hon'ble Mr. Justice Gh. Hasnain Massodi.

Subject Index: Section 488 Cr.P.C. - The duty to maintain the child under Section 488 Criminal Procedure Code remains to be that of the father and in the event, the father is of the belief that any other person including the mother, independent of Section 488 Cr.P.C is under duty to maintain or contribute to maintenance of the child, it is for him to bring appropriate action against such person. But in no case can father wash his hands of the duty cast upon him

under Section 488 Cr.P.C. to maintain his minor child.

(Case No. : AA No.23/2005)

M/S Des Raj Nagpal Engineers & Contractors v. Union of India & ors.

Date of Decision: 05-04-2010.

Judge(s): Hon'ble Mr. Justice J.P. Singh.

Subject Index: Arbitration and Conciliation Act - The Arbitrator's jurisdiction to arbitrate on the claims referred to him for his Award depends primarily on his jurisdiction so to do……. Omission of the Arbitrator to rule on his jurisdiction is thus fatal to the Award, in that, unless he had opined on the issue and found him jurisdictionally competent to deal with the claims, his Award cannot but be said to be without jurisdiction.

(Case No. : C. Rev. No. 20/2009)

Budha Ram v. Rajeev Sharma

Date of Decision : 30-04-2010.

Judge(s): Hon'ble Mr. Justice Gh. Hasnain Massodi.

Subject Index: Order 26 Rule 9 CPC - this provision gives discretion to the court to issue a commission to such person as it things fit, direct him to make local investigation where the court deems such an investigation to be requisite or proper for the purpose of elucidating any matter in dispute. The aforesaid provision thus provides an important tool to the court to get the matter in controversy elucidated without allowing the parties to drag the proceedings endlessly…….. Order 26 Rule 9 is a tool that must be made use of as frequently as facts and circumstances permit so that instead of depending upon the parties to elucidate the matter in controversy which the parties at times are not interested in, the matter is got elucidated through a commission.

(Case No. : OWP No. 69/2002)

Bharat Sanchar Nigam Ltd. v. S. Gurmeet Singh

Date of Decision : 05-05-2010.

Judge(s): Hon'ble Mr. Justice Muzaffar Hussain Attar.

Subject Index: Consumer Protection Act/Indian Telegraph Act - when there is a special remedy provided in Section 7-B of the Indian Telegraph Act regarding disputes in respect of telephone bills, then the remedy under the Consumer Protection Act is by implication barred.

(Case No. : 561-A Cr.P. C. No. 119/2007)

Khem Raj v. State and anr.

Date of Decision: 20-05-2010.

Judge(s): Hon'ble Mr. Justice J.P. Singh.

Subject Index: Forest Act - A plain reading of Section 36-D of the Forest Act demonstrates that a Police Officer seizing any property under the provisions of the Forest Act, is required to have technical clearance of the Authorized Officer, only if a Complaint had to be lodged by such officer under Section 26 of the Act for confiscation of the seized property. The provisions of Section 36-D of the Forest Act when read in the light of the provisions pertaining to Penalties and Procedure appearing in Chapter VI of the Forest Act, indicate that technical clearance in terms of Section 36-D of the Forest Act would be relevant only for purposes relating to confiscation of the seized property and may not otherwise affect the factum of seizure of the forest property, in a trial based on such seizure made by the Police Officer, in a case indicating commission of cognizable offences.

CASE COMMENTS

Dharmbir v. State (NCT of Delhi) & Anr.
2010 (3) Supreme 423

Hon'ble Supreme Court has opined that relevant date for determining the age of the accused, who claims to be a juvenile, would be the the date on which the offence has been committed and not the date when he is produced before the authority or in the court.

Smt. Selvi & Anr v. State of Karnatka
2010 (3) Supreme 558

Hon'ble Supreme Court has held that no individual should be forcibly subjected to any of Scientific techniques, narco-analysis, polygraph examination and Brain Electrical Activation Profile (BEAP) test, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty. It comes into conflict with the "Right to fair trial".

Compulsory administration of any of the Scientific tests constitutes 'cruel, inhuman or degrading treatment' in the context of Article 21.

Munnawar & Ors. v. State of U.P. & Ors.
2010 (4) Supreme 1

Hon'ble Supreme Court has observed that save for very good reasons, dying declaration recorded by a Magistrate duly endorsed by doctor should not be discarded.

Adalat Pandit & Anr. v. State of Bihar
2010 (4) Supreme 18

Hon'ble Supreme Court has noted that on account of mere presence at the place of occurrence, persons cannot be held to be part of unlawful assembly and having common intention of committing an offence.

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