



J&K JUDICIAL ACADEMY e-NEWSLETTER



Official Newsletter of Jammu & Kashmir Judicial Academy

Volume 8

Monthly

January 2025



Patron-in-Chief

Hon'ble Mr Justice

Tashi Rabstan

Chief Justice

Governing Committee

Hon'ble Ms Justice

Sindhu Sharma

Chairperson

Hon'ble Mr Justice Javed Iqbal Wani

Hon'ble Mr Justice Rahul Bharti

Hon'ble Ms Justice Moksha Khajuria Kazmi

Hon'ble Mr Justice Mohammad Yousuf Wani

Members

Editor

Mrs. Sonia Gupta

Director

**Composed by
Ms. Vishali Razdan**

LEGAL JOTTINGS

"Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even reverential, attention of ordinary men."

**-Justice V.R. Krishna Iyer,
Former Judge, Supreme Court of India**

CONTENTS

From Editor's Desk2

Supreme Court Judgments.....3

High Court Judgments.....15

Research Column.....19



From the Editor's Desk

The infrastructure of the Indian judiciary plays a crucial role in ensuring the timely and efficient delivery of justice. The endeavours of Hon'ble Mr. Justice Tashi Rabstan, Chief Justice, High Court of Jammu and Kashmir and Ladakh, in making efforts to enhance judicial facilities, caterto the growing demands of the upgradation of infrastructure of the District and High Court. One of the most notable developments in recent times has been the Completion /Inauguration of new Court Complexes and Residential Quarters at Katra, Drass, Pahalgam, Gurez, Budgam, and other key areas of the J&K. While Some other Construction Projects (ongoing/ under construction) are there as well such as in Akhnoor, Billawar, Anantnag, Poonch, Sopore, Kathua, Kargil, Khaltsi etc making the total number of projects to 68.

The Jammu & Kashmir and Ladakh High Court has recognized the need to modernize its infrastructure and as part of this effort to address the increasing number of cases, extend the judiciary's reach to remote areas and provide citizens with better facilities. These new infrastructures are equipped with modern amenities, including spacious courtrooms, adequate waiting areas, improved technology, Vulnerable Witness Disposition Centers, creches, and virtual hearings as well as accommodation for Judges, to modernize and streamline its judicial infrastructure. The Residential enclaves attached to the Court Complexes are going to help in the long run as the decent living conditions will affect the working capacity of Judicial Officers positively. The upgrade aims to reduce case backlog, ensure quicker delivery of justice, and create a more efficient and accessible system for litigants and legal professionals. By constructing state-of-the-art court complexes in key locations, the judiciary is fostering transparency, efficiency, and increased public confidence in the legal system.

The Hon'ble Supreme Court has recently set a crucial precedent for the inclusion and dignity of marginalized groups by ordering the construction of accessible toilet facilities for women, specially-abled individuals, and transgender persons in court premises and tribunals nationwide. This decision underscores the broader understanding that access to sanitation goes beyond mere convenience—it is an essential aspect of human rights and is directly tied to an individual's right to life under Article 21 of the Indian Constitution. The Court affirmed that safe and hygienic environments are integral to uphold the dignity of all citizens, particularly those who have historically been excluded or neglected in public infrastructure. By explicitly focusing on the needs of women and transgender persons, this judgment addresses an often overlooked issue in public spaces, particularly within legal institutions that should symbolize justice and equality.

The Supreme Court's directive for state governments and union territories to allocate sufficient funds for the construction, maintenance, and cleanliness of these facilities signals a commitment to enforce not only legal rights but also basic human dignity for all those who engage with the judiciary.



SUPREME COURT JUDGMENTS

CRIMINAL

Citation: 2024 LiveLaw (SC) 1050

Special Leave Petition (Crl.) No. 6845 of 2024

Anil Kumar J. Bavishi v. Mahendra Kumar Jalan @ M.K. Jalan

Decided on: January 03, 2025

The Supreme Court held that for the offence of giving false evidence before a Tribunal, the only remedy is to file a private complaint, as the route of Sections 195 read with Section 340 of the Code of Criminal Procedure (CrPC) is available only for offences committed in a proceeding before a Court (and not a Tribunal).

Citation: 2025 LiveLaw (SC) 4

SLP (Crl.) No. 2184 of 2024

BN John v. State of UP & Anr.,

Decided on: January 02, 2025

The Supreme Court stated that a complaint within the meaning and scope of the Criminal Procedure Code is a complaint filed before a Judicial Magistrate and not an Executive Magistrate.

The Court held that a complaint filed before an Executive Magistrate cannot be regarded as a complaint filed in terms of Section 195 of the CrPC.

To support this, Section 2(d), which defines complaint was referred to. The Court also placed its reliance on *Gulam Abbas v. State of U.P.*, (1982) 1 SCC 71 which discussed the difference between a judicial and an executive magistrate.

"Thus, a complaint within the meaning and scope of the Criminal Procedure Code would mean such a complaint filed before a Judicial Magistrate and not an Executive Magistrate," the Bench of Justices B. V. Nagarathna and Nongmeikapam Kotiswar Singh stated.

The Court held that subsequent mentioning of crucial facts, which the complainant could have stated at the time of lodging of the FIR itself, would raise doubts as it indicates an afterthought.

The omission of crucial facts in the FIR cannot be supplemented through witness statements under Section 161 CrPC, the Court held.

"Though FIR is not supposed to be an encyclopedia containing all the detailed facts of the incident and it is merely a document that triggers and sets into motion the criminal legal process, yet it must disclose the nature of the offence alleged to have been committed as otherwise, it would be susceptible to being quashed," the Court observed.

The Court made these observations while quashing a criminal case against the accused-appellant under Section 186 (Obstructing public servant in discharge of public functions) and Section 353 (Assault or criminal force to deter public servant from discharge of his duty) of the IPC.

The Bench opined that the offence specified under Section 353 is more serious involving a stringent punishment when compared with Section 186. While in Section 186 voluntarily obstructing any public servant in the discharge of his official function would suffice, there is a clear requirement of criminal force or assault under Section 353.

Citation: 2025 LiveLaw (SC) 7

Kim Wansoo v. State of Uttar Pradesh & Ors.

Decided on: January 03, 2025

The Supreme Court observed that apart from exercising its power to quash a criminal case under Section 482 Cr.P.C., the High Court can also exercise powers under Article 226 of the Constitution to quash the criminal case to prevent misuse of the law.

"It is true that normally, quashing of criminal proceedings would be sought and would be done in exercise of the inherent power of the High Court under Section 482, Cr. P.C. But certainly, that does not mean that it could not be done only in an invocation of the extraordinary power under Article 226 of the Constitution of India.", the court said.

The bench comprising Justices CT Ravikumar and Sanjay Kumar was hearing the criminal appeal filed against the Allahabad High Court's decision that refused to quash the criminal case against the Appellants in the exercise of its Writ Jurisdiction under Article 226 of the Constitution.

Citation: 2025 LiveLaw (SC) 8

Civil Appeal No. 7578 of 2023

Leela & Ors. v. Muruganantham & Ors.

Decided on: January 03, 2025

The Supreme Court reiterated that mere registration of a will would not make it valid unless the same is not proved as per the requirements of Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. While the first provision pertains to the execution of unprivileged wills, the other one talks about the proof of execution of document.

The Bench of Justices CT Ravikumar and Rajesh Bindal further noted that as per Section 68, at least one attesting witness has to be examined to prove execution of a Will. Reliance was placed on the recent cases of *Moturu Nalini Kanth v. Gainedi Kaliprasad* and *Derek A.C. Lobo v. Ulric M.A. Lobo*.

Citation: 2025 LiveLaw (SC) 12

Daljit Singh v. State of Haryana &Anr.

Decided on: January 03, 2025

The Supreme Court observed that while a proclamation issued under Section 82 Cr.P.C. cannot be enforced if the underlying case is quashed, the accused may still be penalized under Section 174A IPC for failing to appear in response to the proclamation, as it constitutes an independent offence arising from the initial proclamation.

The bench comprising Justices CT Ravikumar and Sanjay Karol was hearing the case where the Punjab & Haryana High Court refused to quash the proclamation issued against the Appellant in response to non-appearance in the cheque dishonor case in which he was already exonerated. Also, the High Court refused to quash the offence made out under Section 174A of IPC for failing to appear in response to the proclamation.

Citation: 2024 LiveLaw (SC) 1051

Muskan Enterprises & Anr. v. State of Punjab &Anr.

Decided on: January 03, 2025

Observing that the principle of res judicata is not strictly applicable to the criminal proceedings, the Supreme Court ruled that the dismissal of a previous petition does not preclude the filing of a subsequent petition under Section 482 of the Cr.P.C if it is prompted by a change in the law.

The Court rejected the argument that if the earlier petition had been withdrawn without liberty obtained to apply afresh, the subsequent petition is not maintainable.

According to the Court, if the earlier petition was dismissed as withdrawn without a liberty to file afresh then it would not be necessary for the litigant to obtain the leave of the Judge who had dismissed the earlier petition prior to filing the subsequent petition under Section 482 Cr.P.C.

The bench comprising Justice Dipankar Datta and Justice Prashant Kumar Mishra was hearing the appeal filed against the Punjab & Haryana High Court decision which dismissed the subsequent petition filed under Section 482 Cr.P.C. because the earlier petition was dismissed as withdrawn without liberty to file afresh.

Citation: 2025 LiveLaw (SC) 15

Civil Appeal No. 7198 of 2009

Lilian Coelho & Ors. v. Myra Philomena Coalho.

Decided on: January 03, 2025

The Supreme Court observed that once the execution of the will is proved as per Section 63 of the Indian Succession Act and Section 68 of the Evidence Act, then it shall be the 'irrecusable duty' of Court to call upon a propounder (person presenting the will before the Court for approval) to remove any raised suspicious circumstances.

The Bench of Justices C.T Ravikumar and Sudhanshu Dhulia observed that a 'Will is validly executed' and a 'Will is genuine' cannot be said to be the same. The Court explained that even if it is proved that the will was executed in accordance with the law, the same cannot lead to the presumption about its genuineness.

Citation: 2025 LiveLaw (SC) 17

Special Leave Petition (Crl.) No. 1093 of 2021

NareshAneja @ Naresh Kumar Aneja v. State of Uttar Pradesh &Anr.

Decided on: January 04, 2025

The Supreme Court observed that for Section 354 IPC (Assault or criminal force to woman with intent to outrage her modesty) to apply, criminal force must be used. Further, such application of force must be coupled with intention to outrage a woman's modesty.

The Bench of Justices Sanjay Karol and C.T. Ravikumar added that in order to establish mens rea something better than vague statements must be produced before the court. Mere bald assertions of mental and physical discomfort would not suffice.

Citation: 2025 LiveLaw (SC) 61

Abdul Nassar v. State of Kerala

Decided on: January 13, 2025

The Supreme Court enunciated the principles that courts must adhere to while appreciating and evaluating evidence in cases based on circumstantial evidence.

While dismissing the appeal against the conviction in a rape-murder case, a bench comprising Justice BR Gavai, Justice KV Viswanathan and Justice Sandeep Mehta summarised the principles as follows :

(i) The testimony of each prosecution and defence witness must be meticulously discussed and analysed. Each witness's evidence should be assessed in its entirety to ensure no material aspect is overlooked.

(ii) Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact. Thus, the reasonable inferences that can be drawn from the testimony of each witness must be explicitly delineated.

(iii). Each of the links of incriminating circumstantial evidence should be meticulously examined so as to find out if each one of the circumstances is proved individually and whether collectively taken, they forge an unbroken chain consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

(iv). The judgment must comprehensively elucidate the rationale for accepting or rejecting specific pieces of evidence, demonstrating how the conclusion was logically derived from the evidence. It should explicitly articulate how each piece of evidence contributes to the overall narrative of guilt.

(v) The judgment must reflect that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.

Citation: 2025 LiveLaw (SC) 66**Criminal Appeal No. 1408 of 2015****Ram Pyarey v. State of Uttar Pradesh,****Decided on: January 14, 2025**

The Supreme Court, while acquitting an accused of cruelty and abetment of suicide, observed that to apply Section 113B (Presumption as to dowry death) of the Indian Evidence Act, clear evidence for incessant harassment is essential. The Bench of Justices J.B. Pardiwala and R. Mahadevan stressed that in the absence of such evidence, it cannot straightaway invoke this provision.

Citation: 2025 LiveLaw (SC) 80**Crl.A No.221/2025****Mahendra Awase v. State of Madhya Pradesh****Decided on: January 17, 2025**

The Supreme Court reminded investigating agencies and trial courts not to mechanically invoke the offence of abetment of suicide (Section 306 of the Indian Penal Code/Section 108 of the Bharatiya Nyaya Sanhita).

"Section 306 IPC appears to be casually and too readily resorted to by the police," the Court said.

The Court stated that the provision (S.306IPC/S.108 read with 45 BNS) cannot be

invoked merely to pacify the sentiments of the family of the person who died by suicide. The interactions between the accused and the deceased must be seen from a practical point of view and hyperbolic exchanges should not be exaggerated as incitement to suicide.

The Court observed that the time has come to sensitise the investigating agencies about the law laid down by the Supreme Court regarding the ingredients of the offence of abetment of suicide. The Court also urged the trial courts to not mechanically frame charges, adopting a "play safe" approach, when the investigation has not disclosed the necessary ingredients of the offence.

A bench comprising Justice Abhay S Oka and Justice KV Viswanathan made these important observations while discharging a bank manager of the offence of Section 306 IPC.

Citation: 2025 LiveLaw (SC) 76

State of Karnataka v. Battegowda & Ors.

Decided on: January 19, 2025

The Supreme Court noted that the severity of injuries caused by individuals acting with common intention cannot justify reducing a harsher punishment to a lighter one.

The bench of Justice Sudhanshu Dhulia and Justice Prashant Kumar Mishra heard the State of Karnataka's appeal challenging the High Court's decision to modify the conviction of Accused No. 2 from Section 326 IPC (voluntary causing grievous hurt by deadly weapons) to Section 324 IPC (voluntary causing hurt by deadly weapon), solely based on the fact that the injuries inflicted by him were less severe than those caused by the co-accused.

Citation: 2025 LiveLaw (SC) 88

Laxmi Das v. The State of West Bengal & Ors.

Decided on: January 21, 2025

The Supreme Court quashed a criminal case for the offence of abetment to suicide against a woman for asking her son's lover to end her life if she could not live without him. The bench comprising Justice BV Nagarathna and Justice SC Sharma was hearing the case arising out of the Calcutta High Court's decision refusing to quash the FIR under Sections 306 r/w 107 of the Indian Penal Code, 1860 against the Appellant.

The Court explained that when Section 306 IPC is read with Section 107 IPC, it is clear that there must be

- (i) direct or indirect instigation;
- (ii) in close proximity to the commission of suicide; along with
- (iii) clearmens rea to abet the commission of suicide.

"It is discerned from the record that the Appellant along with her family did not attempt to put any pressure on the deceased to end the relationship between her and Babu Das. In fact, it was the deceased's family that was unhappy with the relationship. Even if the Appellant expressed her disapproval towards the marriage of Babu Das and the deceased, it does not rise to the level of direct or indirect instigation of abetting suicide. Further, a remark

such as asking the deceased to not be alive if she cannot live without marrying her lover will also not gain the status of abetment. There needs to be a positive act that creates an environment where the deceased is pushed to an edge in order to sustain the charge of Section 306 IPC.”, the Court observed.

Citation : 2025 LiveLaw (SC) 94

Vijay @ Vijayakumar v. State Represented by Inspector of Police

Decided on: January 22, 2025

The Supreme Court observed that not every sudden provocation would reduce the crime from murder to culpable homicide not amounting to murder. For reference, exception 1 to Section 300 (murder) of IPC states that culpable homicide is not murder when the accused is deprived of self-control due to grave and sudden provocation caused by the deceased person.

The Bench of Justices J.B. Pardiwala and R. Mahadevan explained that to invoke this exception, there must be a simultaneous reaction of the grave as well as a sudden provocation. *“If the provocation is grave but not sudden, the accused cannot get the benefit of this exception. Likewise, he cannot invoke the exception where the provocation though sudden is not grave,”* the Court said.

“If the man giving the provocation is killed within a minute after the provocation, it is a case of sudden provocation. If the man is killed six hours after the provocation, it is not a case of sudden provocation,” the Court said.

Secondly, to determine the graveness of any provocation, an objective test must be applied. That is to say, the Court must question *“Is a reasonable man likely to lose self-control as a result of such provocation?”*. While explaining what reasonable man means, the Court also noted that the education and social conditions of an accused must be taken into consideration. Elaborating, the Court said that while an exchange of abuses is not a grave provocation, however, in some societies, adultery is a serious matter and thus the same can be a basis for grave provocation.

“A reasonable man is not the ideal man or the perfect being. A normal man sometimes loses temper. There is, therefore no inconsistency in saying that, a reasonable man may lose self-control as a result of grave provocation. A reasonable or normal or average man is a legal fiction. The reasonable man will vary from society to society. A Judge should not impose his personal standards in this matter. By training, a Judge is a patient man. But the reasonable man or the normal man need not have the same standard of behaviour as the judge himself.”

Lastly, on the issue of losing self-control, the Court said that only in rare cases can it be proved that an accused committed the murder with a cool head. Thus, proving the above two conditions would suffice in order to discharge the accused's burden of bringing his case under this exception. It also said that as per the India Evidence Act, the burden of proof lies on the accused to bring his case under the exception.

In the present case, the prosecution's case was that while the appellant and his friends were sleeping beneath a bridge, the deceased, who was heavily drunk, picked up an altercation with them. Consequently, the appellant picked up a cement brick and hit the

deceased on his head. The Trial Court granted him the benefit of Exception 1 of the Section 300 IPC. The same was affirmed by the High Court. Against this background, the matter reached before the Supreme Court.

At the outset, the Court, taking a cue from the above-made observations, marked:

"What should be the approach of the court? The provocation must be such as will upset not merely a hasty and hot-tempered or hypersensitive person, but one of ordinary sense and calmness. The Court has to consider whether a reasonable person placed in the same position as accused would have behaved in the manner in which the accused behaved on receiving the same provocation."

Shifting its focus on the facts of the case, the Court said that the incident took place in spur of the moment as the deceased uttered some bad words and slapped the appellant. However, that by itself may not be sufficient to bring the case within the ambit of grave and sudden provocation, the Court said.

While stating this, the Court also opined that instead exception 4 (Culpable homicide is not murder if it is committed without premeditation in a sudden fight) could have been invoked. To support this, the Court pointed out that the incident was not pre-planned or pre-meditated.

"The incident occurred at a spur of a moment. The act was not pre-planned or pre-meditated. What is important to note is that the appellant had no weapon in his hands. He picked up a cement stone which was lying beneath the bridge and hit the same on the head of the deceased. Therefore, it could be said that the appellant did not take any undue advantage or acted in a cruel or unusual manner." Notwithstanding, the Court did not disturb the sentence; however, it reduced the sentence to the period already undergone.

CIVIL

Citation: 2024 LiveLaw (SC) 1041

Arising out of SLP (C) No.18977 of 2016

Shri Mukund Bhavan Trust and Ors v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Another

Decided on: December 30, 2024

While reiterating the position of law that the question of limitation is a mixed question of fact and law and the question for rejecting the plaint on that has to be decided after weighing the evidence on record, a bench of Justices JB Pardiwala and R Mahadevan held that in cases where it is glaring from the plaint averments that the limitation hopelessly bars the suit, the *"Courts should not be hesitant in granting the relief and drive the parties back to the Trial Court"*.

Overruling the order of the High Court, the Supreme Court observed: *"We again place it on record that this is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the plaintiff. Rather, the plaintiff and his predecessors did not take any steps to assert their title and rights in time. The alleged cause of action is also found to be creation of fiction. However, the trial Court erroneously dismissed the application filed by the appellants under Order VII Rule 11(d) of CPC."*

The High Court also erred in affirming the same, keeping the question of limitation

open to be considered by the trial Court after considering the evidence along with other issues, without deciding the core issue on the basis of the averments made by the Respondent No.1 in the Plaint as mandated by Order VII Rule 11 (d) of CPC. The spirit and intention of Order VII Rule 11(d) of CPC is only for the Courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process. The Courts by being reluctant only cause more harm to the defendants by forcing them to undergo the ordeal of leading evidence. Therefore, we hold that the plaint is liable to be rejected at the threshold."

The Court held that as per the settled law when an application to reject the plaint is filed, the averments in the plants and the documents annexed therewith alone are germane. In this regard, the Court observed: *"The Court cannot look into the written statement or the documents filed by the defendants. The Civil Courts including this Court cannot go into the rival contentions at that stage."*

On grounds of limitation, the Court said: *"The plaintiff has asserted that by government resolutions in 1980 and 1984 he has acquired the title over the properties. Therefore, as a prudent man, he ought to have initiated necessary steps to protect his interest. Having failed to do so and created a fictional date for cause of action, the plaintiff is liable to be non-suited on the ground of limitation...We have already held that the title claim of the plaintiff is barred by limitation and therefore, the claim for possession is also barred and consequently, the relief of recovery of possession is also hopelessly barred by limitation."*

Citation: 2024 LiveLaw (SC) 1042

SLP (C) NO. 18240 of 2024

Sugirtha v. Gowtham

Decided on: December 30, 2024

Observing that the health of a child cannot be compromised while deciding the disputes between the parents, the Supreme Court modified the directions allowing interim visitation rights to a father.

A bench of Justices Vikram Nath and PB Varale allowed an appeal against the order of the Madras High Court to a limited extent of modifying the place of visitation for the father to meet his 2-year-old daughter at a place where the mother along with the minor daughter resides.

"The interest of the minor child is paramount. In the process of adjudicating upon the rights of the parents, her health cannot be compromised," the Court observed while holding that the visitation rights of the parent cannot be at the cost of the health and well-being of the child.

Citation: 2025 LiveLaw (SC) 3

Urmila Dixit v. Sunil Sharan Dixit and others

Decided on: January 02, 2025

The Supreme Court clarified that a Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has the power to order the eviction and transfer of possession.

Without such a power, the objectives of the 2007 Act - which are to grant speedy,

simple and inexpensive remedies to elderly citizens- would be defeated, the Court said.

A bench comprising Justice CT Ravikumar and Justice Sanjay Karol was deciding an appeal filed by a mother seeking to annul a gift deed executed in favour of her son in 2019. The mother complained that the son was not looking after her and hence, the gift deed was liable to be cancelled as per Section 23 of the Act since the conveyance was made subject to the condition of providing maintenance. Though the Tribunal set aside the gift deed and a single judge of the Madhya Pradesh High Court affirmed the same, a division bench of the High Court, in the son's appeal, reversed the Tribunal's decision

The Supreme Court disapproved of the reasoning of the division bench that Section 23 was a standalone provision and the Tribunal had no power to transfer possession.

Citation: 2025 LiveLaw (SC) 6

SLP (C) No. 10558 of 2024

Sri Mahesh v. Sangram & Ors.

Decided on: January 03, 2025

The Supreme Court observed that although a widow female Hindu's adopted child's rights relate to the date of the adoptive father's death, it would not divest the rights acquired by a female Hindu before an adoption.

In other words, the court stated that any transaction made by the adoptive mother regarding the suit property acquired by her prior to the adoption would remain binding on the adopted child after the adoption.

The Court reaffirmed the principle that the property acquired by a female Hindu before the child's adoption remains her absolute property under Section 14(1) of the Hindu Succession Act, 1956 ("HSA"), and therefore as per Section 12(c) of the Hindu Adoptions and Maintenance Act, 1956 ("HAMA") the child's adoption would not divest her of the rights acquired by her before adoption.

The bench comprising Justices CT Ravikumar and Prashant Kumar Mishra was hearing the appeal filed against the Karnataka High Court's decision validating the sale deed executed by the Appellant's adoptive mother in favor of other defendants after the Appellant's adoption.

Citation : 2025 LiveLaw (SC) 13

Special Leave Petition (C) No. 8687 of 2012

Dalip Ram v. The State of Punjab &Ors.

Decided on: January 03, 2025

The Supreme Court while deciding a batch of civil appeals, reiterated that terms lease and allotment are different. Lease is a temporary grant whereas allotment though is a temporary right of use and occupation of evacuee but does not include a grant by way of a lease, the Court said.

The Bench of Justices C.T. Ravikumar and Rajesh Bindal relied upon a thread of precedents *Amar Singh &Ors. v. Custodian, Evacuee Property &Ors., 1957 INSC 28, Basant Ram v. Union of India., AIR 1962 SC 994* to hold:

Pertinently, the common issue in all the appeals was whether the subject lands

were classified as *Shamlat Deh* and allotted on a quasi-permanent basis to displaced persons, or whether they were *Shamlat Deh* transferred to others after the commencement of Punjab Village Common Lands (Regulation) Act, 1961.

“While considering the question of benefit flowing from the amendment, Section 2 (g) of the Act by inserting (iia) to it, we have already found that the land in question should have been Shamlat deh and the person claiming the benefit should establish that it was allotted to him on permanent basis or transferred by way of sale or in any other manner or transferred in any other manner on permanent basis with rights over the same.,” the Court held.

It also observed mere non-framing of the issues will not nullify the decision if parties have already understood and produced evidence on the issues. Thus, the Court affirmed the finding of the High Court that the lands involved fell into the category of Shamlatdeh. The same was arrived after pursuing the evidence adduced by the Gram Panchayats. Thus, the owner of the concerned lands was Gram Panchayat and not the appellants.

It may also be noted that the issue in the lead appeal was whether the appellant, who stepped into the shoes of his father as lessee, was an unauthorised occupant. Having evicted by the concerned authorities, the petitioner first approached the High Court and now the Supreme Court.

The Division Bench of the Top Court noted that the land was given to the father of the appellant on an annual rate for ten years. The definition of Section 105 of the Transfer of Property Act, 1882, would, therefore, make it nothing but a 'lease', the court said. It further ruled out the possibility of allotment on a quasi-permanent basis.

As far as the main issue was concerned, the Court held that not did the appellants failed to prove that the land was not Shamlatdeh but also could not establish that it was allotted or transferred to them. Thus, it refused to interfere with the findings of the High Court.

Citation: 2025 LiveLaw (SC) 63

M/S Utkal Highways Engineers and Contractors v. Chief General Manager & Ors.

Decided on: January 13, 2025

The Supreme Court reiterated that it is not a stringent rule that the High Court cannot decide a money claim under its writ jurisdiction. The Court reasoned that non-payment of admitted dues by the State authorities may be considered an arbitrary action and thus a writ petition may lie against the same.

The Bench of Justices Manoj Misra and Manmohan, inter-alia, placed reliance on the recent judgment of M/S Surya Constructions v. State of UP., and opined:

“Moreover, it is not an inviolable rule that no money claim can be adjudicated upon in exercise of writ jurisdiction. Non-payment of admitted dues, inter alia, may be considered an arbitrary action on the part of respondents and for claiming the same, a writ petition may lie.”

Citation: 2025 LiveLaw (SC) 67

SLP (Crl.) No. 13083/2023

Srikant Kumar @ Shrikant Kumar v. State of Bihar & Anr.

Decided on: January 15, 2025

In a case arising out of a matrimonial dispute, the Supreme Court set aside a bail condition making the husband's anticipatory bail subject to payment of maintenance to the wife.

"When application for bail is filed, the Court is required to impose such bail conditions which would ensure that the appellant does not flee from justice and is available to face Trial. Imposing conditions which are irrelevant for exercise of power under Section 438 of the CrPC would not therefore be warranted", observed a bench of Justices Hrishikesh Roy and SVN Bhatti.

Citation: 2025 LiveLaw (SC) 69

Krushna Chandra Behera & Ors. v. Narayan Nayak & Ors.

Decided on: January 15, 2025

The Supreme Court observed that a suit filed only for injunction simpliciter cannot be dismissed solely because it lacks a declaratory relief under Section 34 of the Specific Relief Act, 1963 (SRA), especially when the defendants do not dispute the plaintiffs' title.

"The law is well settled that if the defendants do not dispute the title of the plaintiffs then the suit should not fail only on the ground that the matter has been filed only for injunction simpliciter and no main relief in the form of declaration has been prayed for.", the court observed.

The bench comprising Justice JB Pardiwala and Justice R Mahadevan was hearing the case arising out of the Orissa High Court's decision where the High Court in a second appeal reversed the trial court's order and held that the plaintiff's injunction simpliciter suit without seeking declaratory relief under Section 34 SRA would not be maintainable.

Citation: 2025 LiveLaw (SC) 73

Cuddalore Powergen Corporation Ltd v. M/S Chemplast Cuddalore Vinyls Limited and Anr.

Decided on: January 16, 2025

The Supreme Court ruled that a subsequent suit filed on a different cause of action would not be subject to the bar under Order II Rule 2 of the Code of Civil Procedure, 1908 ("CPC"). The Court justified the filing of a subsequent suit for specific performance of an agreement to sell, following the institution of an earlier suit seeking a permanent injunction, noting that both suits were based on distinct causes of action.

Order II Rule 2 CPC mandates that a plaintiff include the whole claim he is entitled to, arising from the same cause of action, in a single suit. The rule seeks to prevent the splitting of claims and multiplicity of suits based on the same cause of action. However, the Court said that the Rule would not be applicable when the subsequent suit was filed on a different cause of action than that of the cause of action for the first suit.

The bench of Justice JB Pardiwala and Justice R Mahadevan was hearing the case where an agreement to sell was entered between Respondent No.1 (Plaintiff-Buyer) and Respondent No.2 (Defendant-Seller) in respect of the immovable property. Disputes arose

when Respondent No. 2 executed another sale deed for the same property in favor of the appellant in 2008.

The Supreme Court noted that while Order II Rule 2 of the CPC mandates including the entire claim arising from the same cause of action in one suit, it should not be misconstrued to require combining all different causes of action stemming from the same transaction into a single suit.

The Supreme Court observed that when the plaintiff couldn't seek the required relief in the first suit, Order II Rule 2 CPC would not bar him from seeking such relief made available to him by happening of an event, by filing a subsequent suit.

Citation: 2025 LiveLaw (SC) 79

U. Sudheera & Others v. C. Yashoda & Others

Decided on: January 18, 2025

Observing that a second appeal under Section 100 CPC cannot proceed without framing substantial questions of law, the Supreme Court set aside the Andhra Pradesh High Court's order which granted an interim relief in the plaintiff's favor without framing a 'substantial question of law'.

The bench comprising Justices JB Pardiwala and R Mahadevan was hearing an appeal on the question whether the High Court could pass any ad interim order for a limited period, before framing the substantial question(s) of law, while dealing with a second appeal filed under Order XLI r/w Section 100 CPC.

Answering negatively, the Court observed:

"Concededly, in the present case, the High Court, without formulating substantial questions of law, granted the interim relief by directing the parties to maintain status quo, till the next date of hearing. The said interim order was also subsequently extended. It is also pertinent to point out that all the respondents in the second appeal have not been served and notice was unnerved qua Respondent Nos.4, 6 and 7 therein. Therefore, we are of the opinion that the High Court could not have passed the interim order without satisfying itself of the existence of a substantial question of law, as mandated under Section 100 CPC."



Case Title: Sunil Kumar Sharma Vs U.T of J&K

Citation: 2025 LiveLaw (JKL) 6

Decided on: January 13, 2025

Stressing that bail should not ordinarily be granted in heinous offences like rape or murder once the trial begins, the Jammu and Kashmir and Ladakh High Court refused bail to the accused in a case of rape and abetment to suicide. Justice Sanjay Dhar observed that courts should refrain from granting bail just after framing charges or before the victim is examined, especially in sensitive cases.

Citing *X vs. State of Rajasthan & anr.*(2024) the court reiterated,

".. once trial commences, it should be allowed to reach to its final conclusion, which may either result in conviction of the accused or acquittal of the accused. It has been further held that it is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the court may be justified in ordering release of the accused on bail"

These observations came in a bail plea of one Sunil Kumar Sharma who was accused of offences under Sections 376 (rape), 506 (criminal intimidation), 201 (destruction of evidence) of the Indian Penal Code (IPC), and Section 67 of the IT Act.

Justice Dhar began by analysing Sections 437 and 439 of the CrPC, which govern bail provisions. He noted that while Section 437 imposes restrictions on granting bail in serious offences, Section 439 provides broader powers to higher courts. However, these powers are not unfettered and must be exercised judiciously, particularly in cases involving heinous crimes, the court stressed.

The Court further observed that overriding considerations in bail matters include the nature and gravity of the offence, the accused's position relative to the victim and witnesses, the risk of flight, the likelihood of reoffending, and the possibility of witness tampering. In heinous cases like the present one, the Court emphasized that societal interest and the victim's dignity must take precedence over the accused's liberty.

The court added,

"It seems that father of the deceased wanted to be sure before pointing any finger at the petitioner and for this reason, he did not mention name of the accused in the application which he made to the police in September, 2022. But one thing is clear that he suspected foul play in the death of his daughter upon knowing the details from his wife and this prompted him to approach the police afresh"

Highlighting that in cases involving heinous crimes, bail should only be considered if trials are unduly delayed without fault on the accused's part the court noted that the trial in this case had barely started, and emphasised that granting bail at this stage could jeopardize witness testimonies and public interest.

Citation: 2025 LiveLaw (JKL) 9

Mohammad Amin Sheikh v. Divisional Commissioner Kashmir, Srinagar

Decided on: January 18, 2025

The Jammu & Kashmir and Ladakh High Court has clarified that procedural delays in informing the Designated Authority about seizures under the stringent provisions of the

Unlawful Activities (Prevention) Act, 1967 (UAPA) do not render the proceedings invalid.

“The information though required to be communicated within 48 hours of the seizure, the delay, if any, caused will not by itself be fatal. The time line given to inform the Designated Authority of seizure or attachment is not mandatory one keeping in view the fact that the seizure has been made under the stringent provisions of law”, the court comprising Chief Justice Tashi Rabstan and Justice Puneet Gupta explained.

The case stemmed from the seizure of a vehicle during the investigation of an FIR registered under Sections 13, 16, 18, and 38 of the UAPA, alongside provisions of the NDPS Act and the Arms Act. The vehicle was allegedly used for transporting arms, ammunition, and narcotics.

The Divisional Commissioner of Kashmir, acting as the Designated Authority under the UAPA, confirmed the seizure. Subsequently, the appellants, Mohammad Amin Sheikh and Khalida Begum, challenged the order before the NIA Court. After the NIA Court upheld the seizure, the appellants moved the High Court, contesting procedural lapses in the seizure process.

“The time line given to inform the Designated Authority of seizure or attachment is not mandatory one keeping in view the fact that the seizure has been made under the stringent provisions of law. Similarly, if the Designated Authority fails to make its order within 60 days confirming or revoking the seizure, period prescribed for the Designated Authority to pass the order, the delay, if any, caused by the said Authority cannot be the reason to overturn the order on that basis only”.

“It is not made out from the provision that in case the Authority fails to pass order within the period of 60 days, the proceedings initiated by the Investigating Officer regarding the seizure shall lapse”.

The court further noted that procedural fairness had been upheld as the Designated Authority provided the appellants with an opportunity to represent their case. Therefore, the appellants could not challenge the order solely on procedural grounds, the court said.

“The alleged purpose for which the vehicle has been used does not call for its release. The owner of the vehicle can be duly compensated later on if the trial court determines that the vehicle is not required to be forfeited.”

Arb App No.1/2022**Union of India v. M/s Des Raj Nagpal Engineers & Contractors****Decided on: January 03, 2025**

The Jammu & Kashmir and Ladakh High Court Bench of Justice Sanjeev Kumar and Justice Puneet Gupta held that the failure of the Chief Engineer to sign the pleadings, which were signed by the Garrison Engineer would only be an irregularity and a curable defect and would not entail dismissal of the application filed under Section 34 of the Arbitration Act without providing opportunity to the appellants to correct the irregularity.

Additionally, the court held that the defect was curable and was not fatal to the maintainability of the application itself.

The dispute arose with respect to a contract agreement executed between Union of India through Chief Engineer and the respondent. To resolve the dispute the parties, refer the matter to arbitration and appointed a sole arbitrator. Then, the arbitrator passed an award against the appellant. Aggrieved by this, the appellant filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award passed by the arbitrator. The Single Judge dismissed the application and then the appellant filed an appeal under Section 37 of the Act challenging the impugned order.

The court noted that Order XXVII of the Code of Civil Procedure deals with suits by or against the Government. Rule 1 provides that in any suit by or against the Government, the plaint or written statement shall be signed by such person as the Government may by general or special order appoint in this behalf. The Government of India has, in the exercise of powers conferred by Rule 1 of Order XXVII aforesaid, issued notification authorizing different officers to sign the pleadings on behalf of Government of India in any suit by or against the Government. The Garrison Engineer is one of those officers. That being the clear position emerging from reading of the provisions of Article 299 of the Constitution of India and, it cannot be said that the Garrison Engineer was not an officer authorized to sign pleadings on behalf of the Government of India.

The court observed that it is not disputed by the respondent that the Garrison Engineer, who signed the application under Section 34 of the Act on behalf of Union of India/Government of India was not the person authorized by the Government of India to represent it in civil proceedings by or against the Government.

The court held that the Single Judge has totally misconstrued the nature of contract i.e. made by the President on behalf of Union of India and has erroneously treated the Chief Engineer, who had executed the arbitration agreement/contract agreement on behalf of the President, as party to the arbitration agreement.

The court held that in the contract, which contains an arbitration clause, there are only two parties, one Union of India and the other the respondent. The contracts on behalf of Union of India in terms of Article 299 are expressed to be made by the President and the same are executed by such person or persons and in such manner as the President may direct or otherwise. The authority of the Chief Engineer to execute the contract containing arbitration clause on behalf of the President is not in dispute. Therefore, the court held

that notwithstanding a contract by the Union of India is made by the President and executed through its authorized officer, neither the president nor its authorized officer becomes party to the contract. The party to the contract shall only be the Union of India.

Finally, the court held that the failure of the Chief Engineer to sign the pleadings, which were signed by the Garrison Engineer, would only be an irregularity and a curable defect and would not entail dismissal of the application without providing opportunity to the appellants to correct the irregularity. The defect, if at all it has there, was curable and was not fatal to the maintainability of the application itself. The court allowed the appeal and set aside the impugned order passed by the Single Judge.

Citation: 2025 LiveLaw (JKL) 7

Mushtaq Ahmad Bhat v. Sheeraza Akhtar

Decided on: January 16, 2025

Reaffirming the principle that no appeal lies against a compromise decree the Jammu and Kashmir and Ladakh High Court has emphasised that a party seeking to avoid such a decree must challenge it before the court that issued it, proving the invalidity of the underlying agreement.

Dismissing three connected petitions involving a compromise decree passed by the National Lok Adalat at Pulwama Justice M.A Chowdhary cited Pushpa Devi Bhagat (dead) through LR. Sadhna Rai vs. Rajinder Singh and Ors.” reported as (2006) and reiterated, “...since no appeal would lie against a compromise decree, the only option available to a party seeking to avoid such a decree would be to challenge the consent decree before the court that passed the same and to prove that the agreement forming the basis for the decree was invalid”.

After meticulously analyzed the case, Justice Chowdhary observed that awards passed by Lok Adalats, under Section 21 of the Legal Services Authorities Act, 1987, are equivalent to civil court decrees. Such awards, based on mutual compromises, are final and binding, and no appeal lies against them, he stated.

“When Lok Adalat disposes of the cases in terms of a compromise arrived at between the parties to a suit, after following principles of equity and natural justice, every such award of the Lok Adalat shall be deemed to be a decree of a Civil Court and such decree shall be final and binding upon the parties”, the court remarked.

“.. What can be gathered from the pleadings of the case is that the petitioner is trying to distance himself from the contents of the compromise deed, while as his counsel Mr. G.M.Yattoo has confirmed the fact that the petitioner is well aware of the contents of the compromise deed, to which he has been a marginal witness and also as a legal advisor”, the court recorded.

Upholding the actions of the trial court in executing the award, including issuing non-bailable warrants the court ruled that such measures were lawful, given the petitioner's failure to honor his obligations under the compromise.

Observing that the petitioner failed to provide any legitimate grounds to challenge the Lok Adalat award or the subsequent execution proceedings the court dismissed the petition.

Digital Right to Privacy: A Critical Analysis

In the digital age, privacy has emerged as a cornerstone of personal freedom and dignity. The digital right to privacy ensures that individuals can safeguard their personal data against unauthorized access, misuse, or exploitation. It is a right deeply intertwined with human dignity, autonomy, and the broader principles of democracy. Yet, as technology rapidly evolves, protecting this right becomes increasingly challenging.

Understanding Digital Privacy

Digital privacy extends beyond traditional notions of personal space, focusing on protecting individuals' data and online activities. From social media platforms to government databases, personal information collection, storage, and use have grown exponentially. While such data facilitates innovation and convenience, it raises concerns about surveillance, profiling, and exploitation.

The Legal Evolution of Privacy

The right to privacy has been recognized as a fundamental human right in many jurisdictions. The landmark Indian case *Justice K.S. Puttaswamy v. Union of India* (8673) 10 SCC 1 declared privacy a constitutional right under Article 65. It emphasized that privacy is integral to autonomy and individual dignity.

Globally, the General Data Protection Regulation (GDPR) has set benchmarks for privacy laws. Its principles of informed consent, data minimization, and accountability have influenced regulations worldwide. Similarly, India's Digital Personal Data Protection Act, 2023 lays down guidelines for data collection and processing, emphasizing user consent and transparency. These legal frameworks reflect a global commitment to addressing digital privacy challenges.

Challenges to Digital Privacy

- 1. Data Over-Collection:** Governments and corporations collect vast amounts of personal information, often without clear consent. Social media platforms, in particular, track user behavior extensively, leading to concerns about manipulation and profiling.
- 2. Cyber Threats and Data Breaches:** High-profile data breaches expose the vulnerability of digital systems. Sensitive information, from financial details to health records, often falls into the wrong hands due to insufficient cybersecurity measures.
- 3. Mass Surveillance:** Governments worldwide use advanced surveillance technologies to monitor citizens. While often justified as necessary for national security, such practices risk eroding civil liberties.
- 4. Limited User Awareness:** Many individuals remain unaware of the extent to which their data is collected or how it is used. This knowledge gap makes them susceptible to exploitation.

Privacy vs. National Security

One of the most debated aspects of digital privacy is its conflict with national security. Governments argue that surveillance tools are essential for combating terrorism and ensuring public safety. However, unchecked surveillance often leads to abuses, disproportionately affecting marginalized groups. Striking a balance requires clear legal frameworks, judicial oversight, and mechanisms to ensure accountability.

Ethical Implications of Privacy

Privacy concerns are not merely legal but deeply ethical. Companies have a responsibility to handle data transparently and prioritize user trust. Ethical data practices, such as anonymization and secure data handling, are essential to maintaining public confidence. Additionally, emerging technologies like artificial intelligence (AI) must be designed with privacy safeguards to prevent misuse.

Safeguarding Privacy: The Role of Technology

Technological advancements themselves offer tools to protect privacy:

- 1. Encryption:** Ensures secure communication and data storage, preventing unauthorized access.
- 2. Blockchain:** Decentralized systems give users greater control over their data, reducing reliance on intermediaries.
- 3. Privacy-Enhancing Software:** Tools like secure browsers, Virtual Private Networks (VPNs), and encrypted messaging apps empower users to maintain anonymity.

A Way Forward

To ensure the digital right to privacy is upheld, the following steps are essential:

- 1. Stronger Legislation:** Laws must adapt to emerging technologies and offer comprehensive protection against misuse.
- 2. Global Cooperation:** International frameworks are needed to address cross-border data flows and establish universal privacy standards.
- 3. Public Awareness:** Educational initiatives must empower individuals to understand and exercise their privacy rights.

Conclusion

The digital right to privacy is fundamental to ensuring autonomy, dignity, and trust in the modern world. However, safeguarding this right requires collective action from governments, corporations, and individuals. As technology continues to evolve, so must our commitment to protecting privacy. Through robust legal frameworks, ethical practices, and public awareness, we can create a digital environment that respects and upholds this essential right.

-Ms. Moksheka Sharma
Research Assistant