# J&K JUDICIAL ACADEMY

# e-NEWSLETTER

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## LEGAL JOTTINGS

"Our quest for technology should not be oblivious to the country's real problems: social exclusion, impoverishment and marginalisation. Dignity and rights of individuals cannot be based on algorithms or probabilities."

**-Justice Dr. D.Y. Chandrachud,**
**Hon'ble Chief Justice of India**

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## From the Editor's Desk

E-Courts Project was conceptualised on the basis of "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary–2005 submitted by the e-Committee of the Hon'ble Supreme Court of India. The e-Court Integrated Mission Mode Project was launched in the year 2007 as part of National eGovernance Plan for implementation of Information and Communication Technology (ICT) in the Indian Judiciary with the objective of improving access to justice using technology. The e-Courts National portal, ecourts.gov.in was launched by Hon'ble the Chief Justice of India on 07th August 2013. The Project is being implemented under the joint partnership of Department of Justice, Ministry of Law & Justice, Government of India and e-Committee, Supreme Court of India, in a decentralized manner through the respective High Courts. The Phase I of eCourts was concluded in the year 2015 in which 14,249 court sites were computerised. Under Phase II, 18,735 districts ordinated courts have been computerised. The Detailed Project Report (DPR) for eCourts Phase-III was approved by the eCommittee, Supreme Court of India on 21.10.2022 and was announced during the presentation of the Union Budget 2023-2024 with an outlay of Rs.7210 crore. The Phase-III of the project envisions facilitation of various new features, which may prove to be a game changer for last mile justice delivery.

Various initiatives under the project include development of Case Information System (CIS) based on customised Free and Open Source Software (FOSS), National Judicial Data Grid (NJDG) with elastic search technology which allows lawyers and litigants to view the status of their cases. There are seven Platforms for citizen centric services for providing real time information on case status, cause lists judgments, etc. These services include SMS Push and Pull, email, multilingual and tactile eCourts services Portal, Judicial Service Centre (JSC), Information Kiosks, eCourts mobile app for lawyers and JustIS app for judges. An eFiling system has also been rolled out for the electronic filing of legal papers with advanced features like online submission of Vakalatnama, eSigning online video recording of oath, online payment, filing of multiple IAs/application, Portfolio Management and bilingual mode etc. Further, eSewa Kendras have been made functional to provide eFiling Services to lawyers and litigants and to mitigate the handicap caused by digital divide. Nyaya Kaushal Centres are being set up to facilitate eFiling of cases in the Supreme Court of India, High Courts and District Courts across the country. It facilitates the virtual hearing, scanning, accessing eCourts services and would prove to be a saviour for those who cannot afford the technology besides, huge savings in terms of time, cost and trouble of long travels.

One of the primary benefits of e-courts is their accessibility from a remotest location. This allows individuals residing in far flung areas or those unable to physically attend court

to avail all the legal services. In other words, digitization bridges the gap between the court and the litigant, ensuring justice not only at the door step of the citizens but at their fingertips. As technological advancements continue to unfold, we need to keep ourselves updated on innovations and advancements in e-court initiatives. The main objective of the e-Court Project is to provide efficient & time-bound citizen-centric service delivery, to automate the processes, to provide transparency of Information, access to its stakeholders, to enhance judicial productivity both qualitatively & quantitatively and to make the justice delivery system affordable, accessible, cost effective & transparent. In fact, e-Courts have the potential to revolutionize the administration of justice particularly for underprivileged and marginalized communities facing barriers to traditional court systems by reshaping access to justice and enhancing efficiency, transparency and fairness.

As part of IEC campaign, initiatives have been taken to educate and train all the stakeholders including the Judicial Officers, Court Staff, Lawyers, Litigants etc. about the facilities available under the eCourts Project. Various training programmes on State as well as National level are organized from time to time. Other initiatives include development of eCommittee website for dissemination of information relating to eCourts Project amongst all stakeholders and also to enable the uploading of their achievements and best practises. YouTube channel with 12 help videos in 7 regional languages, besides, English and Hindi have been uploaded to facilitate the advocates in eFiling. Justice Clocks have been installed to advertise and spread awareness about various schemes of the department and to give status of various fields to the public. Regional North Zone Cluster Workshop organized at J&K Judicial Academy, Srinagar under the aegis of Hon'ble eCommittee Supreme Court of India on 31st May-01st June, 2024 was also a step in that direction.

## CRIMINAL

**Citation: 2024 LiveLaw (SC) 337**
**Sharif Ahmed and others v. State of Uttar Pradesh**
**Decided on: May 01, 2024**

The Supreme Court observed that even before the grant of bail, the accused can be exempted from showing his personal appearance before the court.

*"The observation (of the High Court) that there is no provision for granting exemption from personal appearance before obtaining bail, is not correct, as the power to grant exemption from personal appearance under the Code (Code of Criminal Procedure) should not be read in a restrictive manner as applicable only after the accused has been granted bail."*, the bench comprising Justices Sanjiv Khanna and SVN Bhatti said.

The aforesaid observation of the court came while deciding the plea of the appellant/accused whose application seeking an exemption from personal appearance was rejected by the trial court stating that there's no provision for granting an exemption from personal appearance before obtaining bail. Since the appellant was not on bail therefore the exemption from personal appearance wasn't granted to the appellant/accused. At the outset, the court observed that there's no provision in the Code of Criminal Procedure requiring the accused to take bail before seeking exemption from personal appearance before the court.

The Judgment authored by Justice Sanjiv Khanna noted that the power to grant exemption from personal appearance under the Code should not be read in a restrictive manner as applicable only after the accused has been granted bail.

In support of granting exemption to an accused from personal appearance before the court, the court took reference to the Judgment of Maneka Sanjay Gandhi and Another v. Rani Jethmalani, where the court held that the power to grant exemption from personal appearance should be exercised liberally when facts and circumstances require such exemption.

Further, the court said that the magistrate, while exercising his discretionary powers under Section 205 of Cr.P.C. may dispense with the personal attendance of the accused while issuing summons and allow them to appear through their pleader. *"Section 205 states that the Magistrate, exercising his discretion, may dispense with the personal attendance of the accused while issuing summons, and allow them to appear through their pleader"*, the court said.

**Citation: 2024 LiveLaw (SC) 340**
**Anees v. The State Govt of NCT**
**Decided on: May 4, 2024**

In a notable judgment, the Supreme Court has elucidated the principles relating to the application of Section 106 of the Indian Evidence Act, 1872. Section 106 of the Evidence Act is an exception to the general rule ( Section 101 of the Evidence Act) that the burden of

proof is on the person who is asserting the existence of a fact. As per Section 106 of the Evidence Act, if any fact is within the special knowledge of a person, the burden of proving that fact is on him. While deciding a criminal appeal, the bench comprising Chief Justice of India DY Chandrachud, Justices JB Pardiwala and Manoj Misra expounded the principles relating to Section 106.

The appeal was filed by a man who was found guilty of the murder of his wife and was sentenced to life imprisonment. The prosecution invoked Section 106 of the Evidence Act asking the accused to explain the incident. The Court stated that *Section 106 is not intended to relieve the prosecution of their duty to prove the case beyond reasonable doubt.* On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience".

"Section 106 of the Evidence Act refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts, especially within his knowledge, which would render the evidence of the prosecution nugatory. If in such a situation, the accused offers an explanation that may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But, if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him."

The judgment explained it further as follows :

*"What lies at the bottom of the various rules shifting the evidential burden or burden of introducing evidence in proof of one's case as opposed to the persuasive burden or burden of proof, i.e., of proving all the issues remaining with the prosecution and which never shift is the idea that the prosecution can't give wholly convincing evidence on certain issues from its own hand and it is, therefore, for the accused to give evidence on them if he wishes to escape. Positive facts must always be proved by the prosecution. But the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defenses or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions. If the accused had a different intention that is a fact, especially within his knowledge and which he must prove (see Professor Glanville Williams—Proof of Guilt, Ch. 7, page 127 and following) and the interesting discussion—para 527 negative averments and para 528 — "require affirmative counter-evidence" at page 438 and foil, of Kenny's outlines of Criminal Law, 17th Edn. 1958)"*

**Diary No. - 51276/2023**
**Dhanraj Aswani v. Amar S. Mulchandani and Anr.**

**Decided on: May 09, 2024**

The Supreme Court reserved judgment on the issue of whether anticipatory bail could be granted in one case to a person who is already under custody in another case. The question of law arose in a case where the FIR of the first offence against the accused was quashed but then the report was revived when he was taken in custody for another case. The accused after that filed for anticipatory bail.

If we say that Section 438 CrPC will not apply, then it is very simple for the police to keep on seeking remand. The person will then just be virtually left in an indeterminate loop." On the last hearing, the CJI expressed a prima facie view that anticipatory bail cannot be denied on the sole reason that the accused was in custody in another case. Such a genuine apprehension of arrest arises only when the ingredients of the arrest are sought to be made out as prescribed under S. 41 of the CrPC. As per S. 41 CrPC, police officers are empowered to arrest individuals without a warrant under specific circumstances, mainly when the officer has reasonable suspicion that the person has committed a cognizable offence or is about to commit one, or when there is a need to prevent the person from causing harm to themselves or others or to prevent the destruction of evidence.

The CJI observed that the provision of S. 41 CrPC has a rather balancing effect. On the one hand, it empowers the investigating officials to arrest without a warrant upon discretion, but on the other hand it also checks for misuse by specifying and laying conditions under which such a power can be exercised.

The CJI explained that S. 41A of the law restricts when a police officer can arrest someone, stating they cannot just arrest at will. However, this section doesn't address a person's fear or worry that they might still be arrested without proper basis. S. 438 CrPC should be considered from the accused person's perspective, recognizing their concerns about being arrested, regardless of the legal constraints placed on the arresting officer's power.

Referring to the phrase *' the police has a reason to believe under S. 41(1)(b)(i)',* he explained that *"surely an accused cannot start to think whether an investigating officer is under 41 going to arrest me or not arrest and whether my reason is unfounded on that basis"*

*"41 is an empowering provision for the investing officer by which he is empowered to arrest without a warrant. This (438) is a remedy for the accused, that (S.41) is an empowerment for the police officer. They are in two different fields operating; therefore the legislature chooses the words 'for that person to have a reason to believe he may be arrested on an accusation."*

**Citation: 2024 LiveLaw (SC) 359**
**Sukhpal Singh v. NCT Of Delhi**
**Decided on: May 09, 2024**

In a recent judgment, the Supreme Court held that the statements of the prosecution witness recorded in the absence of the accused can be read as a substantive piece of evidence when the prosecution witness could not be traced out and produced in

the witness box for deposition during trial after the accused had been arrested. The Judgment authored by Justice Sandeep Mehta relied on the Judgment of Nirmal Singh v. State of Haryana, where the court considered the issue of under what circumstances; the statement of a witness recorded under Section 299 of Cr.P.C. would become admissible under Section 33 of the Indian Evidence Act, 1872.

Section 299 of Cr.P.C. is considered to be an exception to Section 33 of the Evidence Act. This means the statements of the witness recorded under Section 299 of Cr.P.C. wouldn't be hit by Section 33 of the Evidence Act, which provides that the evidence of a witness, which a party has no right or opportunity to cross-examine, is not legally admissible. "This procedure contemplated under Section 299 of the Code of Criminal Procedure is thus an exception to the principle embodied in Section 33 of the Evidence Act since under Section 33, the evidence of a witness, which a party has no right or opportunity to cross-examine is not legally admissible. Being an exception, it is necessary that all the prescribed conditions must be strictly complied with. In other words, before recording the statement of the witnesses produced by the prosecution, the court must be satisfied that the accused has absconded or that there is no immediate prospect of arresting him, as provided under the first part of Section 299(1) of the Code of Criminal Procedure.", the court said in Nirmal Singh v. State of Haryana.

*"On a mere perusal of Section 299 of the Code of Criminal Procedure as well as Section 33 of the Evidence Act, we have no hesitation to come to the conclusion that the preconditions in both the sections must be established by the prosecution and it is only then, the statements of witnesses recorded under Section 299 CrPC before the arrest of the accused can be utilised in evidence in trial after the arrest of such accused only if the persons are dead or would not be available or any other condition enumerated in the second part of Section 299(1) of the Code of Criminal Procedure is established…",* the court clarified in Nirmal Singh.

In the present case, the appellant/accused had challenged his conviction against the offence of murder under Section 302 of IPC. The prosecution witness who made statements under Section 299 of Cr.P.C. against the accused could not be traced out and produced in the witness box for deposition during trial after the accused had been arrested despite ample efforts being made by the Investigating Agency to summon and examine the witness. Therefore, the court upheld the decision of the trial court which had justified the statements of the prosecution witness to be read as a substantive piece of evidence.

*"Viewed in light of the provisions of Section 299 Cr.P.C. read with Section 33 of the Indian Evidence Act, 1872 as interpreted by this Court in the case of Nirmal Singh (supra) and Jayendra Vishnu Thakur(supra), the trial Court was justified in holding that the statement of Ashok Kumar Pathak (prosecution witness) recorded in these proceedings was fit to be read as a piece of substantive evidence. We concur with the findings recorded by the trial Court and affirmed by the High Court on this vital aspect of the matter",* the court said.

**Citation: 2024 LiveLaw (SC) 378**
**Rajendra Bhagwanji Umraniya v. State of Gujarat**

**Decided on: May 15, 2024**

The Supreme Court held that an order for the convict to pay compensation to the victim would not result in the reduction of the sentence imposed on the convict.*"In criminal proceedings the courts should not conflate sentence with compensation to victims. Sentences such as imprisonment and / or fine are imposed independently of any victim compensation and thus, the two stands on a completely different footing, either of them cannot vary the other."*, the bench comprising Justices JB Pardiwala and Manoj Misra said.

The Court held that the High Court committed an error while doing so as *"if payment of compensation becomes a consideration for reducing sentence, then the same will have a catastrophic effect on the criminal justice administration.""It will result in criminals with a purse full of money to buy their way out of justice, defeating the very purpose of criminal proceedings."*, the court added Section 357 of the Code of Criminal Procedure provides the power to award compensation to victims of the offence out of the sentence of fine imposed on the accused. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to the victim who has suffered by the action of the accused.

The Court clarified that the sole factor for deciding the compensation to be paid is the victim's loss or injury as a result of the offence and has nothing to do with the sentence that has been passed. This means thereby, where an accused is directed to pay compensation to victims, the same is not meant as punishment or atonement of the convict but rather as a step towards reparation to the victims who have suffered from the offence committed by the convict.

*"The provision of Section 357 (Cr.P.C.) recognizes the aforesaid and is victim centric in nature. It has nothing to do with the convict or the sentence passed. The spotlight is on the victim only. The object of victim compensation is to rehabilitate those who have suffered any loss or injury by the offence which has been committed. Payment of victim compensation cannot be a consideration or a ground for reducing the sentence imposed upon the accused as victim compensation is not a punitive measure and only restitutory in nature and thus, has no bearing with the sentence that has been passed which is punitive in nature."*, the court observed.

**SLP (Criminal) No(s). 8529 of 2019**
**S. Nitheen & Ors. v. State of Kerala & Anr.**
**Decided on: May 17, 2024**

The Supreme Court, in a recent judgment, held that the charge under the offence of bigamy, punishable under Section 494 of the Indian Penal Code, can be framed only against the spouse to the second marriage.

By the mere presence of friends and relatives in the second marriage, it cannot be held that they had the common intention to commit the offence of bigamy unless the complainant prima facie proves the overt act or omission of the accused persons and also

establish that such accused were aware about the subsisting marriage. The bench of Justices BR Gavai and Sandeep Mehta, while setting aside the criminal proceedings against the relatives and friends of the accused wife, observed the following:

*"A bare perusal of the penal provision would indicate that the order framing charge is erroneous on the face of the record because no person other than the spouse to the second marriage could have been charged for the offence punishable under Section 494 IPC simplicitor. However, this is a curable defect, and the charge can be altered at any stage as per the provisions of Section 216 CrPC."*

*"The appellants (friends and relatives) herein are being roped in by virtue of Section 34 IPC (common intention) with the allegation that they had the common intention to commit the offence under Section 494 IPC. In order to bring home the said charge, the complainant would be required to prima facie prove not only the presence of the accused persons, but the overt act or omission of the accused persons in the second marriage ceremony and also establish that such accused were aware about the subsisting marriage of A-1 with the complainant,"* the Court added.

*Trial Court's Order Of Charging Appellants Under The Offence Of Bigamy Erroneous, Only Spouses Involved In Second Marriage Can Be Charged Under Section 494 IPC.*

Stressing the essential elements of an offence of Bigamy, the Court relied upon the decision of Gopal Lal v. State of Rajasthan**.** The key ingredients are noted as follows:

*"The essential ingredients of this offence are: (1) that the accused spouse must have contracted the first marriage (2) that while the first marriage was subsisting the spouse concerned must have contracted a second marriage, and (3) that both the marriages must be valid in the sense that the necessary ceremonies required by the personal law governing the parties had been duly performed."*Thus, the Court concluded that the order framing the charges against the appellants (family members and relatives of the accused) suffers from a patent error as only the spouse to the second marriage could have been charged for the offence of Bigamy.*"A bare perusal of the penal provision would indicate that the order framing charge is erroneous on the face of the record because no person other than the spouse to the second marriage could have been charged for the offence punishable under Section 494 IPC simplicitor. However, this is a curable defect, and the charge can be altered at any stage as per the provisions of Section 216 CrPC."*

The bench noted that peculiarly, the appellants have not been charged under the offence of abetment of bigamy under S. 109 IPC but rather of common intention under S. 34 IPC. Applying the rules for establishing common intention, the Court noted the prima facie need to show that not only were the appellants present at the bigamous wedding but also committed an overt act or omission to show their common intention towards the bigamy and the knowledge that Mr Lumina was already married.

*In order to bring home the said charge, the complainant would be required to prima facie prove not only the presence of the accused persons, but the overt act or omission of the accused persons in the second marriage ceremony and also establish that such accused were aware about the subsisting marriage of (A-1) with the complainant.*

**Citation: 2024 LiveLaw (SC) 389**

**National Investigation Agency New Delhi v. Owais Amin @ Cherry & Ors.**

**Decided on: May 18, 2024**

The Supreme Court has held that the Code of Criminal Procedure, 1973(CrPC) will apply to Jammu and Kashmir only with effect from 31.10.2019, the date when the Jammu and Kashmir Reorganization Act 2019 came into effect following the abrogation of the special status of J&K under Article 370 of the Constitution. The Court clarified that the CrPC will not have retrospective application to J&K prior to 31.10.2019 and hence all the proceedings and investigation which were initiated before such date will have to be as per the J&K CrPC 1989.

*"A perusal of Table 1 and Table 3 of the Fifth Schedule would clearly show that CrPC, 1973 would govern the field only from the appointed day and consequently the CrPC, 1989 stands repealed. To reiterate, it would come into effect only from the appointed day, and therefore has got no retrospective application. To make this position clear, the CrPC, 1973 shall be pressed into service from 31.10.2019 onwards, and thus certainly not before the appointed day,"* a bench comprising Justices MM Sundresh and SVN Bhatti observed.

In the instant case, the Court was dealing with the issue whether sanction as per the J&K CrPC 1989 was required for taking cognizance of the offence of criminal conspiracy as per the Ranbir Penal Code.*"We have no difficulty in holding that while an investigation could continue after its initiation under the CrPC, 1989, by way of the application of the CrPC, 1973, it cannot be stated that even for a case where there was a clear non-compliance of the former, it can be ignored by the application of the latte,"*

The Court added :*"If we were to hold that even by way of a prospective application, notwithstanding the non-compliance under the CrPC, 1989, the appellant shall be permitted to prosecute the respondents, we would only be applying CrPC, 1973 retrospectively, which as discussed is not permissible."*

***Not taking sanction a curable defect, holds Supreme Court***

While the Supreme Court held that the CrPC 1989 was applicable in respect of the offence, it stated that the failure to obtain sanction was a curable defection. *"It is to be noted, that a mere non-compliance of an earlier procedure mentioned in the repealed Code by itself would not ensure to the benefit of an accused, the procedure being a curable one, depending upon the facts and circumstances of the case."*, the bench comprising Justices MM Sundresh and SVN Bhatti said. Therefore, the investigating agency is not debarred from proceeding further after complying with the omission committed earlier, by taking recourse to the repealed Code, the Court clarified.*"Accordingly, we give liberty to the appellant to comply with the mandate of Section 196-A of the CrPC, 1989, by seeking appropriate authorization or empowerment as the case may be. Needless to state, if such a compliance is duly made, then the Trial Court shall undertake the exercise of taking cognizance, and proceed further with the trial in accordance with law."*, the court observed.

**Citation: 2024 LiveLaw (SC) 406**

**Rajendra S/O Ramdas Kolhe v. State of Maharashtra**
**Decided on: May 17, 2024**

The Supreme Court held that corroboration of the dying declaring statement isn't required when it inspires the confidence of the court to convict the accused.

*"The law relating to dying declaration is now well settled. Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and credible and that it is devoid of any tutoring. Once such a conclusion is reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction."*, the bench comprising Justices Abhay S Oka and Ujjal Bhuyan said.

Referring to precedents, the Court summarised the principles relating to dying declaration as follows :

*(i) It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;*

*(ii) Each case must be determined on its own facts, keeping in view the circumstances in which the dying declaration was made;*

*(iii) It cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;*

*(iv) A dying declaration stands on the same footing as another piece of evidence. It has to be judged in the light of surrounding circumstances and with reference to the principles governing weighing of evidence;*

*(v) A dying declaration which has been recorded by a competent Magistrate in the proper manner stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character;*

*(vi) In order to test the reliability of a dying declaration, the court has to keep in view various circumstances including the condition of the person concerned to make such a statement; that it has been made at the earliest opportunity and was not the result of tutoring by interested parties.*

The court clarified that the minor inconsistencies in the version of the prosecution witnesses deposing the correctness of the dying declaration would not prove fatal to the prosecution if the prosecution witnesses' statements were in convergence to the core of the narration of the deceased made in the dying declaration and the medical history recorded by the doctor.*"That being the position, the evidence on record, particularly Ex. 59, clearly establishes the guilt of the appellant beyond all reasonable doubt",* the court observed.

## CIVIL

**Citation : 2024 LiveLaw (SC) 375**

**Bhikchand S/O Dhondiram Mutha (Deceased) Through Lrs v. Shamabai Dhanraj Gugale (Deceased) Through Lrs.**

**Decided on: May 14, 2024**

In an important ruling concerning the principle of 'restitution' under Section 144 of the Code of Civil Procedure, 1908 ("CPC") the Supreme Court observed that if after knowing that the decree was likely to be reversed, a stranger auction purchaser (not being party to the proceedings) purchases the property in execution of the decree, then he couldn't claim the protection of being a bona fide purchaser and the principle of restitution would apply in such circumstances.

Reversing the findings of the High Court, the bench comprising Justices Hrishikesh Roy and Prashant Kumar Mishra observed that if the person who has purchased the suit property from the decree-holder despite having full knowledge of pending appeal proceedings against the decree, then the purchaser of the suit property from the decree-holder is not entitled to object restitution on the ground that he is a bona fide purchaser.

The Judgment authored by Justice Prashant Kumar Mishra drew its strength from the case of Chinnamal & Ors. Vs. Arumugham & Anr, AIR 1990 SC 1828, where the Court distinguished between the decree-holder who purchased the property in execution of his own decree, which is afterward modified or reversed and a person who is not a party to the decree i.e., the stranger who purchases the property from the decree-holder.

*"If the evidence indicates that he had no such knowledge he would be entitled to retain the property purchased being a bona fide purchaser and his title to the property remains unaffected by subsequent reversal of the decree. The court by all means should protect his purchase. But if it is shown by evidence that he was aware of the pending appeal against the decree when he purchased the property, it would be inappropriate to term him as a bona fide purchaser. In such a case the court also cannot assume that he was a bona fide or innocent purchaser for giving him protection against restitution. No assumption could be made contrary to the facts and circumstances of the case and any such assumption would be wrong and uncalled for."*, the court answered in Chinnamal.

Allowing the appeal, the Supreme Court allowed the application under S.144 CPC. *"The parties are restored back to the position where the execution was positioned before the attachment of the immovable properties of the judgment debtor,"* the Court ordered.

**Citation : 2024 LiveLaw (SC) 413**

**Bijay Kumar Manish Kumar Huf v. Ashwin Bhanulal Desai**

**Decided on: May 17, 2024**

The question that appeared before the Supreme Court was whether the tenant would be liable to pay compensation to the landlord in the form of 'mesne profit' when there was no eviction order against the tenant but continued to remain in the rented premise. Answering affirmatively, the Judgment authored by Justice Sanjay Karol observed that the tenant would be liable to pay the mesne profit to the landlord for the period he had been a 'tenant at sufferance'.

The Court's observation drew support from its Judgment of *Indian Oil Corporation Ltd. v. Sudera Realty Private Limited, 2022 LiveLaw (SC) 744*, where also it was observed that the tenant while continuing in possession after the expiry of the lease became liable to pay mesne profits.

**Citation: 2024 LiveLaw (SC) 414**
**Alifiya Husenbhai Keshariya v. Siddiq Ismail Sindhi &Ors.**
**Decided on: May 27, 2024**

The factual matrix of the present case is such that the appellant got injured in an accident and subsequently, approached the Motor Accident Claims Tribunal for compensation. Contending that she had sustained permanent disablement, she had filed a claim of Rs. 10 Lakhs. However, the Tribunal awarded her around Rs. 2 Lakhs.

Aggrieved by this, she filed an appeal in the High Court along with an application seeking permission to file the appeal as an indigent person. However, the Court refused to entertain the same after noting that the claimant had been awarded the aforesaid compensation. Importantly, at the same time, the Court also acknowledged, in its order, that no amount has been received by her yet. Against this backdrop, the matter came before the Supreme Court.

The Court referred to a thread of precedents, including *Union Bank of India v. Khader International Construction &Ors., (2001) 5 SCC 22*. Therein, it was noted that if the suit is decreed for the plaintiff, the court fee would be calculated as if the plaintiff had not originally filed the suit as an indigent person."*...So there is only a provision for the deferred payment of the court fees and this benevolent provision is intended to help the poor litigants who are unable to pay the requisite court fee to file a suit because of their poverty*.," the Court added.

Taking a cue from this, the Bench opined that the High Court was incorrect in dismissing the above mentioned application even after recording that she has not received the compensation."*So even though she had been awarded a sum, her indigency was not extinguished thereby. Any which way, in our considered view, the High Court was incorrect in rejecting the Misc. Application*.," the Court said.

**Citation: 2024 LiveLaw (SC) 407**
**Civil Appeal No. 7840 Of 2023**
**Rajesh Kumar v. Anand Kumar & Ors.**

Even though the limitation period for filing a suit for specific performance of a contract is three years, the Supreme Court held that every suit for specific performance of the contract filed within the period of limitation cannot be decreed.

The court noted that the three-year limitation period for filing the suit for specific performance of the contract wouldn't grant liberty to a plaintiff to file a suit at the last moment and obtain specific performance despite knowing about the breach of contract.

In the present case, the plaintiff entered into an agreement with only one of the co-owners and thereafter sought extensions for the execution of the sale deed but did not prefer any suit though he was aware of the sale deed dated 14.05.1997 executed in favor of the third party and sent a legal notice on 30.05.1997 and even objected to the subsequent

purchasers' application for mutation of their names in the revenue records on 20.08.1997 and refers to a meeting of the Gram Panchayat dated 06.12.1997, yet the suit was preferred, on 09.05.2000 on the last date of limitation.

The Judgment authored by Justice PK Mishra held that the appellant/plaintiff would not be entitled the discretionary relief of the specific performance of the suit due to his conduct for not preferring the suit within the reasonable time despite knowing the fact of the breach of the contract well before the filing of the suit.

**Citation: 2024 LiveLaw (SC) 411**
**S. Shivraj Reddy(Died) Thr His Lrs. And Another v. S. Raghuraj Reddy And Others**
**Decided on: May 27, 2024**

The Supreme Court held that even if the plea of limitation is not set up as a defence, the Court has to dismiss the suit if it is barred by limitation.

Reversing the findings of the High Court's Division Bench, the bench comprising Justices BR Gavai and Sandeep Mehta upon placing reliance on the case of *V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugao and Another, (2005) 4 SCC 613* observed that as per the mandate of Section 3 of the Limitation Act, the court has to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence.

The aforesaid observation of the Court came while deciding a case where a plea for a rendition of accounts of the partnership firm was filed by the partner beyond the period of limitation.As per the mandate of Section 42(c) of the Partnership Act, 1932 the partnership firm automatically dissolves upon the death of a partner.

The court noted that the filing of a suit for the rendition of an account of the partnership firm by another partner ought to be filed within the prescribed limitation period of three years being calculated from the date of the partner's death. Any suit filed beyond the limitation period would not be maintainable due to the enforcement of a specific bar to entertain the time-barred suit under the Limitation Act.

*"The period of limitation for filing a suit for rendition of account is three years from the date of dissolution. In the present case, the firm dissolved in year 1984 by virtue of death of Shri M. Balraj Reddy (deceased partner) and thus, the suit could only have been instituted within a period of three years from that event. Indisputably, the suit came to be filed in the year 1996 and was clearly time-barred..."*, the judgment authored by Justice Sandeep Mehta said.

**Citation: 2024 LiveLaw (JKL) 107**
**Jaswant Singh v. State of J&K**
**Decided on: May 07, 2024**

The Jammu and Kashmir and Ladakh High Court has ruled that stones used for pelting cannot, by any stretch of reasoning, be termed as a 'dangerous weapon' or 'an instrument' used for shooting to bring an accused within the meaning of section 326 Ranbir Penal Code (RPC) which deals with causing grievous hurt by dangerous weapons.

Altering the conviction of an accused from Section 326 to Section 325 of the Ranbir Penal Code (RPC) Justice Sanjeev Kumar observed, *"The size of stones used for pelting cannot , by any stretch of reasoning, be termed as a 'dangerous weapon' or 'an instrument' used for shooting, stabbing or cutting etc. nor can it be termed as 'any corrosive or 'any explosive substance' or a substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood etc".*

Singh had challenged his conviction under Section 326 of the RPC, arguing that the stones used were not dangerous weapons and the offence should have been charged under Section 325, which deals with causing grievous hurt without weapons.

After meticulously examining the provisions of Sections 325 and 326 RPC, the Court emphasized that the appellant's act, though resulting in grievous hurt, did not involve the use of instruments classifiable as 'dangerous weapons.'

*"Having regard to the fact that the fight which resulted into grievous hurt to the complainant was not premeditated and that the injury was caused by pelting of small stones, it is a foregone conclusion that what was used by the appellant for causing grievous hurt to the complainant was not a 'dangerous weapon' so as to bring the act of the appellant within the meaning of section 326 RPC",* the bench recorded. Elaborating further Justice Kumar observed that Singh was aware of the potential consequences of his actions and the fact that pelting stones could cause grievous hurt, but the size of the stones used did not elevate the offence to one committed with a dangerous weapon under Section 326.

**Citation: 2024 LiveLaw (JKL) 119**
**Farooq Ahmad Wani v. Tariq Ahmad Khan**
**Decided on: May 17, 2024**

The Jammu and Kashmir and Ladakh High Court has reiterated the wide discretion a court has under Section 311 of the Criminal Procedure Code (Cr.P.C.) to ensure a just decision. In a judgment passed by Justice Javed Iqbal Wani, the court emphasized that the broad wording of the section, allowing "any court" to summon witnesses "at any stage" of the proceedings, should not be restricted. These observations came in a plea involving petitioner Farooq Ahmad Wani, accused of dishonouring a cheque in favour of Respondent Tariq Ahmad Khan. During the trial before the Chief Judicial Magistrate, Anantnag, Wani's

lawyer opted not to present any defence evidence.

Emphasising that Section 311's purpose is to unearth the truth and secure a just verdict by considering all relevant facts Justice Wani observed, *"The very usage of the expressions in the Section i.e. "any court" and "at any stage" clearly spells out that the section is expressed in widest possible terms and do not circumscribe or limit the discretion of the court in any way".* However the court also added, *"that widest power requires a corresponding caution and carefulness in exercise of such power with a further caveat to be exercised judicially and in furtherance of the cause of justice inasmuch as not to exercise the said power for filling up of lacunas in evidence"*

Dealing with the other contention as to whether the application of the accused petitioner could have rejected by the trial court on the ground of the age of the case or the period of time having been consumed in trying the same the bench cited *Manju Devi Vs. State of Rajasthan and Anr. 2019* and reiterated,*".. the age of a case, by itself, cannot be a decisive of the matter when a prayer is made for examination of a material witness "*In light of these observations, the court allowed Wani's petition. The impugned orders were set aside, permitting him to present the witnesses mentioned in his application before the trial court on the next hearing date or a subsequent date fixed by the court.

**Citation: 2024 LiveLaw (JKL) 120**
**Ashok Kumar v. State**
**Decided on: May 20, 2024**

Reiterated the importance of Section 313 of the Criminal Procedure Code (CrPC) as a vital safeguard for the accused in a fair trial the Jammu and Kashmir and Ladakh High Court highlighted the trial court's duty to ensure the accused is informed of all incriminating evidence against them and is provided an opportunity to explain themselves.

*"The purpose of putting material evidence distinctively and separately to the accused is to enable the accused to tender his explanation and if the incriminating evidence is not put in the manner aforesaid, then it amounts to condemning the accused unheard",* the bench comprising Justice Rajnesh Oswal observed.

The case originated from an incident leading to the conviction of Ashok Kumar for offences under sections 279, 338, and 304-A of the Ranbir Penal Code (RPC). The Judicial Magistrate Akhnoor, convicted Kumar and sentenced him to various terms of simple imprisonment and fines for these offences on May 15, 2013. Justice Oswal meticulously examined the trial records and found that the trial court had indeed put the statements of all witnesses to the accused in one line, a practice condemned by the Supreme Court in various judgments.

*".. this Court finds that the learned trial court recorded the statement of the petitioner on 19.02.2013 and the statements of all the witnesses were put to him in one line only, the practice which has been deprecated by the Hon'ble Supreme Court",* the bench remarked. Underscoring the essence of Section 313 CrPC, Justice Oswal highlighted its role as a

safeguard that ensures a direct dialogue between the court and the accused as it mandates that the court must question the accused specifically and distinctly about each material circumstance appearing in the evidence against him.

Referring *Raj Kumar v. State (NCT of Delhi), 2023 & Premchand v. State of Maharashtra, 2023* the bench strenuously emphasised the necessity of direct and clear questioning of the accused to enable him to explain any incriminating evidence. Concluding that both the trial and appellate courts had erred in their judgments by not adhering to the mandated procedure under Section 313 CrPC the court set aside the judgments of both courts and remanded the case back to the trial court with directions to comply with the legal requirements.

## CIVIL

**Citation: 2024 LiveLaw (JKL) 118**
**Mohammad Shafi Vs Union Of India**
**Decided on: May 17, 2024**

Protecting the pension rights of a retired Sanitary Inspector the Jammu and Kashmir and Ladakh High Court has reiterated that pension a hard-earned benefit which accrues to an employee, constitutes "property" under Article 31(1) and any interference will be a breach of Article 31(1) of the Constitution.

Deciding a plea involving questions of the pensionary rights of an employee a bench of Justice M A Chowdhary quoted *'Deokinandan Prasad v. State of Bihar',(1971) & 'D. S. Nakara v. Union of India', reported as '(1983)* wherein the Apex Court observed,*"..we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order, dated June 12, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable."*

Upon meticulously examining these arguments Justice Chowdhary acknowledged the well-established legal position on pension rights, citing Supreme Court judgments which have repeatedly recognized pension as a right earned through service, not a mere government handout.

*"..the right of pension cannot be taken away by a mere executive fiat or administrative instruction.....pension and gratuity are not mere bounties or given out of generosity by the employer, but the employee earns these benefits by virtue of his long, continuous, faithful and unblemished service",* the court recorded.

Scrutinising details of the case the bench observed that Shafi had served diligently for over 20 years, fulfilling all the responsibilities associated with the role of a Sanitary Inspector. The government's acceptance of his service throughout this period was undeniable, the court pointed and emphasized that any administrative delay or lapse on the part of the government in formally sanctioning the post on the SPARSH portal could not be used to deprive Shafi of his rightful pension.

*"The Respondents seem to have slept over the matter for a period of more than two decades and had taken services of the Petitioner as Sanitary Inspector and, now, they cannot be permitted to take a U-turn by saying that the post held by the Petitioner was not sanctioned by the competent authority",* the bench remarked.

Quashing the government's communications denying Shafi's pension benefits the court directed the authorities to conduct a proper review through the SPARSH portal and release all his pensionary benefits, including gratuity, calculated based on the last pay drawn as a Sanitary Inspector.

**Citation: 2024 LiveLaw (JKL) 12**
**Farooq Ahmad Sheikh Vs Tariq Ahmad Malik**
**Decided on: May 22, 2024**

Setting a precedent regarding who can be considered a "necessary party" in writ petitions the Jammu and Kashmir and Ladakh High Court has ruled that the concept of a necessary party in a writ petition is far broader than in a purely civil suit. Shedding light on a much broader application of Order 1 Rule 10(2) concerning writ petitions a bench of Justices Tashi Rabstan& M A Chowdhary observed, *"The Writ Court cannot keep itself confined merely to the litigants appearing before it or on the record available nor will it keep itself confined only to the lis before it, but will also take into account the consequences or the effect which the decision will have or is likely to have on the interests of others who may not be wholly necessary for decision of the issue at hand...Viewed from this angle, the concept of necessary party in a purely Civil Suit and a Writ Petition cannot be one and the same".*

Scrutinising the principles of necessary and proper parties in writ petitions versus civil suits the bench cited the Supreme Court's ruling in *"Prabodh Verma & Ors. v. State of Uttar Pradesh &Ors.",* and noted that individuals who would be vitally affected by a judgment must be included in writ petitions, even if they were not directly involved in the initial dispute. Deliberating on the contours of "necessary party" viz a viz a writ petition in contrast to a civil suit the court said,

*"Unlike in a Civil Suit, for being a proper or a necessary party, where the applicant has to show a fair semblance of title or interest, the applicant, in a Writ Petition, has to satisfy the Court as to whether the applicant will be vitally affected by the decision to be taken in the Writ Petition".* Criticising the writ court's narrow interpretation of Order 1 Rule 10 CPC regarding the impleadment of necessary parties the bench stated that the concept of the necessary party in a purely Civil Suit and a Writ Petition cannot be the same, as the scope of the necessary party in a Writ Petition is much wider than in a Civil Suit.

*"The High Court, invoking Writ jurisdiction, looks beyond the parties appearing before it and must ensure that not only the persons, who are essential for the purpose of the disposal of the case, but also those, who will be vitally affected by the order to be passed, are made parties so that nothing is decided behind their back"*, the bench reasoned.

Applying these principles to the case at hand, the court held that the Writ Court erred in solely focusing on the title disregarding the potential impact on the Applicants/ Appellants' land use and access and emphasized the need to ensure all potentially affected parties are heard to achieve a complete and just resolution.

# ACTIVITIES DURING THE MONTH

## Pre-appointment Induction Training for Trainee Civil Judges(Jr. Division) Batch 2024

Under the patronage of Chief Justice, High Court of J&K and Ladakh, Justice N Kotiswar Singh and guidance of Chairman Governing Committee, Justice Sanjeev Kumar and other members of Governing Committee for Academy, J&K Judicial Academy organised a pre-appointment training programme for the newly selected Civil Judges (Junior Division) at J&K Judicial Academy, Srinagar.

HMJ N. Kotiswar Singh, Chief Justice, High Court of J&K and Ladakh and Patron-in-Chief, J&K Judicial Academy defined the tone and texture of the programme into motion in presence of Justice Tashi Rabstan. Justice Sanjeev Kumar, Justice Sindhu Sharma, Justice Javed Iqbal Wani, Justice Puneet Gupta, Justice Moksha Khajuria Kazmi, Justice M. Y. Wani and all the Judges from Jammu wing joined the programme virtually. The Chief Justice, in his inaugural address, said that the concept of 'Justice' can be regarded as a prodigious view imbibed in our Constitution which owes its genesis to the soil of India. The notion of justice is most commonly associated with an underlying assumption that


justice equates to the concept of equal rights and equal opportunity to have access and fair treatment in the legal system. The Chief Justice delineated that source of judicial power in the law, in reality, is the effective exercise of judicial powers which originate from two sources. He added that the judges have to honour the judicial office which they hold as repositories of public trust. He emphasised that every action and every word whether spoken or written, must show and reflect correctly that you hold the office of public trust and they should be determined to strive hard continuously to enhance and maintain people's confidence in the judicial system. He also shared some real-life incidents with the trainees and encouraged them to deliver justice efficiently as first-line warriors. Justice Sanjeev Kumar, Chairman, Governing Committee for J&K Judicial Academy, gave an overview of Pre-appointment Training Programme module prepared by the Academy. He underlined that primary objective of the Induction Course is to build a strong foundation for the grooming of raw talent into as finest Judicial Officers. He highlighted that prime focus of the Induction Course, is on inculcation of Judicial Ethics, Development of Judicial Skills and Aptitude and Sensitization to Social Issues. Justice Kumar further emphasized that

institutional training at J&K Judicial Academy shall train and equip the Judicial Officer to effectively discharge their judicial functions. Its purpose would be to bridge the gap between the level of knowledge and its applicability in the actual discharge of duties, he added. He deliberated that the judicial education and training provides the means for the judiciary as an institution to consolidate, develop and perform this crucial, yet fragile, role in society. Justice Javed Iqbal Wani, Member, Governing Committee for J&K Judicial Academy in his formal welcome address, observed that Judiciary, which is an integral part of the society, plays pivotal role in keeping the society ever dynamic. He added that the judiciary is the repository of confidence of the people and Indian judiciary has enjoyed immense public confidence and has stood the test of time. He said that the common man considers the judiciary as the ultimate guardian of his rights and liberties and therefore, every member of this institution owes a duty to maintain that confidence of the common man in the judiciary. Justice Moksha Khajuria Kazmi, Member, Governing Committee for J&K Judicial Academy, presented vote of thanks. Her ladyship emphasised that pre-appointment Induction Training is a progressive step in the right direction to tune young minds to take over the new assignment with confidence.

Director, J&K Judicial Academy, Y.P. Bourney, conducted the proceedings of the inaugural programme. He congratulated the young trainees for having come out with flying colours and made to the merit list. He also gave introduction to the Induction Training Course in the first session.

The second session was conducted by Justice Bashir Ahmad Kirmani, Former Justice, High Court of J&K, who discussed the Judicial Ethics and Code of Conduct for Judicial Officers. The learned resource person highlighted that Judge should be courteous and fair in whatever he says and does. He added that the judges should take care to be punctual, to be dressed decently, to talk discretely and behave in a dignified and graceful manner befitting the high office he holds.

The third session was chaired by Justice Sanjeev Kumar, Chairman, Governing Committee for J&K Judicial Academy. He discussed that Judges are not employees and as

members of the judiciary, they exercise the sovereign judicial power of the State. He stated that Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or other members of the services since latter cannot be placed at par with the members of the judiciary, either constitutionally or functionally.

All the sessions remained very interactive during which all the trainee judges actively participated and shared their experiences, difficulties and also discussed various aspects of the subject topics. They also raised a number of queries which were answered satisfactorily by the resource persons.