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Contents

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From the Editor's Desk

Jurisprudence on rape, on the pretext of marriage, is being shaped by judicial precedents across India. Marriage is considered as sacred union between two individuals – transcending beyond physical, emotional and spiritual bounds. In ancient Hindu laws, marriage and its rituals are performed to pursue dharma (duty), artha (possessions) and kama (physical desires). With such sanctity, marriage is more than a ritual, and accordingly the present criminal jurisprudence invokes Section 90 of the Penal Code, 1860 when the consent for a sexual intercourse is sought on the false promise of marriage. On the other hand, "men's rights activists" claims that these charges framed against the accused should be equitable to "false rape cases" for various reasons. It is argued that these allegations are paradoxical and rather counterproductive insofar as rampant acquittals and discharge in such cases dilute the seriousness surrounding the penal provision relating to rape.

Therefore, the term "consent" becomes the subject-matter of a legal deliberation and debate. In terms of Section 90 IPC, consent given by a victim under a misconception of fact would amount to rape within the meaning of Section 375 IPC. However, what is the degree and the nature of this misconception? Is there a legal litmus test to decipher this misconception? Anthropologists and experts can vouch for the fact that wear and tear is an integral part of any relationship, marital or otherwise. In fact, quite recently, Sikkim High Court had extended the benefit of doubt to the accused on the ground of "relationship going sour". Therefore, an endeavour is made herein to sum up the recent developments on the jurisprudence surrounding rape on the pretext of marriage and identify legal parameters which could potentially decipher the key difference between actual inducement leading to rape on the pretext of marriage or not.

The Supreme Court has, especially in the last decade, passed several landmark decisions in an endeavour to frame policy related jurisprudence on this subject matter. From holding that the victim was not a "gullible woman of feeble intellect" in *Vinod Kumar* v. *State of Kerala*, to reiterate the distinction between a promise which is unfulfilled and a promise which is false from the very beginning in *Anurag Soni* v. *State of Chhattisgarh*, Supreme Court has made it unambiguous and coherent that in order to establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance or bear a direct nexus to the woman's decision to engage in the sexual act.

To summarise the legal position that emerges from various cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act.

LEGAL JOTTINGS

"Judicial decisions must in principle be reasoned and the quality of a judicial decision depends principally on the quality of its reasoning. Proper reasoning is an imperative necessity which should not be sacrificed for expediency. The statement of reasons not only makes the decision easier for the parties to understand and many a times such decision would be accepted with respect. The requirement of providing reasons obliges the Judge to respond to the parties' submissions and to specify the points that justify the decision and make it lawful and it enables the society to understand the functioning of the judicial system and it also enhances the faith and confidence of the people in the judicial system.."

K.S. Panicker Radhakrishnan, J. In State of Uttaranchal v. Sunil Kumar Vaish, (2011) 8 SCC 670, para 19

CRIMINAL

Supreme Court Judgments

Criminal Appeal No. 1288 of 2021
Pradeep S. Wodeyar v. The State of Karnataka
Decided on: November 29, 2021

Hon'ble Supreme Court bench comprising Justice DY Chandrachud, Justice Vikram Nath and Justice BV Nagarathna, in an appeal filed against a judgment of the Karnataka High Court which dismissed the appellant's petition seeking quashing of the criminal proceedings against him has held that an irregularity in the order taking cognizance will not vitiate the proceedings in a criminal trial. One of the arguments raised by the appellant was that the Special Court under the MMDR Act had no power to take cognizance of the offences without the case being committed to it by the Magistrate under Section 209. Therefore, it was argued that the order taking cognizance was irregular and hence the proceedings were vitiated. The Apex Court agreed that the Special Court does not have, in the absence of a specific provision to that effect, the power to take cognizance of an offence under the MMDR Act without the case being committed to it by the Magistrate under Section 209. Hence, the Court concluded that the order taking cognizance was irregular. Further, while deciding the question whether the irregularity in taking cognizance will affect the trial, the Hon'ble Court referred to Sections 460, 461 and 465 of the Code of Criminal Procedure. It was observed thus "*It is a settled principle of law that cognizance is taken of the offence and not the offender. However, the cognizance order indicates that the Special Judge has perused all the relevant material relating to the case before cognizance was taken. The change in the form of the order would not alter its effect. Therefore, no failure of justice' under Section 465 CrPC is proved. This irregularity would thus not vitiate the proceedings in view of Section 465 CrPC".*

Special Leave to Appeal (Crl.) No. 643/2020
Ashok v. State of Madhya Pradesh
Decided on: November 29, 2021

Hon'ble Supreme Court bench of Justices Indira Banerjee and JK Maheshwari observed that the claim of juvenility can be raised before any Court, at any stage, even after final disposal of the case. It was also observed that if the Court finds a person to be a juvenile on the date of commission of the offence, it is to

forward the juvenile to the Board for passing appropriate orders, and the sentence, if any, passed by a Court, shall be deemed to have no effect." *The claim of juvenility can thus be raised before any Court, at any stage, even after final disposal of the case and if the Court finds a person to be a juvenile on the date of commission of the offence, it is to forward the juvenile to the Board for passing appropriate orders, and the sentence, if any, passed by a Court, shall be deemed to have no effect."*

Criminal Appeal No. 2373 of 2010
Surinder Singh v. State (Union Territory of Chandigarh)
Decided on: November 26, 2021

Hon'ble Supreme Court bench of CJI NV NV Ramana, Justices Surya Kant and AS Bopanna while considering a criminal appeal against Punjab and Haryana High Court's order has observed that illegal use of a licensed or sanctioned weapon per se does not constitute an offence under Section 27 of the Arms Act, 1959 ("Act"), without proving the misdemeanor u/s 5 or 7 of the Act. The Apex Court also observed that at best, it could be a 'misconduct' under the service rules. *"...the illegal use of a licensed or sanctioned weapon per se does not constitute an offence under Section 27, without proving the misdemeanor under Section 5 or 7 of the Arms Act. At best, it could be a 'misconduct' under the service rules, the determination of which was not the subject of the trial".* While partly allowing the appeal by setting aside conviction and sentence u/s 27 of the Act but maintaining conviction u/s 307 IPC, , the bench said, *"True it is that prior to the amendment of Section 27 of the Arms Act, vide Arms (Amendment) Act 1988, the said provision penalized the use of any arms and ammunitions for any 'unlawful purpose'. However, post its amendment, Section 27 of the Arms Act is strictly confined to violation of conditions mentioned either under Section 5 or 7 of the Arms Act and the 'unlawful purpose' of using arms and ammunition is no longer an inseparable component of the delinquency."*

Criminal Appeal No. 1410 of 2021
Attorney General for India v. Satish And Another
Decided on: November 18, 2021

Hon'ble Supreme Court Bench comprising of Justices U.U. Lalit, S. Ravindra Bhat and Bela.M. Trivedi held that "skin-to-skin touch is not a requirement to constitute an offence of sexual assault under S.7 of the POCSO Act. It was stated that restricting 'touch' or 'physical contact' under Section 7 of POCSO is absurd and will destroy the intent of the Act, which is enacted to protect children from sexual offences. Restricting the meaning of expression 'touch' and 'physical contact' under Section 7 of POCSO to "skin to skin contact" would not only be narrow and pedantic interpretation but will also lead to absurd interpretation of the provision.If such an interpretation is adopted, a person who uses gloves or any other like material while physical groping will not get conviction for the offence. That will be an absurd situation. The Construction of rule should give effect to rule rather than destroying it. The intention of legislature cannot be given effect to unless wider interpretation is given do. The purpose of the law cannot be to allow the offender to escape the meshes of the law.

The Hon'ble Bench also made an important observation about how certified copies of judgement be uploaded. The Hon'ble Bench expressed surprise in the way and manner the certified copy was issued by affixing the stamp on the backside of every page of the judgment which is blank. It was also noted that while it is a written statement at the foot of the

judgement that the said copy is a true copy of the judgment as contemplated in Section 76 of the Indian Evidence Act , the same is also missing.

"49. It is very surprising to note that the Registry of High Court of Bombay, Nagpur Bench, has certified the copy of the impugned judgment by affixing the stamp on the back side of every page of the judgment which is blank. The said copy of the judgment appears to have been downloaded from the website and, therefore, does not bear even the signature or the name of the concerned judge at the end of the judgment. The certificate that the said copy is a true copy of the judgment, is also not written at the foot of the judgment as contemplated in Section 76 of the Indian Evidence Act."

Criminal Appeal No. 2438 of 2010
Bijender @ Mandar v. State of Haryana
Decided on: November 08, 2021

The Hon'ble Supreme Court bench of Justice NV Ramana, Justice Surya Kant and Justice Hima Kohli observed that to convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material, the recovery should be unimpeachable and not be shrouded with elements of doubt. On facts, High Court of Punjab and Haryana had upheld the Trial Court judgment which convicted an accused-Bijender @ Mandar under Sections 392 and 397 of the Indian Penal Code. The question for consideration was whether the conviction of the Appellant on the strength of the purported disclosure statement) and the rec overy memo , in the absence of any corrobora tive evidence, can sustain? It was observed "16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt.1 We may hasten to add that circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the Court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery.

Criminal Appeal No. 1170 of 2021
The State of Jammu & Kashmir and others v. Dr. Saleem Ur Rehman
Decided on: October 29, 2021

Hon'ble Supreme Court bench comprising Justices MR Shah and AS Bopanna has held that prior sanction of the Magistrate is not mandatory for investigating a non-cognizable offence along with a cognizable offence. Hon'ble Court observed so while dealing with an appeal against a judgment of the Hon'ble Jammu and Kashmir High Court, which quashed an FIR for offences under the J&K Prevention of Corruption Act and criminal conspiracy under Section 120B of the Ranbir Penal Code. The Hon'ble High Court, among other grounds, had quashed the FIR observing that prior sanction of the Magistrate as per Section 155 of the J&K Code of Criminal Procedure was not obtained for investigating the offence of criminal conspiracy, which was non-cognizable as per the Ranbir Penal Code. The High Court also held the delay in completing preliminary enquiry as a reason to quash

the case. It was also observed by the Apex Court that the offence under the Prevention of Corruption Act is a substantive offence. When the investigation in respect of the offence under the PC Act, is coupled with the offence of conspiracy, there is no requirement of prior sanction of the Magistrate. Referring to *Pravin Chandra Mody v. State of Andhra Pradesh, 1965 (1) SCR 269,* wherein it was held that prior sanction under Section 155 CrPC was not needed when the non-cognizable offence is being jointly investigated along with a cognizable offence, it was observed that *¦The offence under the Prevention of Corruption Act is a substantive offence and the investigation in respect of the offence under the PC Act, when considered and coupled with the offence of conspiracy, there is no requirement of prior sanction of the Magistrate. Merely because the offence of the conspiracy may be involved, investigation into the substantive offence, i.e in the present case, offence under the PC Act which is cognizable is not required to await a sanction from the Magistrate, as that would lead to a considerable delay and affect the investigation and it will derail the investigation."* The Hon'ble Court also observed that whatever enquiry is conducted at the stage of Preliminary Enquiry, by no stretch of imagination, can be considered as investigation under the code of criminal procedure which can only be after registration of the FIR. The Court also observed that merely because some time is taken for conducting preliminary enquiry that cannot be a ground to quash the criminal proceedings for an offence under the Prevention of Corruption Act.

High Court of Jammu & Kashmir and Ladakh Judgments

CRM(M) 21/2020
Yasir Amin Khan v. Abdul Rashid Ganie
Decided on: November 22, 2021

Hon'ble High Court of Jammu & Kashmir and Ladakh laid down extensive guidelines regarding approach of the trial Court while awarding punishment to an accused convicted for commission of offence under Section 138 of N.I. Act , in petition filed under Section 482 Cr.P.C wherein the petitioner sought setting aside of order passed by the Special Mobile Magistrate (Sub-Judge), Srinagar in a complaint filed under Section 138 of Negotiable Instruments Act, 1981 whereby on the basis of statement made by the respondent-accused under Section 242 Cr.P.C (251 Central Act), he has been convicted and punished with simple imprisonment for a term of six months and in addition and he has been held liable to pay compensation of Rs.2.00 lac to the opposite side. The petitioner was not aggrieved by the impugned order insofar as it convicts accused for commission of offence under Section 138 of N.I.Act and imposes punishment of simple imprisonment . However, his grievance was that the respondent-accused should have also been awarded fine sufficient to meet the liability of the cheque issued by him which later on was dishonoured. Hon'ble Court reiterated the Apex Court observation that unlike other forms of crime, the punishment for commission of offence under Section 138 of N. I. Act is not a means of seeking retribution but is more a means to ensure payment of money and, therefore, in respect of offence of dishonor of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect.It was observed *," 12 From a reading of provisions of Section 138 of N. I. Act in the context of laudable object sought to be achieved by Chapter XVII of N.I Act, it is abundantly clear that the Criminal Court while convicting an accused for commission*

of offence under Section 138 of N.I. Act, cannot ignore the compensatory aspect of remedy and the compensatory aspect can only be given due regard if the sentence imposed is at least commensurate to the amount of cheque, if not more, so that this fine, once imposed, can be appropriated towards payment of compensation to the complainant by having resort to Section 357 of Cr.P.C. Also, regarding the amount of cheque, the Hon'ble Court set out the guiding principles "*20 Indisputably, the Legislature has given discretion to the Magistrate to impose a sentence of fine which may extend to double the amount of cheque and, therefore, the sentence of fine whenever imposed by the Criminal Court upon conviction of accused under Section 138 of N.I. Act must be sufficient enough to adequately compensate the complainant. The amount of cheque and the date from which the amount under the cheque has become payable along with payment of reasonable interest may serve as good guide in this regard. To be consistent and uniform, it is always advisable to impose a fine equivalent to the amount of cheque plus at least 6% interest per annum from the date of cheque till the date of judgment of conviction. However, before inflicting such fine, the trial Magistrate must eschew the amount of interim compensation, if any, paid under Section 143A of N.I. Act or such other sum which the accused might have paid during the trial or otherwise towards discharge of liability. It may or may not accompany the sentence of simple imprisonment. It is purely in the discretion of the trial Magistrate but having regard to the object of legislation, it shall be appropriate if the sentence of imprisonment imposed is kept at the minimum unless, of course, the conduct of accused demands otherwise.*" With the observation, the petition was allowed and matter was remanded back to the trial Court for considering the imposition of sentence upon the respondent de novo in the light of legal position.

WP (Crl) No. 105/2021
Muntazir Ahmad Bhat v. Union Territory of JK & Anr.
Decided on: November 12, 2021

While upholding the detention of an alleged worker of Jaish-e-Mohammad (JeM), under the J&K Public Safety Act, 1978, the Hon'ble High Court of Jammu & Kashmir and Ladakh observed that extremism, radicalism, terrorism have become the most worrying features of contemporary life. It was also observed that the basic edifices of a modern State, like democracy, State security, public order, rule of law, sovereignty and integrity, basic human rights, etcetera, are under attack of such extreme, radical, and terror acts. Hon'ble Court also noted that where individual liberty comes into conflict with an interest of the security of the State or maintenance of public order, then the liberty of the individual must give way to the larger interest of the nation. "*It is, therefore, difficult in the present context to draw sharp distinctions between domestic and international terrorism. Many happenings in the recent past caused the international community to focus on the issue of terrorism with renewed intensity. Anti-fanatism, anti-extremism, antiterrorism activities in the global level are mainly carried out through bilateral and multilateral cooperation among nations. It has, in such circumstances, become our collective obligation to save and protect the State and its subjects from uncertainty, melancholy and turmoil.*"

OWP No.83/2019
Anjum Afshan & Ors v. State of J&K & Ors.
Decided on: November 10, 2021

In a writ petition seeking a direction upon respondents to ensure safety of their life and honour with further direction asking the official respondents to proceed against the private respondents in

accordance with law. Hon'ble High Court of J&K and Ladakh observed that no law or religion gives a license to a father to harass or intimidate his major daughter just because she does not accede to wishes of her father to marry a particular person. Hon'ble Court noted that both the petitioners are major and that they have entered into wedlock out of their own will and volition. "No law or religion gives a license to a father to harass or intimidate his major daughter just because she does not accede to wishes of her father to marry a particular person. It is not open to a father or relatives of a girl to take law into their own hands. It is the duty of the Court to protect life and liberty of a major girl who, out of her own volition, wants to reside separately from her father."

"Integrity is indeed the sine qua non of merit and suitability; no person can be considered as possessing merit and suitability if he lacks in character and integrity."

Y.V. Chandrachud,J. In Gurdial Singh Fijji v. State of Punjab , (1979) 2 SCC 368, para 12

CIVIL

Supreme Court Judgments

Civil Appeal No. 6825 of 2008
State Of Haryana v. Harnam Singh (Dead) Thr. Lrs. & Ors.
Decided on: November 25, 2021

Hon'ble Supreme Court Bench of Justices L. Nageswara Rao and Aniruddha Bose observed that mechanical compliance of stipulations under Section 63 of the Indian Succession Act, 1925, does not prove the execution of a Will and further that evidence of meeting the requirement of the said provision must be reliable. Factually, the person claiming to be scribe of the Will as well as the two attesting witnesses deposed to support the case of the original plaintiff, but both the Trial Court and the First Appellate Court disbelieved their testimony. It was further found that thumb impression of the propounder was not matched and that there was a contradiction in the evidence of attesting witnesses as regards the place of execution. However, the High Court allowed the appeal on the basis that the Will was proved in terms of Section 63 of the Indian Succession Act, 1925.The Apex Court disagreed with the High Court and held "*The requirement of Section 63 of the Indian Succession Act, 1925 cannot be said to have been fulfilled by mechanical compliance of the stipulations therein. Evidence of meeting the requirement of the said provision must be reliable*.",

Civil Appeal Nos. 6989-6992 of 2021
Kewal Krishan v. Rajesh Kumar & Ors. Etc.
Decided on: November 22, 2021

Hon'ble Supreme Court bench comprising Justices Ajay Rastogi and Abhay S. Oka observed that the payment of price is an essential part of a sale. If a sale deed in respect of immovable property is executed without payment of the price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. The court also observed that a document that is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings. Referring to Section

54 of the Transfer of Property Act, 1882, the bench observed:

"Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property".

Civil Appeal No.6724 of 2021
Smt. Meena Pawaia & Ors v.
Ashraf Ali & Ors.
Decided on: November 18, 2021

The Hon'ble Supreme Court bench comprising Justices MR Shah and Sanjiv Khanna observed that even in case of a deceased who had no income at the time of death, their legal heirs shall also be entitled to future prospects by adding future rise in income. The Bench observed that it is not expected that the deceased who was not serving at all, his income is likely to remain static and his income would remain stagnant. In the factual background, the Apex Court observations were made in a case wherein an accident which occurred on 12.09.2012, the son of the claimants, who was a bachelor aged 21 years studying in 3rd year of B.E (Engineering Course), died. The High Court reduced the amount of compensation awarded by Motor Accident Claims Tribunal from Rs.12,85,000/- to Rs.6,10,000/- assessing the income of the deceased at Rs.5,000/- per month instead of Rs.15,000/- per month as awarded by the Tribunal. Referring to *National Insurance Company Limited vs. Pranay Sethi and Others (2017) 16 SCC 680*, the court observed thus:

"11. We see no reason why the aforesaid principle may not be applied, which apply to the salaried person and/or deceased 12 self employed and/or a fixed salaried deceased, to the deceased who was not serving and/or was not having any income at the time of accident/death. In case of a deceased, who was not earning and/or not doing any job and/or self employed at the time of accident/death, as observed herein above his income is to be determined on the guesswork looking to the circumstances narrated hereinabove. Once such an amount is arrived at he shall be entitled to the addition over the future prospect/future rise in income. It cannot be disputed that the rise in cost of living would also affect such a person. As observed by this court in the case of Pranay Sethi (Supra), the determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Motor Vehicles Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment and/ or in case of a deceased who was on a fixed salary and /or self-employed would only get the benefit of future prospects and the legal representatives of the deceased who was not serving at the relevant time as he died at a young age and was 13 studying, could not be entitled to the benefit of the future prospects for the purpose of computation of compensation would be inapposite."
Allowing the appeal and holding that the claimants shall be entitled to a total sum of Rs.15,82,000/- with interest thereon at the rate of 7% from the date of claims petition till the date of realization, the court

observed *"Merely because in the execution proceedings they might have accepted the amount as awarded by the High Court, maybe as full and final settlement, it shall not take away the right of the claimants to claim just compensation and shall not preclude them from claiming the enhanced amount of compensation which they as such are held to be entitled to. As such, the Motor Vehicles Act is a benevolent Act and as observed hereinabove the claimants are entitled to just compensation. As such, the Union of India ought not to have taken such a plea/defence."*

Civil Appeal Nos.6779-6780 of 2021
Acqua Borewell Pvt. Ltd. v. Swayam Prabha & Ors.
Decided on: November 17, 2021

Hon'ble Supreme Court Bench comprising Justices M.R. Shah and B.V. Nagarathna has held that injunction orders with respect to a suit property cannot be passed in detriment to the interest of third parties who are directly affected by it, without impleading them or giving them an opportunity of being heard. The Bench set aside the common judgment and order passed by the Karnataka High Court, which had granted injunction against alienation to the extent of 1/7th share in the suit property, without giving the third parties (appellants), who have right, title or interest in the property by way of development agreements and/or otherwise, an opportunity of being heard. It was observed that the respondents, who are original plaintiffs have acknowledged that the third parties (appellants) are necessary and property parties by filing applications to implead them as parties to the suit. In view of the same, the Court noted that before granting injunction, the appellants ought to have been impleaded and given an opportunity to be heard. *"Therefore, according to the plaintiffs also, the appellants herein (proposed defendants) are necessary and proper parties. Therefore, before granting any injunction with respect to the properties in which the appellants herein (proposed defendants) are claiming right, title or interest on the basis of the development agreements or otherwise they ought to have been given an opportunity of being heard. No injunction could have been granted against them without impleading them as defendants and thereafter without giving them an opportunity of being heard."*

High Court of Jammu & Kashmir and Ladakh Judgments

CR No. 41/2018
S.K. Puri v. Pradeep Kumar Puri
Decided on: November 09, 2021

Hon'ble High Court of Jammu & Kashmir and Ladakh in a petition challenging the order by the executing court whereby warrant of attachment of the property in question had been issued, reiterated the ambit and scope of Order 21 Rule 58 CPC. While observing that O21 r58 is a solitary provision relating to any claim that may be preferred or any objection that may be raised to the attachment of any property in execution of a decree, it was held *" 6. A bare perusal of above provision suggests that whenever a claim is preferred under O21 r58 against attachment of an immovable property, the court is vested with jurisdiction to adjudicate on the said claim or objection and upon determination of such claim, the court has to,in accordance with such determination, either allow the claim or objection and release the property for attachment, or disallow the claim or objection, or continue the attachment subject to mortgage, charge or other interest in favour of any person or pass such*

order as in the circumstances of the case it deems fit." Commenting upon the scope of investigation under O21 r58, the Hon'ble Court emphasized that it is to find out whether the property attached in execution is or is not liable to attachment and the objector has to establish that the property belonged to him in his own right and he was in possession of it.

MA No. 17/2021
Samitra Devi v. Shree Kumar Kotwal and others
Decided on: November 03, 2021

Hon'ble High Court of Jammu & Kashmir and Ladakh, while deciding an appeal, wherein the appellant sought setting aside of the order passed by the court of learned Principal District Judge, Bhaderwah whereby the application for grant of stay was dismissed, reiterated the provision envisaged under Order XXXIX CPC and observed that grant of temporary injunction is not to put an end to the litigation, but it is a beginning of the litigation. *It was observed " 11. Rule 1 of Order XXXIX, thus, says and envisages that in the event in a suit it is by affidavit or otherwise proved that any property, which is in dispute in a suit, is in danger of being wasted, damaged or alienated 5 MA No. 17/2021 by any party to the suit or wrongfully sold in an execution of a decree or that the defendant threatens or intends to remove or dispose-off his property with a view to defrauding his creditors or that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property, which is in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff or otherwise causing injury until the disposal of the suit or until further orders. It is necessary to be seen that if the property in dispute is tried to be wasted, damaged, alienated, sold, disposed-off or there are chances of dispossessing the plaintiff from any property, which is in dispute in the suit and/or which may cause injury to the plaintiff concerning any property, which is in dispute in the suit, the Court may grant the temporary injunction. So, grant of temporary injunction is not to put an end to the litigation, but it is a beginning of the litigation and grant of the temporary injunction is aiming at preserving the property, which is in dispute in the suit because if the temporary injunction is refused to be granted, it would pave way for either of the parties before the Court to alienate, sell, dispose of and/or change the nature of the property, which is in dispute in the suit and in such situation the purpose of litigation would be futile and/or endless for both the parties. Thus, as can be professed from the Rule 1 of Order XXXIX, grant of 6 MA No. 17/2021 temporary injunction is to prevent damage or wastage to any property which is in dispute in the suit."* With this observation, the Hon'ble Court found no scope to interfere in the impugned order passed by the Trial court and accordingly dismissed the appeal.

ACTIVITIES OF THE ACADEMY

ONE DAY REFRESHER TRAINING PROGRAMME ON: (A) CHARGE AND DISCHARGE IN SESSIONS TRIALS; (B) RECORDING OF EVIDENCE, EXAMINATION – IN - CHIEF, CROSS EXAMINATION, POWER OF JUDGES TO PUT QUESTIONS U/S 165 EVIDENCE ACT.

Jammu & Kashmir Judicial Academy organized One Day Refresher Training programme on: (a) Charge and Discharge in Sessions Trials; (b) Recording of Evidence,

Examination–in- Chief, Cross Examination, Power of Judges to put questions u/s 165 Evidence Act was organized for all District & Sessions Judges serving in Jammu province at Judicial Academy Complex, Jammu on 20th November, 2021.

"Expectations are very high from the Judiciary and it is the duty of every Judicial Officer to be responsive to the demands of the society for which Judicial Officers should constantly update themselves to meet the requirements of the situation", observed Hon'ble Mr. Justice Janak Raj Kotwal, Former Judge, High Court of Jammu & Kashmir, Chairman, Advisory Board under JKPSA who was the resource person for the refresher training programme. The resource person presented a detailed overview of the subject including Charge and Discharge in Sessions Trials, Recording of Evidence, Examination–in-Chief, Cross Examination and Power of Judges to put questions u/s 165 Evidence Act.

Mr. Sanjay Parihar, Director, J&K Judicial Academy welcomed the participants to the programme and said that platform provided by the Judicial Academy is an opportunity for them in updating their knowledge and clearing their doubts by interacting with the Resource person.

Later, an interactive session was held during which the participants deliberated and discussed the various aspects of the subject topic and raised queries which were satisfactorily settled by the resource person.

OATH CEREMONY

To commemorate the spirit of Constitution on the occasion of Samvidhan Diwas, Jammu and Kashmir Judicial Academy organised 'Oath Ceremony' for newly enrolled advocates who have been conferred with absolute certificates to practice law on 26th November, 2021.

The newly enrolled Advocates were administered Oath by Hon'ble Mr Justice Puneet Gupta, Judge, High Court of Jammu & Kashmir and Ladakh in the presence of Mr. Sanjay Parihar, Director, Jammu and Kashmir Judicial Academy. On the occasion, newly enrolled advocates took oath to uphold the values of the Constitution of

India follow the commandments enshrined in the Advocates Act and to follow the rules of ethics, conduct and behaviour in letter and spirit. Enrolment certificates were also distributed among Advocates from various districts of Jammu province.

Hon'ble Mr Justice Puneet Gupta, Judge,

High Court of Jammu & Kashmir and Ladakh

in his address advised the new entrants to be constantly upgraded in learning the skills of the profession. He impressed that success in the profession demands practice, skill enhancement, research and gaining experience through interactive discourses with fellow Advocates, colleagues and judicial officers and new entrants must be equipped with ethics of the profession before entering the portals of justice. He also highlighted that Advocates have an important role in the process of administration of Justice and in upholding the rule of law.

On the occasion, Director Judicial Academy addressed the advocates and encouraged them to display the highest qualities of professional excellence and ethics. He exhorted them to uphold the spirit of the constitution and render their services to the society in the most meaningful manner.

ONE DAY SPECIAL TRAINING PROGRAMME ON : (A) CANNONS OF JUDICIAL ETHICS; (B) CODE OF CONDUCT FOR JUDICIAL OFFICERS – RELATIONS WITH SUPERIORS/ BAR AND STAFF/LITIGANTS (C) EXERCISE OF POWER U/S 156(3) CRPC (D) GRANT OF INTERIM INJUNCTIONS AND APPOINTMENT OF RECEIVER (E) PUNCTUALITY, UNNECESSARY ADJOURNMENT OF CASES AND CONSEQUENCES OF SHORTFALL IN DISPOSAL IN THEIR SERVICE CAREER.

J&K Judicial Academy organized One day Special Training programme on : (a) Cannons of Judicial Ethics; (b) Code of Conduct for Judicial Officers – Relations with Superiors/Bar and Staff/Litigants (c) Exercise of Power u/s 156(3) CrPC (d) Grant of Interim Injunctions and Appointment of Receiver e)Punctuality, unnecessary adjournment of cases and consequences of shortfall in disposal in their service career was organized for Munsiffs serving in Jammu province at Judicial Academy Complex, Jammu on 27th November, 2021.

Hon'ble Mr. Justice J.P. Singh, Former Judge, High Court of J&K, Former Member, J&K State Accountability Commission was the resource person in the Special Training Programme. The resource person educated the participants about the judicial ethics that need to be incorporated in their way of life and personality for the fair and just discharge of their professional duties. The resource person also elaborately discussed the provisions viz. 156(3) of Code of Criminal Procedure and injunctions under the civil procedure code and the various aspects pertaining to the subject which need to be taken care of while dealing with matters in court.

Later, an interactive session was held during which the participants deliberated and discussed the various aspects of the subject topic and raised queries which were satisfactorily settled by the resource person.

"REFORMING THE PRISONERS THROUGH OPEN PRISONS"

1. It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens but its lowest ones. This declaration of Nelson Mandela echoes that true social justice will only be realized in a society which respects and ensures basic human dignity and human rights for all persons including those incarcerated. The literature on prison justice and prison reforms shows that there are nine major problems which affect the prison system and which need immediate attention. These are: (1) overcrowding; (2) delay in trial; (3) torture and ill treatment; (4) neglect of health and hygiene; (5) insubstantial food and inadequate clothing; (6) prison vices; (7) deficiency in communication; (8) streamlining of jail visits; and (9) management of open air prisons.
2. J&K Legal Service Authority under the patronage of Hon'ble Mr. Justice Pankaj Mithal, Chief Justice, High Court of J&K and Ladakh & the dynamic guidance of Hon'ble Mr. Justice Ali Mohammad Magrey, Executive Chairman has been working consistently and innovatively hard to provide legal assistance not only to the prisoners but also to the dependents of the prisoners but one area which requires urgent attention of the govt. of UT of J&K is reformation of the prisoners with the establishment of "Open Air Prisons".
3. In this article I wish to propose the establishment of Open Air Prisons, which themselves would take care of other problems noted above. So, the theme of this article is to see the prison and prisoners in a different light. "Open Air Prison" as the term goes means prison without walls, bars and locks. The jail does not confine them completely but requires them to earn their living to support their families, living with them inside the jail. Open prisons have relatively less stringent rules as compared to the controlled jails. The fundamental rule of an open prison is that the jail has minimum security and functions on the self discipline of the inmates.
4. Open prisons were developed in the United States in 19th Century to rehabilitate prisoners who had almost completed their sentence. The prisoners nearing release were sent to work as labourers to evaluate their behavior. The concept of open prisons was then developed in the UK in the 1930"s and was based on the idea of 'carrots' rather than 'sticks'. The subject of open prison was largely discussed in the first United Nation Congress on Prevention of Crime and Treatment of Offenders held in Geneva in 1955, followed by second meeting in London in 1960. Even our great sociologist Manu highlighted that even the hardest of the hard offenders shouldn't be punished indiscriminately, this can make the person more

dangerous to society. Effective and efficient measures should be taken to make them law abiding citizens of the society.

5. The All India Committee on Jail Reforms constituted in 1980 recommended the government to setup and develop open prisons in each state and Union Territory. Prisons in India are governed by the Prisons Act 1900 and each state follows their prison rules and manuals. In India first open prison was established in 1953 in U.P. where housed prisoners were requisition to construct a dam over the river Chandraprabha in Varanasi. Now, on the basis of recommendations of the Jail Reform Committees and directions of the Apex Court, open jails are functioning in 17 states in India. There are currently 69 open jails, of which, 29 open jails are in Rajasthan and 13 in Maharashtra. In Rajasthan more than 2000 prisoners of 29 jails work as accountants, school teachers, guards and domestic help. These are some of the people who serve their sentence for offences like murder, theft etc.
6. Study of criminology describes various theories of punishment such as deterrent, retributive, preventive but the most useful is considered as reformative theory. In this, prisoners are transformed into law abiding citizens of the society, so that after their release they can be useful to society and not a burden or repeat offenders. This theory of punishment is considered to be new and most effective. The United Nations Standard Minimum Rules for the Treatment of Prisoners, popularly known as Nelson Mandela Rules, laid down the objectives of open prisons stating that such prisons provide no physical security against escape but rely on self discipline of inmates, provide the conditions most favorable to the rehabilitation of carefully selected prisoners.
7. Ostensibly, a sound prison system with open air prisons is a crying need of the UT of J&K in the backdrop of increase in the number of prisoners and that too of various types and from different strata of society. The establishment of "Open Air Prisons" would not only reduce the overcrowding but will also dilute the scope of torture and ill treatment. it will provide homely food and proper clothing. Moreover, it will reduce the prison vices and will reduce the financial burden on the exchequer of the state. Needless to underscore that human dignity is paramount and setting up of Open Air Prisons will usher in a new dawn which will end the gloom cast on the faces of prisoners. Let's hope a new awakening percolate every prison wall.

-Contributed by:
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