J&K JUDICIAL ACADEMY
e-NEWSLETTER
Official Newsletter of Jammu & Kashmir Judicial Academy

Volume 5 | Monthly | July 2022

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From the Editor's Desk

Women's rights are an essential part of the overall human rights discourse and the concomitant right of a woman to possess and enjoy superlative physical and psychological health, is at the very core of her basic human rights and that by corollary includes her integrant right to decide independently in all matters related to reproduction, including abortion. Women's right to independent decision-making vis-a-vis reproductive health has garnered much debate quite recently in the wake of the overturning of the fifty years old landmark decision in ***Roe vs Wade, 410 U.S. 113(1973)*** which had previously established prime protections against violations of individuals' rights to bodily autonomy, health, and equality. The decision, since long, had become a benchmark reference source for recognition of reproductive rights of women across various countries, subject of course to individual constitutional realms. In a paradigm shift from the underlying hypothesis in Roe's case, the U.S. Supreme Court in ***Webster v. Reproductive Health Services, 492 U.S. 490 (1989)*** upheld the *"Missouri law"* which stated that "the life of each human being begins at conception".In another landmark case, the U.S. Supreme Court in ***Planned Parenthood v. Casey***, ***505 U.S. 833 (1992)***, upheld the right to have an abortion as established by *Roe v. Wade* and coined the term "imposition of the undue burden standard" when evaluating state-imposed restrictions on abortion rights. On June 24, the Supreme Court of the United States in ***Thomas E Dobbs v. Jackson Women's Health Organization,*** while allowing a *"Mississippi law"* that bans abortions after 15 weeks to take effect, overturned Roe vs. Wade in a 6-3 vote, thereby eliminating the constitutional right of women to abortion in the country and sending the decision to state legislatures resultantly sparking immediate concerns about the fracturing of constitutional rights of women in the United States more particularly related to reproduction. Back home and in the Indian context, Roe's judgment has been referred to in a catena of judgments pronounced by the apex court prominently including *Justice K S Puttaswamy (Retd) v Union of India* **(2017) 10 SCC 1**, wherein the Hon'ble Supreme court made an expository observation regarding the statutory recognition of the constitutional right to make reproductive choices as being an ingredient of personal liberty under Article 21 and deduced the existence of such a right from a woman's right to privacy, dignity and bodily integrity. Sociologically, abortion is a lesser discussed subject but compared to other countries in the world, abortion laws in India are rather progressive. Pursuant to Shanti Lal Shah Committee's recommendations in 1966 for liberalization of abortion law to reduce maternal morbidity and mortality associated with illegal abortion, *The Medical Termination of Pregnancy (MTP) Act* was enacted in 1971 whereby abortion was legalized in India under various conditions

primarily with the view to facilitate safer abortions in certain circumstances, in a legalized manner. It provides for the termination of pregnancy by a licensed registered medical practitioner thereby also providing covers from the rigors of Sec 312 IPC. The Medical Termination of Pregnancy Act, 1971 was amended by The **Medical Termination of Pregnancy (Amendment) Act, 2021** which expanded the access to safe and legal abortion services thereby ensuring holistic healthcare for women. The amended law, inter alia, enhanced the upper gestation limit from 20 to 24 weeks for special categories of women, including survivors of rape, victims of incest and other vulnerable women including differently-abled women, minors among others. Also, if substantial foetal abnormalities are diagnosed by a Medical Board, there is no upper limit for abortion in India after the amendment.

Amidst the outrage triggered by the decision, it is the burgeoning concern of those actively pursuing the cause of women's reproductive health that it may lead to serious health consequences and may compound the quotidian challenges being faced by them in terms of equitable access to health-related choices and services. However, unfettered by the developments across the globe, we must always be sensitive to the fact that the health of women collectively determines the health of communities and the population as a whole and sustained efforts must focus on information and awareness regarding wellness, health literacy and accessible health services amongst women for creating and maintaining conducive health environment around them for their meaningful inclusion and productive participation in the development of individual nations and the world collectively.

LEGAL JOTTINGS

"The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice and as such no action can be permitted which may shake the very foundation itself."

Dr. A.S. Anand, J. In Ajay Kumar Pandey, Advocate, In re, (1998) 7 SCC 248, para 18

CRIMINAL

SUPREME COURT JUDGEMENTS

Special Leave to Appeal (Crl.) No(s). 5647/2022
Saud Faisal v. State of Uttar Pradesh & Anr.
Decided on: June 21, 2022

Hon'ble Supreme Court bench of Justices C.T. Ravikumar and Sudhanshu Dhulia while considering an application under sec 311 Cr.P.C challenging the order of Sessions Court, held that merely because a different statement was given by the same prosecution witness in another case relating to the same incident, that itself would not be a reason for recalling the witness under section 311, Cr. P. C. It was also noted that *"It is not a case where a contradictory statement was given by some other witnesses in the present trial."*

Criminal Appeal No. 903 of 2022
Ms. P1 Xxx v. State of Uttarakhand & Anr.
Decided on: June 16, 2022

Hon'ble Supreme Court Bench comprising Justices Dinesh Maheshwari and Vikram Nath while dismissing an appeal assailing the order of the Uttarakhand High Court, which had upheld the decision of the Court of Sessions Judge, Chamoli to discharge the accused in respect of a set of offences (S. 376 IPC) for want of jurisdiction reiterated that whether two or more acts constitute the same transaction for the purpose of being tried together under Section 220 of the Code of Criminal Procedure (Cr.P.C), is purely a question of fact. The reasonable determination of the same would however depend on elements like proximity of time,

unity or proximity of place, continuity of action and community of purpose or design.

Criminal Appeal no 2606 of 2012
Ex. Ct. Mahadev v. Director General, Border Security Force
Decided on: June 14, 2022

Hon'ble Supreme Court Bench of Justices BR Gavai and Hima Kohli in an appeal reiterated that an accused who takes up the plea of self defence need not prove it beyond reasonable doubt and that it would suffice if he could show that the preponderance of probabilities is in favour of his plea, just as in a civil case. It was observed*," 21. To sum up, the right of private defence is necessarily a defensive right which is available only when the circumstances so justify it. The circumstances are those that have been elaborated in the IPC. Such a right would be available to the accused when he or his property is faced with a danger and there is little scope of the State machinery coming to his aid. At the same time, the courts must keep in mind that the extent of the violence used by the accused for defending himself or his property should be in proportion to the injury apprehended. This is not to say that a step to step analysis of the injury that was apprehended and the violence used is required to be undertaken by the Court; nor is it feasible to prescribe specific parameters for determining whether the steps taken by the accused to invoke private self-defence and the extent of force used by him was proper or not. The Court's assessment would be guided by several circumstances including the position on the spot at the relevant point in time, the nature of apprehension in the mind of the accused, the kind of situation that the accused was seeking to ward off, the confusion created by the situation that had suddenly cropped up resulting the in knee jerk reaction of the accused, the nature of the overt acts of the party who had threatened the accused resulting in his resorting to immediate defensive action, etc. The underlying factor should be that such an act of private defence should have been done in good faith and without malice."*

Criminal Appeal No. 898 of 2022
Swaminathan Kunchu Acharya v. State of Gujarat & Ors.
Decided on: June 09, 2022

Hon'ble Supreme Court bench comprising Justices MR Shah and Aniruddha Bose in an appeal by paternal grandfather aggrieved with the impugned judgment and order passed by the High Court of Gujarat at Ahmedabad by which the High Court had handed over the custody of the corpus to his maternal aunt, observed that that income, age, bigger family cannot be the sole criteria to tilt balance in child- custody cases. It was observed *""There cannot be any presumption that the maternal aunt being unmarried having an independent income; younger than the paternal grandparents and having a bigger family would take better care than the paternal grandparents. In our society still the paternal grandparents would always take better care of their grandson. One should not doubt the capacity and/or ability of the paternal grandparents to take care of their grandson. It is said that the grandparents love the interest rather than the principle. Emotionally also the grandparents will always take care better care of their grandson. Grand Parents are more attached emotionally with grandchildren."*

Criminal Appeal No.764 & 765 of 2021
Mahendra Singh v. State of MP
Decided on: June 03, 2022

Hon'ble Supreme Court bench comprising Justices BR Gavai and Hima Kohli observed that when the Court finds that a witness is "wholly unreliable", neither conviction nor acquittal can be based on the testimony of such a witness. Hon'ble Court referred to *Vadivelu Thevar vs. The State of Madras (1957) SCR 981* and observed that *"13. It could thus be seen that this Court has found that witnesses are of three types, viz., (a) wholly reliable; (b) wholly unreliable; and (c) neither wholly reliable nor wholly unreliable. When the witness is "wholly reliable", the Court should*

not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness. Equally, if the Court finds that the witness is "wholly unreliable", there would be no difficulty inasmuch as neither conviction nor acquittal can be based on the testimony of such witness. It is only in the third category of witnesses that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial."

HIGH COURT OF JAMMU & KASHMIR AND LADAKH JUDGEMENTS

WP(Crl) No. 278 /2021
Khawer Sultan Mir vs UT of J&K & Ors
Decided on: June 01, 2022

Hon'ble High Court of J&K and Ladakh while considering a petition against order of detention passed by District Magistrate, Pulwama explained the essential concept of preventive detention and the underlying distinction between prosecution in a Court of law and a detention order under the Act. It was observed that while conviction is a punitive action, detention is a preventive act. In one case, a person is punished upon proof of his guilt and the standard is proof, beyond reasonable doubt, whereas in preventive detention a man is prevented from doing something, which it is necessary for reasons mentioned in the Act, to prevent. Hon'ble Court guided the courts in matters of Acts or activities of individual or a group of individuals, prejudicial to the security of the State by cautioning them not to be swayed by passion of mercy. It was observed that it is the obligation of the Court to constantly remind itself that the right of society is never maltreated or marginalized *" If anyone flouts law, he has to face the ire of law, contingent on the concept of proportionality that the law recognizes. It can never be forgotten that the purpose of criminal law legislated by competent legislatures, subject to judicial scrutiny within constitutionally established parameters, is to protect collective interest and save every individual that forms a constituent of the collective from unwarranted hazards."*

CRR No.42/2018
Showkat Ahmad Nadaf v. State of J&K
Decided on: June 03, 2022

Hon'ble High Court of J&K and Ladakh, in a criminal revision petition against order passed by learned Principal Sessions Judge, Srinagar whereby the learned Sessions Judge has upheld the judgment of conviction/sentence passed by the learned Judicial Magistrate convicting the petitioner for offences under Section 279, 304-A RPC and sentencing to imprisonment for a period of one year and a fine of Rs.2000/ has clarified as to what extent the answers given by an accused under Section 311 of the Central Cr.P.C, which is in parimateria with Section 342 of the J&K Cr. P. C, are of relevance. It was observed by the Hon'ble Court that statement of an accused recorded under Section 342 of the J&K Cr. P. C, being without administering the oath, cannot be treated as evidence within the meaning of Section 3 of the Evidence Act but at the same time, the answers given by an accused when the incriminating circumstances appearing in the prosecution evidence are put to him and his statement under Section 342 of the J&K Cr. P. C is recorded, are required to be considered in the light of the evidence led by the prosecution. Referring to *Sanatan Naskar & anr. Vs. State of West Bengal, AIR 2000 SC 3570*, it was observed *"From the foregoing enunciation of law on the subject, it is clear that the statement of an accused may be taken into consideration in a trial and the court can rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution but such statement cannot be considered in isolation but in conjunction with evidence adduced by the prosecution."*

"Poise and peace and inner harmony are so quintessential to the judicial temper that huff, 'haywire' or even humiliation shall not besiege; nor , unveracious provocation, frivolous persiflage nor terminological inexactitude throw into palpitating tantrums the balanced cerebration of the judicial mind. The integral yoga of shanti and neeti is so much the cornerstone of the judicial process that criticism, wild or valid, authentic or anathematic, shall have little purchase over the mentation of the Court. "

V.R. Krishma Iyer, J. in S. Mulgaokar, In re, (1978) 3 SCC 339, para 24

CIVIL

SUPREME COURT JUDGEMENTS

Civil Appeal No. 4577 of 2022
Bharat Bhushan Gupta v. Pratap Narain Verma & Anr.
Decided on: June 16, 2022

Hon'ble Supreme Court Bench comprising Justices Dinesh Maheshwari and Vikram Nath while allowing an appeal assailing the order of the Delhi High Court, which had held that the valuation of the suit for the purpose of Court fees and jurisdiction at Rs. 250 for each of the reliefs of mandatory and prohibitory injunction and at Rs. 1 lakh for damages was wholly arbitrary when it is an admitted fact that the value of the property at the time of filing the suit was as high as Rs. 1.8 crores, reiterated that a suit for mandatory and prohibitory injunction is not required to be valued at the market value of the property. It was observed that the nature of relief claimed in a plaint is decisive of the valuation of the suit and market value does not become decisive of suit valuation merely because immovable property is the subject-matter of litigation.

Civil Appeal No(s). 6406-6407 of 2010
Kattukandi Edathil Krishnan & Anr v. Kattukandi Edathil Valsan & Ors.
Decided on: June 13, 2022

Hon'ble Supreme court bench comprising Justices S. Abdul Nazeer and Vikram Nath while disposing of a civil appeal that arose out of a partition case wherein the Trial Court after passing preliminary decree adjourned the suit sine die with liberty to the parties for applying for final decree proceedings directed the Trial Courts dealing with partition suits to proceed suo motu with the case soon after passing the preliminary decree. It was observed, *"We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree."*

Civil Appeal No (s). 1117 of 2009
Somakka (dead) by Lrs v. K.P.Basavaraj (dead) by Lrs
Decided on: June 13, 2022

Hon'ble Supreme Court bench comprising Justices S. Abdul Nazeer and Vikram Nath while setting aside an order of the Karnataka High Court and reinstating the decree passed by the Trial Court, held that non-consideration of the evidence on record, in particular, those relied upon by the Trial Court and not stating the points for determination, by the First Appellant Court would lead to infirmity in its judgment and that it is the duty of the First Appellate Court to decide the appeal keeping in view the scope and powers conferred to it under Section 96 read with Order 41 Rule 31 of the Code of

Civil Procedure, 1908. It was also observed that the judgment of the Appellate court should reflect the application of mind and must record findings with reason in respect of all the issues, along with the contentions raised by the parties.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH JUDGEMENT

CM(M) No. 153/2021 (O&M)
M/S Shuhul Auto World Pvt. Ltd v. KIA Motors India Pvt. Ltd.
Decided on: June 01, 2022

Hon'ble High Court of J&K and Ladakh in a petition filed under Article 227 of the Constitution seeking setting-aside of order passed by the Court of Additional District Judge, Budgam in civil Miscellaneous Appeal with a further prayer that the Court of Sub Judge, Chadoora be directed to restore order dated 23.09.2020 passed by it, reiterated the nature, scope and object of injunctions enshrined in Order 39 of CPC. Referring to legal position and principles of law laid down by the Apex court in *"Dalpat Kumar and another Vs. Prahlad Singh and Others, reported in 1992 (1) SCC 719, Gujarat Bottling Co. Ltd. Vs. Coca Cola Co. reported in 1995 (5) SCC 545, Colgate Palmolive (India) Ltd V. Hindustan Lever Ltd., reported in 1999 (7) SCC 1,* Hon'ble Court observed that the underlying object of grant temporary injunction is to maintain and preserve the lis/subject matter and to prevent any change in it until the final determination of the suit and also that an injunction may be in a restrictive form or a mandatory form.

ACTIVITIES OF THE ACADEMY

One Day Refresher Training Programme on Bail Jurisprudence-Basic Principles, Parameters and Conditions u/s 437, 438, and 439 CrPC, Special Provisions on Bail under POCSO, NDPS Act, Reasonable Exercise of Judicial Discretion, Order Writing

J&K Judicial Academy organized One Day Refresher Training Programme on Bail Jurisprudence-Basic Principles, Parameters and Conditions u/s 437, 438, and 439 CrPC, Special Provisions on Bail under POCSO, NDPS Act, Reasonable Exercise of Judicial Discretion, Order Writing for District & Sessions Judges and Civil Judges (Sr. Division) of Kashmir Province at Judicial Academy, Srinagar on 4th June, 2022.

The training programme was inaugurated by Hon'ble Mr. Justice Mohammad Akram Chowdhary, Judge, High Court of J&K and Ladakh and Hon'ble Mr. Rashid Ali Dar, Former Judge, High Court of J&K was the resource person in the programme.

In his special remarks delivered in the inaugural session, Hon'ble Mr. Justice Rashid Ali Dar exhorted the judicial officers to consistently strive for excellence in all pursuits of administration of justice. He also underlined the importance of continuous up -gradation of knowledge for enhancing judicial performance and encouraged them to work efficiently within the settled principles of laws while dealing with matters, particularly those relating to the liberty of an individual.

Hon'ble Mr Justice Mohammad Akram Chowdhary, Judge, High Court of Jammu & Kashmir and Ladakh in his inaugural address, emphasized that justice delivery is an essential activity for maintaining order in the society and described Article 21 as being at the heart of the Constitution and the most cherished right in a civilized society paving the way for the triumph of justice by preventing encroachment upon personal liberty and deprivation of life except according to procedure established by law. He also underlined the indispensability of the concept and mechanism of bail in any criminal justice system as a saviour of the fundamental right to liberty as envisaged under the constitution. He advised the participants to employ reasonableness and judiciousness while exercising discretion of grant or refusal of bail and exert restraint while laying down conditions for grant of bail simultaneously ensuring the right to speedy trial and access to justice in addition to due procedure and fairness.

Mr. Shahzad Azeem, Director, J&K Judicial Academy presented the welcome address and gave an overview of the programme. He stated that the legal system is constitutionally obligated to protect its citizen's freedom and liberty as contemplated under Article 21, forming the background for the development of law relating to Bail which is an integral part of criminal jurisprudence. He highlighted the essence of bail as an interplay between individual rights and the collective interests of the society and referred to the general

principle of presumption of the innocence of accused till proven guilty as well as the parameters governing the grant or refusal of bail.

In the first technical session, resource person Justice Rashid Ali Dar educated the judicial officers on the basic principles, parameters, and conditions governing bail u/s 437,438 and 439 CrPC. The resource person also referred to the procedure involved in the process and extensively discussed case law on the topic

In the second technical session, detailed deliberations were made on the provisions on bail under special laws including POCSO and NDPS Acts. The participants were educated on the concept of reasonable exercise of judicial discretion and the process of Order writing on the subject matter.

The training programme was mostly interactive during which the participants deliberated and discussed the various aspects of the subject topic and raised queries which were satisfactorily settled by the resource persons.

Induction Training Course for Newly Appointed Civil Judge (Junior Division)

J&K Judicial Academy imparted the induction training to Ms. Rekha Sharma, newly selected Civil Judge (Junior Division) for a period of 01 month w.e.f. 1st June, 2022. The training course is comprised of 10 days intensive institutional training at the Academy followed by Practical Training by way of Court attachments for 10 days and there after 10 days in Field visits. The objective of imparting training is to train and equip the Judicial Officer to effectively discharge judicial functions and to bridge the gap between the level of knowledge and its applicability in the practical discharge of duties. It will ensure judicial competence and efficiency by promoting *qualities* that are intrinsic to the principles of judicial conduct viz. Independence, impartiality, integrity, propriety, competence, punctuality, responsiveness etc. and will be instrumental in developing the correct *attitude* for serving the cause of justice and adopting a considerate approach towards the weaker and marginalized sections of the society as well as commitment to the cause of social justice and ensuring access thereto. Judicial education at Academy will also tone up the *judging skills* and shall enhance the capacity for reasoning, logic, analysis and appreciation of law and evidence simultaneously upgrading the level of *knowledge* regarding the various provisions of procedural as well as substantive laws including principles of medical jurisprudence and forensic science. The object of training is also to enhance the *skills of management* including court, case, time, stress, human resources etc. along with *skills of administration* such as leadership, public speaking, social and attitudinal transformation, and administrative ability.

One-day Training program on "E-Courts Project with emphasis on use of E-Court Services"

A One-day Training program on ***"E-Courts Project with emphasis on use of E-Court Services"*** was organized by J&K Judicial Academy through virtual mode on 29th June, 2022 for Advocates of UTs of J&K and Ladakh.

The Online training programme was

moderated by Sh. Shahzad Azeem, Director, J&K Judicial Academy, and Sh. Anoop Kumar Sharma, Central Project Coordinator, e-Courts Project, High Court of J&K and Ladakh was the resource person in the programme.

In his introductory remarks, Sh.

Shahzad Azeem, Director, J&K Judicial Academy described Advocates as an integral part of the justice delivery system, who in their significant role as the Officers of the court are entrusted with the responsibility of upholding the rule of law and maintaining the confidence and trust of the public in the justice system. He also advised the

participating Advocates to make consistent endeavours to keep pace with technological innovations and utilize the E-Courts facility including video conference hearings, e-filing, e-payments, and virtual courts for providing qualitative and output-oriented services to the seekers of justice.

Resource Person, Sh. Anoop Kumar Sharma in his deliberations dealt with the topics in detail and updated the knowledge as well as the skill of the participating Advocates by making them aware of the usage of all ICT initiatives launched under the e-Courts mission mode project, particularly those, which pertain to the Advocates. The participating lawyers were advised to keep themselves abreast of technological advancements, particularly those related to e-Courts initiatives. He also underlined the importance of incorporating the ICT initiatives of the e-Courts project into their day-to-day practice and explained

how the same is going to benefit them immensely. The resource person also gave a live demonstration pertaining to the handling and usage of the e-Court Service portal, e-Court Service Mobile App, National Judicial Data Grid (NJDG), Case Information System (CIS), and e-Filing for the benefit of participating advocates.

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.

SUBSTANTIAL QUESTION OF LAW IN CIVIL SECOND APPEAL

An appeal is a statutory and substantive right and not merely a legal right. The recourse to it can only be taken when it is expressly prescribed by the statute. An appeal is judicial examination by a higher court of a decision of a subordinate court to rectify any possible errors in the order under appeal. The expression 'appeal' has not been defined in the Code of Civil Procedure. Black's Law Dictionary defines an appeal as "a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority." The law provides the remedy of an appeal because of the recognition that those manning the judicial tiers too commit errors.

Part VII of Civil Procedure Code, 1908, deals with the chapter of appeals of which Section 100 to section 103 of Civil Procedure Code, particularly deals with appeals from appellate Decrees. Section 100 of the CPC provides for a right of second appeal by approaching a High Court, when there is substantial question of law involved. Section 103 of the code gives High Court the power to hear second appeal based on findings of fact provided when there is element of perversity involved in reaching any findings by the trial court and the First appellate court. This section 103 of CPC is infact complimentary to section 100 of the CPC, however at present we will try to comprehend the thought of substantial question of Law given in section 100 of CPC .

An appeal under Section 100 of the CPC could be filed both against the concurrent findings or divergent findings of the courts below. The jurisprudential approach of the legislature behind this provision under Section 100 of the Code of Civil Procedure, 1908 has been that as it is necessary to provide for a stricter and better scrutiny of second appeals as they should be made subject to special leave, instead of giving an absolute right of appeal limiting it to a question of law.

Sub-section (1) of Section 100 of the CPC states that a second appeal would be entertained by the High Court only when the High Court is satisfied that the case 'involves a substantial question of law'. The expression "substantial question of law" has not been defined in any statute, but it has become jurisprudentially essential with the passage of time after it was contemplated by the Constitutional Bench of the Hon'ble Supreme Court of India in Chuni Lal v. Mehta and Sons Ltd. Vs. Century SPG. and MFG. Co Ltd. (AIR 1962 SC 1314). This expression finds reference in various provisions of law including Article 133 of the Constitution of India. However, in relation to Section 100 of the Code of Civil Procedure, this expression is sine qua non as Section 100 mandates the High Court to formulate a substantial question of law before allowing the Civil Second Appeal.

Section 100 CPC restricts the right of second appeal, to only those cases, where a substantial question of law is involved. In Chuni Lal Mehta and Sons Ltd. v. Century Spinning and Manufacturing, AIR 1962 SC 1314, the Constitution Bench of the Hon'ble Supreme Court has laid down the test to determine whether the question is substantial question of law or not. The test laid down by the Hon'ble Supreme Court is as under:

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so

whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. Under Section 100 of the CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under Section 100 CPC. In Nazir Mohamed v. J. Kamala, (2020) 19 SCC 57, the Hon'ble Supreme Court has observed that to be substantial, a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way. The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to the impact or effect of the question of law on the decision in the lis between the parties. 'Substantial question of law' means not only 'substantial question of law' of general importance, but also a substantial question of law arising in a case as between the parties. Obviously, a question of law of general public importance, the decision of which is likely to affect a large section of the public, will be a substantial question of law. A question of law on which there is great divergence of judicial opinion will be a substantial question of law.

In the context of Section 100 of the CPC, any question of law, which affects the final decision in a case is a 'substantial question of law' as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. Where there is a clear and settled enunciation on a'question of law', by the Hon'ble Supreme Court or even by Hon'ble High Court, it cannot be said that the case involves a 'substantial question of law'.

Whether a question of law is a substantial one and whether such question is involved in the case or not, would depend on the facts and circumstances of each case. A second appellate court is not supposed to interfere with the concurrent findings given by the trial court and the first appellate court. However, it is only on the premise of perversity which is an exceptional case of grave injustice or imprudence so as to shock the conscience of the court that concurrent findings can be interfered with. The first appellate court, under Section 96 CPC, is the last court of facts unless the findings are based on no evidence or are perverse. In exercise of power under Section 100 CPC, the High Court cannot interfere with the finding of fact recorded by the first appellate court which is the final court of fact, unless the same is found to be perverse.

In Gurnam Singh (D) by LRs. v. Lehna Singh (D) by LRs., (2019) 7 SCC 641, the Hon'ble Supreme Court has held that in a Second Appeal under Section 100 of the CPC, the High Court cannot substitute its own opinion for that of the First Appellate Court, unless it finds that the conclusions drawn by the Court were erroneous being

(1) contrary to the mandatory provisions of the applicable law; or (2) contrary to the law as pronounced by this Court; or(3) based on inadmissible evidence or no evidence.

The procedure relating to second appeals as evident from Section 100 read with Order 42 Rules 1 and 2 CPC has been laid down by Hon'ble Supreme Court in SBI v. S.N. Goyal [(2008) 8 SCC 92]:

(a) The appellant should set out in the memorandum of appeal, the substantial questions of law involved in the appeal.

(b) The High Court should entertain the second appeal only if it is satisfied that the case involves a substantial question of law.

(c) While admitting or entertaining the second appeal, the High Court should formulate the substantial questions of law involved in the case.

(d) The second appeal shall be heard on the question(s) of law so formulated and the respondent can submit at the hearing that the second appeal does not in fact involve any such questions of law. The appellant cannot urge any other ground other than the substantial question of law without the leave of the Court.

(e) The High Court is at liberty to reformulate the substantial questions of law or frame other substantial question of law, for reasons to be recorded and hear the parties or such reformulated or additional substantial questions of law.

At this stage , I would like to add that it is imperative upon the Hon'ble High Court to frame the Substantial question(s) of law before hearing the second appeal.

The Hon'ble Supreme Court in *Kunjumuhammed v. Mariyumma 2020 SCC OnLine SC 955* held that while hearing a second appeal, the High Court must frame the substantial question of law. Such substantial questions of law should be clearly indicated by the court. Once, the substantial question(s) of law is framed, it is only then that the parties are required to make the necessary arguments pertaining to those questions. In Ishwar Dass Jain vs Sohan Lal, (2000) 1 SCC 434 it has been held that " Now under section 100 CPC, after the 1976 Amendment, it is essential for the High Court to formulate a substantial question of law and it is not permissible to reverse the judgement of the first appellate Court without doing so."

It is worthwhile to mention that in Roop Singh v. Ram Singh (2000) 3 SCC 708, it has been held that under section 100 CPC jurisdiction of the High Court is confined only to entertain a second appeal and is confined only to such appeals which involves a substantial question of law and it does not confer any Jurisdiction on the High Court to interfere with pure questions of fact while exercising its Jurisdiction under section 100 CPC.

Another important aspect of the matter in hand is that in case the appeal does not involve any substantial question of law, the High Court has no other option but to dismiss the appeal. However, in order to come to a conclusion that the appeal does not involve any substantial question of law, the High Court has to record the reasons. The High Court cannot dismiss the second appeal in limine without assigning any reasons for its conclusion. This view has been held by the Hon'ble Supreme Court of India in case titled Hasmat Ali v. Amina Bibi, 2021 SCC OnLine SC 1142.

Obviously, the aforesaid decisions may help reduce the burden of Hon'ble Courts by preventing parties from filing frivolous second appeals, even when no substantial question of law arises.

To conclude, it may be reiterated that civil second appeals would lie in cases which involve substantial questions of law. It is the settled position of law that the condition precedent for interference under Section 100 of the CPC is the existence of a substantial question of law. The substantial question of law for consideration will not arise in abstract. The substantial question of law will vary based on the material evidence available on record and the facts and circumstances of each and every case. Nonetheless, the principles regarding substantial question of law with regard to section 100 CPC laid down by the Hon'ble Supreme Court from time to time, can be followed for the purpose of determining a substantial question of law in civil second appeal.

-Contributed by:
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SUMMARY SUITS UNDER ORDER XXXVII (37) CPC

1. The underlying object behind the incorporation of this provision in CPC is to ensure speedy disposal of suits of commercial nature and to prevent the defendant from prolonging disposal of suits if he has no substantial defence. The primary difference between ordinary suits and summary suits is that in latter, the defendant will get a chance to defend himself only, if leave to defend is granted unlike in ordinary suits. In ordinary suits the defendant is entitled to defend the suit of the plaintiff as a matter of right, however, in summary suits the defendant as a matter of right cannot defend the suit without filing leave to defend before the court.
2. The order applies to the suits based on bill of exchange, Hundi, promissory note and suits in which the plaintiff seeks only to recover debts or liquidated demand in money or on a written contract or on guarantee, where the claim against the principal is in respect of debt or liquidated demand only.
3. A summary suit can be instituted in High Courts, City Civil Courts and Courts of Small Causes and any Courts as well as notified by the High Court.
4. Rule 2 and Rule 3 provide the procedure of summary suits. On presentation of such suits, summons in a prescribed mode and manner is required to be issued by the court upon the defendant. The defendant upon service of such summon is obliged to enter into appearance before the court within a period of 10 days from the date of such service. If defendant fails to enter into appearance, the allegations contained in the plaint shall be deemed to be admitted by the defendant and consequently plaintiff shall be entitled to decree forthwith in terms of Rule 2(3).
5. In case defendant appears within such prescribed period of limitation i.e within 10 days from the date of such service, the plaintiff shall thereafter serve on the defendant summon for judgment in a prescribed mode and manner provided under the said provision. The defendant on service of such summon for judgment is again under obligation to apply within 10 days for leave to defend the suit of the plaintiff and the leave to defend shall be granted only by the court if defendant discloses such facts as may be deemed sufficient to entitle defendant to defend such suit. The leave to defend the suit may be granted unconditionally or upon such condition as the court may deem fit.
6. If the defendant has not applied for leave

to defend the suit or if such application is made and refused by the court, the plaintiff shall be entitled to judgment forthwith. It further provides that plaintiff shall be also entitled to decree if the defendant is given conditional leave to furnish security and on his failure to furnish such security, the plaintiff shall be entitled to judgment forthwith.

7. The Hon'ble Supreme Court after referring to its earlier judgment has laid out principles that have been summarized below that are required to be followed by the courts when the application seeking leave to defend is under consideration of the court. In the case titled *IDBI Trusteeship Services ltd vs Hubtown ltd. (2017) 1 SCC 578,* the following guidelines/principles were laid down by the Supreme Court

a. If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit;

b. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend;

c. even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security;

d. if the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

e. if the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith;

f. if any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.

8. Hon'ble Supreme Court has further held that trial judge is vested with the discretion which has to result in justice being done on the facts of each case. Hon'ble Supreme Court further explained that at one end of the spectrum is unconditional leave to defend granted in all cases which present substantial defence. However, it must be borne in mind that on the other end of this spectrum are frivolous or vexatious defenses, which should result in a refusal of leave to defend. In between these two extremes are various kinds of defences raised which yield conditional leave to defend in most cases. It is these defences that have to be guided by broad principles which are ultimately applied by the trial Judge so that justice is done on the facts of each given case.

9. Under Rule 4 order 37, the court is empowered to set aside the decree under

special circumstances. Therefore, in a summary suits setting aside ex-parte decree is stricter and more stringent and special circumstances for non appearance need to be set out by the defendant unlike in ordinary suit where only sufficient cause needs to be shown.

10. So summary suits would be beneficial to businesses as unless the defendant is able to demonstrate that he has a substantial defence, the plaintiff is entitled to a judgement forthwith. Order 37 CPC provides appropriate mechanism that ensures that the defendant does not prolong litigation especially as in commercial matters, time is of the essence and helps further cause of justice.

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CYBER CRIMES: A GENERAL DISCOURSE

The present era marks a period where the world has shrunk to the size of a global village to a great extent by the use of Internet and there is a close interface amongst various organs of governments to governments, countries to countries, people to government, people to people, institutions *inter-se,* various other statutory and non-statutory bodies, other legal entities and so on. A paradigm shift from physical to virtual mode of interaction and transactions has also broadened the cyber horizon expanding the scope for miscreants and fraudsters through various methods and means. An individual or a user with limited working knowledge is allured to explore large number of fake websites and portals until such user is victimized of any or various crimes by cyber fraudsters who are far better equipped and advanced in the cyber knowledge compared to an ordinary user. There are thousands of reasons for people to interact through Internet. Socially, people are now more open to communicate and interrelate with others compared to past which widened the objectives from personal relations to professional ones. One common advantage behind rapid adoption to this approach is collaboration and speedy communication through Internet which is lacking in other medium of communication. Technological innovation is an evolutionary process. Speedy advancements in information and communication technology have shaped a suitable channel to large resources of information for people. With greater advantages there would definitely be cases of misuse for wrong drive. The stronger an entity is, the more heinous offences are committed by the criminals in cyber world. Cyber terrorism is and will undoubtedly continue to be a constant issue for governments posing a serious threat for its national security. Other bodies and individuals confront with various other crimes including but not limited to Internet fraud and financial crimes, online sale of illegal articles, online gambling, digital forgery, cyber defamation, cyber-stalking, phishing, cyber conspiracy and number of other crimes. The main purpose of this article is to highlight the various types of cyber crimes, new modes adopted by cyber-space criminals and the need to take care while entering into the arena of cyberspace.

A paradigm shift from physical world to virtual world has created a lot of problems including identity of offenders, application of laws to such crimes otherwise applicable to physical world, investigational and trial jurisdictional issues, interception of various online gateways and pace and

compatibility of existing laws with the rapid and vast change in cyberspace. Cyberspace is the new region which is controlled by machine for information and communication among human beings across the world. Crimes committed in cyberspace are considered as cyber crimes. Cybercrime is a crime on the Internet that includes cyber-stalking, gambling, hacking, terrorism, fraud, cyber theft, pornography, flowing of viruses etc. Cyber crime is an unlawful act where the computer is used as a tool or a target or else both. Any use of computer as an instrument to further illegal ends, like doing fraud, child pornography, stealing identities or privacy violation falls in this category. Cybercrime is defined as a plan in which a computer is the object of the crime (hacking, fishing, spamming etc) or is used as a tool to commit an offence. Cyber crime is also known as a crime against an individual or an organisation where the criminal uses a computer or any computer-aided technology for an entire or little amount of time.

Two important essentials of a real-world crime also apply to cyber crimes. These two underlying factors are *ACTUS REUS* and *MENS REA* in cyber crimes. It is easy to identify element of Actus Reus in cyber crimes but it is not easy to prove it. An occurrence of crime can be said to have taken place when a person is:
a) Trying to make a computer function;
b) trying to access data stored on a computer or from a computer, which has access to the data stored outside.

Likewise, two essentials for applying Mens Rea to a cyber criminal are:
a) The access intended to be secured must be unauthorized; and
b) The offender should have been aware of the same at the time that he or she has tried to secure access.

Mens Rea does not enquire into the mental attitude of a cyber-criminal. The act is not judged from the mind of wrongdoer but mind is judged from the act. An act which is unlawful cannot be ignored on the ground that it was done with good motive. To bring home charge of cyber crime the act must have been done voluntarily and willingly. If an accused sends virus through email he is liable but one who forwards the same message through email is not liable because he has no knowledge. Section 43 (c) and Section 66 of I.T Act deal with such cases.

To understand how different methods are applied to different types of offences it shall be profitable to learn about classification of the cyber crimes which include- (a) Internet frauds and financial crimes, (b) Online sale of illegal articles, (c) Online Gambling, (d) Digital Forgery, (e) Cyber defamation, (f) Cyber Stalking, g) Phishing, (h) Cyber Terrorism, (i) Cyber Conspiracies etc.

Phishing is a new method of online financial frauds. It is also known as carding and Spoofing. This technique is applied by internet fraudsters to obtain finance details from innocent victims by offering some bait. It tricks computer users to enter certain sensitive and critical information into fake websites which is later used to commit identity theft or swindling user bank accounts. When users respond with certain information attackers can use it to gain access to the accounts. The Phishing in cyber world has been derived from the word "fishing" where bait is offered to fish. In cyber space, this bait is offered to unsuspecting victims who are allured to share critical details in websites/ web pages which look to be genuine but the same are used to deceitfully gain crucial details. An alternative form of phishing is also applied

for identity thefts. An offender installs malicious code on one's computer machine without knowledge or permission of such user. This Code works secretly in the background monitoring all the sites one visits and the password typed in it. This information is, later on, shared with identity thieves.

One needs to be extra cautious and vigilant in online transactions. Various fake websites and web pages have been opened on the internet. By this method a victim is not only robbed of his money but his identity as well. It means a fraudster has the access to all bank and credit card information and can make online commercial transactions for and on behalf of the real user without the consent of the victim. A fraudster can withdraw cash or make purchases without credit or Debit cards and without any information or instruction from the holder thereof. To deal with this menace provisions of IPC, which are applicable to physical crimes, are applicable to Phishing as well and besides that, Section 66D of I. T Act also deals with it.

Conclusion:

Technology and infrastructure lay the roots of cyber crimes. There is rapid increase in the number of internet users and with this risk of several types of crimes is also amplified. Cyber-crimes are varying in its nature due to enhancement in technologies. There is a need for constant awareness of the internet users alongwith with modification of existing laws to keep pace with rapid development in technology. Users cannot afford to withhold their hands from making use of the internet for their day to day requirements but all that they need is to make proper use of the same by strict adherence to internet security protocol.

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