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Contents

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From the Editor's Desk

Arbitration is gaining momentum in India and is becoming an important Alternative Dispute Resolution (ADR) tool. Judicial system is already under tremendous stress owing to the huge pendency of cases. Ever increasing pendency of cases has the effect of clogging the judicial system and slowing down the justice delivery. Arbitration is intended to bring faster resolution of disputes outside the court. Arbitration mechanism if utilized effectively, can create more space in the judicial system for far more serious cases requiring close judicial scrutiny.

Formal arbitration mechanism was put in place in the year 1940, with Arbitration Act legislation. Subsequently however, some amendments were carried out to strengthen the arbitration regime. The United Nations Commission on International Trade Law (UNCITRAL) in the year 1985 proposed Model Law on International Commercial Arbitration. Based on UNCITRAL, Arbitration and Conciliation Act, 1996 was legislated. This legislation provided for mechanism of institutional arbitration apart from the already existing adhoc arbitration mechanism. It was intended to give fillip to trade and commerce activities, unhindered by the tedious court processes.

In 2015, Arbitration and Conciliation (Amendment) Act was enacted to improve the arbitration in India, to iron out many creases and to streamline the arbitration mechanism in line with international trends. It tried to ensure quick enforcement of contracts, easy recovery of monetary claims, reduce the pendency of cases in courts and hasten the process of dispute resolution through arbitration, so as to encourage foreign investment by projecting India as an investor friendly country having a sound legal framework and ease of doing business in India.

Institutional arbitration refers to the administration of arbitration by an institution in accordance with its rules of procedure. The institution provides appointment of arbitrators, case management services including oversight of the arbitral process, venues for holding hearings etc. There are few domestic and international arbitral institutions in India, many of them having their own rules and some following the arbitration rules of the UNCITRAL. These institutions are gaining popularity but are yet to develop sufficient credibility and get sufficient workload. Acceptability of arbitration as preferred mode of dispute resolution has been quite slow owing to inherent faith of people in judicial institutions and weaknesses in the arbitration mechanism.

To address the challenges and shortcomings of the Institutional arbitration in India, a High-Level Committee (HLC) under Justice B.N. Srikrishna was constituted in 2016, which in 2017 submitted its recommendations in relation to institutional arbitration landscape in India. It strongly recommended setting up of an autonomous body, named as the Arbitration Promotion Council of India (APCI), having representatives from all stakeholders for grading arbitral institutions in India. APCI is proposed to recognize professional institutes providing for accreditation of arbitrators and to take all measures to build faith and trust of people, especially the business community, in the institutional arbitration. Growth of arbitration institutions and increased faith and trust in them shall put India at a respectable position in the world.

LEGAL JOTTINGS

"...while appreciating the existence of the right to peaceful protest against a legislation (keeping in mind the words of Pulitzer Prize winner, Walter Lippmann, who said "In a democracy, the opposition is not only tolerated as constitutional, but must be maintained because it is indispensable"), we have to make it unequivocally clear that public ways and public spaces cannot be occupied in such a manner and that too indefinitely. Democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone.."

Sanjay Kishan Koul, J. *in Amit Sahni v. Commissioner of Police & Ors., Civil Appeal No. 3282 of 2020, decided on October 07, 2020*

CRIMINAL

Supreme Court Judgments

Criminal Appeal No.152 of 2013
Tofan Singh v. State of Punjab
Decided on: 29 October 2020

The Supreme Court in this case held that the officers appointed under Narcotic Drugs and Psychotropic Substances Act are police officers and hence the 'confessional statement' recorded by them in terms of Section 67 is not admissible as per the mandate of Section 25 of the Evidence Act.

The Court was dealing with the following reference made by a two Judges Bench in the year 2013, on the issues:

"Whether the officer investigating the matter under NDPS Act would qualify as a police officer or not?

Whether the statement recorded by the investigation officer under section 67 of the Act can be treated as a confessional statement or not, even if the officer is not treated as a police officer?"

These issues arose in view of law laid down in Kanhaiyalal v. Union of India, where it was held that officer under section 63 cannot be considered as police officers, hence "the bar under sections 24 and 27 of the Evidence Act" cannot be imported. It was also made clear in that case that the statement made by a person "directed to appear before the officer concerned may be relied upon as a 'confessional statement' against such person."

The Court, thus, observed that a confessional statement made in accordance with Section 67 of the NDPS Act does not have any evidentiary value as per Section 25 of the Indian Evidence Act. The Court held that law laid down on the point in Kanhaiyalal v. Union of India is not a good law.

Criminal Appeal No. 699 of 2020
M. Ravindran v. The Intelligence Officer, Directorate of Revenue Intelligence
Decided on: 26 October 2020

In this case the Court held that the indefeasible right of default bail remains enforceable once the accused has applied for it. During the pendency of bail application, filing of the charge sheet or making of additional complaint will not have any bearing on this right once an application for default bail has been filed. Therefore, an accused cannot be denied default bail on account of delay in deciding his application and cannot be kept in continued detention thereafter.

Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have availed of or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167 (2), CrPC read with Section 36A (4) NDPS Act upon expiry of 180 days or the extended period, as the case may be, the court must release him on bail forthwith without any delay after getting necessary information from the public prosecutor. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.

If the accused fails to furnish bail and/

or comply with the terms and conditions of the bail order within the time stipulated by the court, his continued detention in custody is valid.

However, the Court further held that this right to default bail would stand extinguished if the accused does not move the court seeking default bail, and the prosecution moves the court with a plea for extension of custody or if it files the charge sheet.

The Court also observed that adjournment of the hearing of a default bail plea deliberately would be in violation of the legislative mandate.

Criminal Appeal Nos. 2187-88 of 2011
Raveen Kumar v. State of Himachal Pradesh
Decided on: October 26, 2020

The appellant challenged the judgment of Division Bench of High Court of Himachal Pradesh whereby his acquittal under section 20 of NDPS Act was reversed and was sentenced to undergo 2 years rigorous imprisonment with a fine of Rs.50,000. These appeals raised the following three questions of law:-

a) What is the scope and essence of the High Court's appellate jurisdiction against a judgment of acquittal?

b) What is the extent of reliance upon a document with which the other side was not confronted with during cross-examination?

c) Whether non-examination of independent witnesses vitiates the prosecution case.

Regarding the first question, the Hon'ble Supreme Court observed that it has been settled through a catena of decisions that there is no difference of power, scope, jurisdiction or limitation under CrPC between appeals against judgments of conviction or of acquittal.

Taking note of law laid down in State of UP v. Banne (2009) 4 SCC 271, the Court observed that it has very illustratively listed circumstances where interference of an appellate court against acquittal would be justified. These would include patent error of law, grave miscarriage of justice and perverse findings of fact.

Regarding the second question, the Hon'ble Supreme Court observed that a court should be over-cautious to place reliance on a piece of evidence with which the concerned witness has not been confronted despite an opportunity to do so. The Court relied on the judgment in Sita Ram Bhau Patil v. Ram Chandra Nago Patil (1977) 2 SCC 49, where it was held that even if the admission is proved in accordance with the provisions of the Evidence Act and if it is to be used against the party who has made it, it is sound that if a witness is under cross-examination on oath, he should be given an opportunity, if the documents are to be used against him, to tender his explanation and to clear up the point of ambiguity or dispute.

Regarding the third question, it was held that lack of independent witness is not fatal to the prosecution case. However, in such a situation, there is an additional duty on courts to adopt a greater degree of care while scrutinising the testimonies of the police officers which, if found reliable, can form the basis of a successful conviction.

Criminal appeal Nos. 681-682 of 2020
Saravanan v. State represented by the Inspector of Police
Decided on: October 15, 2020

In this criminal appeal the question which arose for the consideration of the Supreme Court was, whether while releasing the accused on default bail under Section 167 (2) CrPC can any condition of deposit of amount be imposed on the accused?

The appellant was arrested and remanded to the judicial custody for the offence punishable under Section 420 of IPC. The appellant had filed an application before Judicial Magistrate seeking bail under Section 437 CrPC. Wife of the appellant filed an affidavit before the learned Magistrate and assured to pay Rs. Seven Lakh and the balance amount on next date. Therefore, the learned Magistrate released the appellant on bail on the conditions stated in the said order.

Feeling aggrieved with the order passed by the Magistrate releasing the appellant on bail, the appellant approached the High Court. The High Court dismissed the said application with liberty to the appellant to approach the Magistrate for any modification and observed that, if any modification is required, the same

may be considered by the Magistrate. The appellant instead filed an application before the Sessions Court to release the appellant on default bail under 167(2) CrPC. The appellant contended that he is inside the jail for more than 101 days and the investigation is not completed, and the police has not filed the final report within the period provided under Section 167 of CrPC. The said application came to be dismissed by the Sessions Court on the ground that earlier when the appellant applied for regular bail and which was allowed on condition to deposit Rs. Seven Lakh in the court and the same has not been complied with, and despite the liberty reserved by the High Court to approach the Magistrate for modification of the conditions, the appellant has filed an application for default bail under Section 167(2) CrPC.

The Hon'ble Supreme Court referred to the catena of decisions and more particularly in the case of Rakesh Kumar Paul v. State of Assam (2017) 15 SCC 67, where it was held that if investigation is not completed within 60 or 90 days as the case may be, and no charge sheet is filed by 60th of 90th day, accused gets an "indefeasible right" to default bail and the accused becomes entitled to default bail once the accused applies for the default bail and furnish bail. Therefore, the only requirement for getting the default bail under section 167 (2) CrPC is that the accused is in jail for the more than 60 or 90 days, as the case may be, and within 60 or 90 days, as the case may be, and no charge sheet is filed by the by 60th of 90th day and the accused applies for default bail. No other condition of the alleged amount involved can be imposed. Imposing such conditions while releasing the accused on default bail would frustrate the very object and purpose of the default bail under section 167(2) CrPC. The Supreme Court observed that the circumstances while considering the regular bail application under section 437 CRPC are different, while considering the application for default/ statutory bail. Under the circumstances the condition imposed by the High Court to deposit Rs. Eight Lakh while releasing the appellant on default bail is unsustainable.

Criminal Appeal No. 336 of 2015
Amar Singh v. The State (NCT of Delhi)
Decided on: October 12, 2020

The above two appeals are directed against the impugned judgment and order passed by the High Court dismissing the criminal appeal filed by the appellants challenging the order of conviction against them whereby the appellants were convicted under Section 302 IPC r/w Section 34 IPC. One of the accused– appellant, Inderjeet Singh, was also held guilty and convicted under Section 27 of the Arms Act and was sentenced to undergo imprisonment for life and a fine of Rs.5000/-, in default of payment to undergo Simple Imprisonment for 3 months.

The Court observed that normally minor lapses on the part of the investigating officer should not come in the way of accepting eye witness account, if otherwise reliable. But in the circumstances of the case at hands where the conduct of sole eye witness is unnatural and there are various surrounding circumstances which make his presence at the site of incident doubtful, such a lapse on the part of the investigating officer assumed significance and is not liable to be ignored. Since there are inherent improbabilities in the prosecution story and the conduct of eye witness is inconsistent with ordinary course of human nature it did not think it would be safe to convict the appellants upon the uncorroborated testimony of the sole eye witness.

Thus the Apex Court set aside the impugned orders of the High Court and allowed these appeals as the prosecution has miserably failed to prove the guilt of the accused beyond doubt giving the appellants the benefit of doubt.

Criminal Appeal No. 667 of 2020
Bikramjit Singh v. State Of Punjab
Decided on: October 12, 2020

Appellant, accused of offences under Sections 302, 307, 452, 427, 341, 34 of the Indian Penal Code read with Section 25 of the Arms Act, 1959, Sections 3, 4, 5, 6 of the Explosive Substances Act, 1908 and Section 13 of the Unlawful Activities (Prevention) Act, 1967 was in custody and preferred an application for default bail on expiry of 90 days i.e 21.02.2019 before Sub-divisional Judicial

Magistrate and on 25.02.2019 the said application came to be dismissed on the ground that the Magistrate by an order dated 13.02.2019 had already extended the time from 90 days to 180 days under section 167 CrPC as amended by UAPA, 1967. Both Orders of Magistrate, dated 13.02.2019 and 25.02.2019, came to be challenged by way of revision petition before Special Court. Order dated 13.02.2019 by virtue of which Magistrate had extended time from 90 days to 180 days was set aside on the premise that in view of the Notification issued by the Government of Punjab, to deal with the cases of Unlawful Activities Act, Court of Session or Court of Additional Session Judge, in every District have been designated to try the said cases, so the application for seeking extension of time for filing challan was not maintainable before Ilaqa Magistrate.

On the next day charge sheet came to be filed and in the meanwhile revision petition challenging order dated 25.02.2019 came to be dismissed on 11.04.2019 on the premise that though the order dated 13.02.2019 has been set aside but the charge sheet in the case has now been filed and hence petitioner has lost his right of bail by way of default under Section 167(2). High Court of Punjab and Haryana after considering Section 167 and various provisions of UAP Act & NIA Act arrived at the conclusion that since investigation in the case is being carried out by State Police, the Magistrate got the power to extend time upto 180 days and dismissed the petition.

Accused approached the Hon'ble Supreme Court challenging the impugned judgment of the High Court on the grounds; firstly, that the exclusive jurisdiction to extend time vested only in the Special Court and not in the Ilaqa Magistrate, despite the fact that it was the State Police agency that investigated these offences and secondly, that the appellant's right to default bail was not extinguished by the filing of the charge sheet.

By allowing the Appeal, the Apex court set aside the judgment of the High Court and held that power to extend time can only be exercised by Special Court/Designated Court constituted for the purpose of trying scheduled offences and as such arrived at the conclusion that High Court has missed to take notice of Section 22(2) read with Section 13 of the NIA Act. Also, the impugned judgment has missed to take notice of Section 16(1) of the NIA Act which states that a Special Court may take cognizance of any offence without the accused being committed to it for trial, inter alia, upon a police report of such facts. Whether the investigation of scheduled offence is carried out by National Investigation Agency or by State Police, only the Special Courts constituted under Section 13 and 22, respectively, are empowered to try the accused and to carry out other incidental functions. On second ground the Supreme Court placed reliance upon constitution bench judgment in Sanjay Dutt v. State through CBI (1994) 5 SCC 410 and held that subsequent filling of charge sheet does not extinguish the indefeasible right of accused who applies for default bail.

Criminal Appeal No. 316 of 2011
Karulal & Ors. v. The State of Madhya Pradesh
Decided on: October 09, 2020

The present Criminal Appeal has been filed by the accused persons against the judgment and order dated 23.6.2009 in Criminal Appeal No.1637 of 1999 whereby, the Madhya Pradesh High Court confirmed the conviction of the appellants ordered by the trial court under Section 148, 302 read with Section 149 of the Indian Penal Code, 1860. The High Court found consistency in the testimony of the eyewitnesses and noted that the injuries attributed by the eyewitnesses to the accused, is corroborated by the medical evidence. It was then held by the High Court that there is no infirmity in the judgment of conviction rendered by the trial court and the appeal against conviction was accordingly dismissed.

The main point of law which came up for consideration before the Hon'ble Supreme Court was related to the evidentiary value of the related eye witnesses.

Hon'ble Supreme Court held that that the testimony of the related witness, if found to be truthful, can form basis for conviction if it substantially supports material particulars. Hon'ble Supreme Court while commenting on

the aspect related to the evidentiary value of a related witness relied upon the observation of Justice Vivian Bose in Dalip Singh & Ors. v. State of Punjab (AIR 1953 SC 364),

"….We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar v. The State of Rajasthan. We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.,"

"…A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person……."

Hon'ble Supreme Court further held that in any case, being related to the deceased does not necessarily mean that they will falsely implicate innocent persons. In this context, it was appropriately observed by Justice H.R. Khanna in State of Uttar Pradesh v. Samman Dass, (1972) 3 SCC 201 -

"It is well known that the close relatives of a murdered person are most reluctant to spare the real assailant and falsely involve another person in place of the assailant….."

Again in a later decision of this Court in Khurshid Ahmed v. State of Jammu and Kashmir (2018) 7 SCC 429, Justice N.V. Ramana on the issue of evidence of a related witness was justified in declaring that:

"There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused."

Hon'ble Supreme Court thus, relied on number of the precedents and observations that make it amply clear that being related to the deceased does not necessarily mean that they will falsely implicate innocent persons.

Regarding the issue related to the old enmity being the cause for implicating the accused. Hon'ble Court held that if the witnesses are otherwise trustworthy, past enmity by itself will not discredit any testimony. In fact the history of bad blood gives a clear motive for the crime. On this issue, Hon'ble Court relied upon the observation of Justice Faizan Uddin in Sushil & Ors. v. State of U.P. (1995) Supp 1 SCC 363, where the learned Judge correctly observed:

"….It goes without saying that enmity is a double-edged weapon which cuts both ways. It may constitute a motive for the commission of the crime and at the same time it may also provide a motive for false implication. In the present case there is evidence to establish motive and when the prosecution adduced positive evidence showing the direct involvement of the accused in the crime, motive assumes importance. The evidence of interested witnesses and those who are related to the deceased cannot be thrown out simply for that reason. But if after applying the rule of caution their evidence is found to be reliable and corroborated by independent evidence there is no reason to discard their evidence but it has to be accepted as reliable……."

Moreover, the prosecution case need not to fail merely on the fact that few of the witnesses turn out to be hostile. If there are enough material evidence and trustworthy testimonies which clearly support the case against the accused and the prosecution need not to fail on this count alone. Some witness may not support the prosecution story for their own reasons and in such situation, it is necessary for the court to determine whether the other available evidence comprehensively proves the charge. In this case, it is seen that the prosecution version is cogent and supported by three eyewitnesses who have given a consistent account of the incident. Their testimonies are corroborated by the medical evidence. The trial

judge had elaborately discussed the evidence of both sides and came to a logical conclusion which inspires confidence. The hostile witnesses will not affect the conviction of the appellants.

Hon'ble Supreme Court thus, upheld the conviction of the appellants and dismissed the appeals.

Criminal Appeal No. 660-662 of 2020
Ankita Kailash Khandelwal & Ors. v. State of Maharashtra & Ors.
Decided on: October 08, 2020

These Special Leave Petition arise out of common judgment and order dated 21-2-2020 passed by High Court of Judicature at Bombay in interim Applications as preferred by the appellants in Criminal Appeal No. 911 of 2019 seeking relaxation of Condition Nos. (iii), (iv) and (v) imposed in terms of the order dated 9th August, 2019 passed by the High Court while granting bail to the appellants. In fact, the appellants were pursuing Post Graduate Degree Course (M.D.) in Topiwala National Medical College, Mumbai and after completion of Two years out of their Three year Course in April, 2019 were working as Residents in B.Y.L. Nair Charity Hospital attached to the Hospital. On 22 -5-2019 Crime Branch registered case against the appellants as per the provisions of Schedule Caste and Schedule Tribe (Prevention of Atrocities), Act 1999 and Section 4 of the Maharashtra Prohibition of Ragging Act, 1999 under Section 306 read with Section 34 vide Crime No. 157 of 2019, on the complaint of mother of Dr. Payal Tadvi that her daughter on account of harassment by the appellants has committed suicide.

After the arrest of the appellants on 29-5-2019, the investigation was transferred to Crime Branch and case was re-numbered as Crime No. 49 of 2019. Thereafter, Challan was filed against the appellants.

After the rejection of the Bail Application preferred by the appellants by the trial court, the appellants filed Criminal Appeal No. 911 of 2019 before the High Court. The High Court in its order dated 9th August, 2019 taking into consideration the factum of filing of Challan and recording of statement under Section 164 of the Criminal Procedure Code of material witnesses, granted bail to the appellants with specified conditions; condition (iii) being that appellants shall not leave Mumbai without the permission of the Court and shall report to the office of Crime Branch till framing of charge, condition (iv) being that appellants shall not enter the jurisdiction of Agritada Police Station particularly Topiwala National Medical College (B.Y.L Nair Charity Hospital), condition No. (v) being that the licenses of the appellants issued by Medical Council of India as well as Maharashtra Medical Council shall remain suspended till the conclusion of the trial.

The appellants filed interim applications before the High Court for relaxation of the said conditions and the High Court vide its order dated 21-2-2020 relaxed the Conditions No. (iii) and (v) but maintained Condition No. (iv) as imposed upon the appellants at the time of grant of bail. The Order dated 21-2-2020 passed by High Court to the extent of non relaxation of Condition No. (iv) was subject matter of Special Leave Petition. The appellants relied upon Sumit Mehta v. State (NCT of Delhi) (2013)15 SCC 570 and Kunar Kumar Tiwary alias Kunar Kumar v. State of Bihar & Anr. (2018) 16 SCC 74 that in terms of Section 437 (3) of Criminal Procedure Code, the powers of the court to impose the conditions are there but such conditions cannot be arbitrary, fanciful and extend beyond the ends of the provision. It is further argued that Condition (iv) as imposed is resulting negation of the rights of the appellants to continue their study in the College which amounts to infringement of their rights under Article 21 of the Constitution of India.

The Apex Court while taking the note of Sumit Mehta judgment (supra) held that law presumes an accused to be innocent till guilt is proved and the appellants as presumably innocent persons, are entitled to all the fundamental rights including the right to liberty granted under Article 21 and are entitled to pursue their course of study so long as exercise of such right does not hamper smooth conduct and progress of the prosecution. While allowing the Special Leave Petition, the Apex Court allowed the appellants to enter the college and the hospital to pursue their courses of study with a condition that appellants shall not in any

manner influence or even attempt to influence any of the witnesses. The appellants shall present themselves on each date the matter gets posted before trial court unless their presence is specifically exempted.

Criminal Appeal No: 659 of 2020
Miss 'A' v. State of Uttar Pradesh & Anr.
Decided on: October 08, 2020

While allowing an appeal the Court held that the right to receive a copy of a statement recorded under Section 164 CrPC will arise only after cognizance is taken and at the stage contemplated by Sections 207 and 208 of the Code and not before.

The Appeal was filed against the order passed by High Court of Judicature at Allahabad in which it had allowed an application and had held the accused was entitled to receive a copy of the statement recorded under Section 164. However the findings of the High Court were overruled by the Supreme Court in this case and held that it is only after taking of the cognizance and issuance of process that the accused is entitled, in terms of Sections 207 and 208 of the Code, to copies of the documents referred to in said provisions. The filing of the charge-sheet by itself, does not entitle an accused to copies of any of the relevant documents including statement under Section 164 of the Code, unless the stages indicated above are undertaken.

The Court held: "Though, a copy of the statement recorded under Section 164 of the Code was made over to the accused, we must set aside the order passed by the High Court and lay down that under no circumstances copies of statements recorded under Section 164 of the Code can be furnished till appropriate orders are passed by the Court after taking cognizance in the matter."

Criminal Appeal No.40 of 2011
Gurcharan Singh v. The State of Punjab
Decided on: October 01, 2020

The present appeal arose from the judgment and order of the High Court of Punjab and Haryana whereunder, the judgment of conviction under section 306 of the Indian Penal Code was upheld. The Apex Court set aside and quashed the conviction under Section 306 IPC and allowed the appeal.

The Apex Court observed that in order to give a finding of abetment under Section 107 IPC, the accused should instigate a person either by act of omission or commission and only then, a case of abetment is made out. In the present case there is no direct evidence of cruelty against the husband or the in-laws. There is nothing on record to show which particular hope or expectation of the deceased was frustrated by the husband. Evidence is also lacking on willful neglect of the appellant, which led to the suicidal death. Whereas contrary evidence is available to suggest that care and treatment was given to the deceased in the matrimonial home and in the hospital, and during the three years of marriage, there was no instance of maltreatment, attributable to dowry demand. there is nothing to show that the deceased was harassed on this count, in the matrimonial home. In the face of such material, it is difficult to conclude that deceased was pushed to commit suicide by the circumstances or atmosphere created by the appellant.

The Hon'ble Court pointed out that the definition of abetment under 107 IPC makes it clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the trial court as well as the High Court never examined whether appellant had the mens rea for the crime, he is held to have committed.

The Court observed that no overt act or illegal omission is seen from the appellant's side and evidence also does not indicate that the deceased faced persistent harassment from her

husband. Nothing to this effect is testified by the parents or any of the other prosecution witnesses. The trial court and the High Court speculated on the unnatural death and without any evidence concluded only through conjectures, that the appellant is guilty of abetting the suicide of his wife.

In such circumstances, Hon'ble Court observed that the trial court and the High Court erred in concluding that the deceased was driven to commit suicide, by the circumstances or atmosphere in the matrimonial home. This is nothing more than an inference, without any material support. Therefore, the same cannot be the basis for sustaining conviction of the appellant, under section 306 of the IPC and thereby allowed the present appeal by setting aside and quashing the conviction under Section 306 IPC.

Special Leave Petition (Crl) No. 7369 of 2019
Satish @ Sabbe v. The State of Uttar Pradesh
Decided on: September 30, 2020

The petitioners, Vikky and Satish, had been serving life imprisonment for the offence of kidnapping for ransom. Satish's plea for premature release was rejected on the following grounds- first, the crime is heinous, second, petitioner is hardly 53-54 years old and can repeat the crime, third, the informant has serious apprehensions against his release, and fourth, governmental authorities have adversely commented upon his release considering its direct adverse effect on the society. Similarly, for Vikky, on grounds of his age of 43 years, healthy physical condition, apprehensions of the informant, and nature of the crime.

Taking note of these grounds of rejecting the plea for premature release, the Hon'ble Supreme Court observed that the three-factor evaluation of (i) antecedents (ii) conduct during incarceration and (iii) likelihood to abstain from crime, under Section 2 of the UP Prisoners Release on Probation Act, 1938, have been given a complete go-by. The court referred to recent judgments in Shor v. State of Uttar Pradesh, 2020 SCC OnLine SC 626 and Munna v. State of Uttar Pradesh, Order dated 21.08.2020 in WP (Crl) 4 of 2020. Taking note of their conduct in jail, the Court observed that it is extremely unlikely that the petitioners would commit any act which could shatter or shame their familial dreams.

While directing their release, the Court emphasized the reformative theory. It said that a civilized society cannot be achieved only through punitive attitudes and vindictiveness but equally strong is the foundation of the reformative theory which propounds public harmony, brotherhood, and mutual acceptability. The Court also observed that the length of the sentence or the gravity of the original crime cannot be the sole basis for refusing premature release. Any assessment regarding predilection to commit a crime upon release must be based on antecedents as well as the conduct of the prisoner while in jail, and not merely on his age or apprehensions of the victims and witnesses.

J&K High Court Judgments

CRM(M) No.330/2020
Taro Devi v. Union Territory of J&K & Anr.
Decided on: October 22, 2020

In the instant case, the petitioner challenged order dated 09.09.2020 passed by the Magistrate, whereby the Magistrate directed SHO concerned to verify the matter and if cognizable offences are made out, to proceed in terms of Section 156(3) of the Code of Criminal Procedure. Hence, the issue before the Hon'ble Court was, whether the Magistrate was justified in directing verification of the matter before registration of the FIR.

Hon'ble Court after taking note of the relevant provisions of the law and ratio laid down by the Supreme Court in Lalita Kumari v. Govt. of UP & Ors., and Priyanka Srivastava & Anr. v. State of UP & Ors, observed that there may be cases in which it may not be appropriate for the Magistrate to directly order registration of FIR keeping in view the facts and circumstances of such cases and there may be appropriate cases where the Magistrate would be well advised to verify the truth and veracity of the allegations. The registration of an FIR against a person has serious consequences, as such, it cannot be done in a routine manner.

Once an FIR is registered, the accused faces the possibility of arrest and all forms of harassment and indignation, which are associated with a criminal prosecution. If a Magistrate in the cases directly orders registration of FIR without verifying the veracity of the allegations and without getting satisfied as to whether or not any cognizable offence is made out, the affected parties will be un-necessarily put to harassment. It is because of these consequences in mind that Magistrates before ordering registration of FIR should look for certain safeguards like filing of an affidavit by the petitioner and verifying the veracity of the allegations. Accordingly, the Court dismissed the petition and held that the impugned order passed by the Magistrate is well -reasoned and based on sound principles of law. The same does not call for any interference from the Court.

CRMC No. 152/2018
Mohd. Salim Pandith v. State of J&K & Ors
Decided on: October 07, 2020

Petition under Section561-A of J&K CrPC was filed by petitioner seeking quashing of FIR No. 26/2018, registered by P/S Kothibagh, Srinagar for offence under Section 505(1) (b) RPC.

An association of travel agents had filed a complaint that on 03.04.2018, petitioner had published a false news item in daily 'Times of India' titled "Stone pelters in J&K now target tourists, four women injured" with the intention to disrupt peaceful tourist season and to create an atmosphere of threat amongst citizens of the Country. The FIR was registered on basis of this complaint.

Petitioner contended that although police denied the stone pelting incident but in a press briefing, the SP had himself admitted the same. Moreover, he pleaded that he had under a bona fide belief and in good faith reported the incident of stone pelting on tourists. Respondents, on the other hand, claimed that the FIR was lodged upon report lodged by one Ashfaq Sidiq S/o Gh. Mohammad R/o Srinagar, and during investigation of the case, the newspaper (Times of India) issues dated 03.04.2018 and 04.04.2018 were seized and statements of witnesses under Section 161 were recorded. Hence, the offence alleged is made out against the petitioner. However, the complainant has filed affidavit dated 21.09.2020 seeking closure of case in view of compromise with petitioner.

The Hon'ble Court upon perusal of Section 505(1)(b) of the RPC and the exceptions therein, and case law from Hon'ble Supreme Court in Bilal Ahmad Kaloo v. State of Andhra Pradesh, 1997 (3) Crimes 130 (SC) and Orissa High Court in Kali Charan Mohapatra v. Srinivas Sahu, AIR 1960 Orissa 65, held that unless a publication has been made with an intention to cause fear or alarm whereby a person is induced to commit an offence against the State, the offence under Section 505(1)(b) of RPC is not made out. It was also observed that "reporting of events which a journalist has bona fide reason to believe to be true, can never be an offence. Taking a contrary view would be violative of the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India."

Hon'ble Court exercised its inherent powers under 561-A of J&K CrPC and allowed the petition thereby quashing the impugned FIR.

CRM(M) No.324/2019
Farooq Ahmad Khan v. Mahbooba Khan
Decided on: September 30, 2020

Petitioner had filed application u/s 482 CrPC seeking quashing of order dated 20.11.2019 passed by the Magistrate along with the proceedings initiated against him u/s 488 CrPC and the trial court order dated 04.10.2017 awarding interim maintenance to the respondent. Necessary directions have also been sought by the petitioner in an order passed by the trial court on 10.11.2018 under Section 476 read with Section 195 of the J&K CrPC.

The parties having been married for 39 years were living separately since 2014. Respondent alleged that the husband/petitioner is a retired DC and owns 2 hotels and a school, having income of 10 Lakh per month, and seeks interim maintenance @90,000 per month on the ground of desertion. Petitioner alleged that the respondent is earning good amount from

managing a hotel and rental income from her flat in Delhi and that the petition is filed just to harass him.

The trial court, vide order dated 04.10.2017, awarded interim maintenance @ 15,000 per month to respondent. The said order was challenged unsuccessfully before the Sessions Court in revision as well as before the High Court u/s 561-A. Upon failure of petitioner to pay the amount of interim maintenance to the respondent on regular basis, the trial court passed an order dated 20.11.2019 directing attachment of his pension and pensionary benefits.

After perusal of records and hearing arguments, the Hon'ble Court refused to interfere with the impugned order of trial court as well as the proceedings u/s 488 CrPC and observed that by frequent filing of such applications, the petitioner is abusing process of the Court which needs to be deprecated.

On the question of attachment of pensionary benefits, the Hon'ble Court after citing provisions of Chapter XXXVI and section 386 of the J&K CrPC, and the judgment of Supreme Court in the Union of India v. Jyoti Chit Fund & Finance, AIR 1976 SC 1163, held that so long as the pension and pensionary benefits are not actually paid to a pensioner, the same do not become movable property of the pensioner i.e. until credited in the Bank account of the pensioner or paid in cash to him, the said pension and pensionary benefits cannot be attached.

The petition was partly allowed, and the trial court order dated 20.11.2019, was set aside. However, the Court made it clear that the trial Magistrate may enforce the execution of order of interim maintenance including the arrears thereof by directing attachment of the pension and pensionary benefits of the petitioner after the same are credited to his account or are paid to him as also by directing attachment of any other property of the petitioner or by any other mode permissible under law.

"The need for protecting labour welfare on one hand and combating a public health crisis occasioned by the pandemic on the other may require careful balances. But these balances must accord with the rule of law. A statutory provision which conditions the grant of an exemption on stipulated conditions must be scrupulously observed. It cannot be interpreted to provide a free reign for the State to eliminate provisions promoting dignity and equity in the workplace in the face of novel challenges to the state administration, unless they bear an immediate nexus to ensuring the security of the State against the gravest of threats."

Dr. Dhananjaya Y. Chandrachud, J. ***in Gujarat Mazdoor Sabha & Anr. v. State of Gujrat, Writ Petition (Civil) No. 708 of 2020, decided on October 01, 2020***

CIVIL

Supreme Court Judgments

Civil Appeal No. 3340 of 2020
The State of Rajasthan & Ors. v. Heem Singh
Decided on: October 29, 2020

A police constable, who was tried and acquitted in a murder case, had challenged his dismissal from service after a disciplinary enquiry. The Division Bench of the Rajasthan High Court granted the respondent reinstatement in service with no back wages for the seventeen years that elapsed since his termination. The State had, hence, challenged the reinstatement before the Supreme Court.

On 13 August 2002, the respondent proceeded on leave and had to report back on duty on 16 August 2002. He failed to do so and eventually reported for work on 19 August 2020. The respondent, along with 2 co-accused was arrested on 9 September 2002, for alleged murder of the informant's brother. The respondent was tried and was acquitted by the Sessions Court on 8 October 2003. Departmental proceedings were also initiated against the respondent on charges of overstaying leave, involvement in murder and

getting additional leave by suppressing facts and the conduct hurtful to the image of police department. In the finding of the Disciplinary enquiry it was noticed that the Court had not completely acquitted the said constable rather acquitted by giving him the benefit of doubt.

The Hon'ble Supreme Court observed that there has been an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry.

The Hon'ble Court referred to the case of Southern Railway Officers Association v. Union of India, where the Court held that an acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.

Also, the Court noted that in Inspector General of Police v. S. Samuthiram, it was held that unless the accused has an "honorable acquittal" in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement.

The direction of the Division Bench for reinstatement was set aside. In exercise of the jurisdiction under Article 142 of the Constitution, the Court directed that the cessation from service will notionally take place on the respondent completing minimum qualifying service. The direction of the High Court that the respondent shall not be entitled to back wages was upheld. The retiral dues of the respondent shall be computed and released on this basis within a period of three months.

The appeal was allowed in the above terms. No order as to costs was passed.

Civil Appeal No. 3559/2020
Smriti Madan Kansagra v. Perry Kansagra
Decided on: October 28, 2020

While deciding a case involving transnational custody of minor child, the Supreme Court held that it shall be just and appropriate that the custody of minor child be handed over by his mother to father located in Kenya, provided that the father obtains a 'mirror order' from Kenya. In this case, due consideration was given to preferences and inclinations of child in determining issue of parental custody and hence father was granted the permanent custody of the child and allowed him to shift his son to Kenya. The mother of the child was given access and visitation rights over the child on terms and conditions.

The Court explained that the objective of 'mirror order' is to safeguard the interest of the minor child in transit from one jurisdiction to another, and to ensure that both parents are equally bound in each State. The mirror order is passed to ensure that the courts of the country where the child is being shifted are aware of the arrangements which were made in the country where he had ordinarily been residing. Such an order would also safeguard the interest of the parent who is losing custody, so that the rights of visitation and temporary custody are not impaired. The Supreme Court held that mirror orders from foreign courts ensure welfare of minors. The Court relied on Section 17(3) of the Guardians and Wards Act, which requires due consideration to be given to the wishes of the child if the child is old enough to form an intelligible preference. The judgment indicates that the Court had a personal interaction with the child in Chambers during the pendency of the proceedings, to ascertain his aspirations and wishes.

Special Leave Petition (C) No. 9217 of 2020
The State of Madhya Pradesh v. Bheru Lal
Decided on: October 15, 2020

Instant petition was filed by the petitioners after a delay of 663 days and the reason given by the state for delay was, "due to unavailability of documents and process of arranging the documents." The delay was also

attributed to, inadvertent "bureaucratic work".

Hon'ble Supreme Court dismissed the petition as time barred and held that, "Supreme Court of India cannot be a place for the government to walk in when they choose ignoring the period of limitation prescribed."

Hon'ble Court also imposed costs of Rs.25000/- on the petitioner state and held,

"… where there are such inordinate delays that government or state authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible."

Civil Appeal No. 3489 of 2020
Rajasthan State Road Development and Construction Corporation Ltd. v. Piyush Kant Sharma & Ors.
Decided on: October 15, 2020

In this petition, the appellant feeling aggrieved and dissatisfied with the impugned interim order passed by the High Court of Judicature for Rajasthan in Civil Writ Petition No. 1924 of 2019, wherein the original respondent No. 1, appellant Corporation who was restrained from appointing new set of contractual employees in place of the original writ petitioner, has preferred the present appeal.

After hearing the parties, the Hon'ble supreme Court held that the High Court has committed a grave error in passing such an interim order restraining the appellant Corporation from appointing new set of contractual employees in place of original writ petitioners. No reasons whatsoever have been assigned by the High Court while passing the impugned interim order. The High Court has failed to appreciate and consider the fact that according to the appellant Corporation, there was no regular sanctioned post of Computer Operator in the appellant Corporation and that there was no employer--employee relationship between the original writ petitioner and the appellant Corporation and that the original writ petitioner was an employee appointed by the contractor on contractual basis and worked with the appellant Corporation on contractual basis.

Accordingly, the present appeal was allowed, and the impugned interim order passed by the High Court restraining the appellant Corporation from appointing new set of contractual employees in place of the original writ petitioners was quashed and set aside.

SLP (Civil) Nos: 6787-6788 of 2020
Sri Munraju Gowda P.M. v. Sri Muni Rathna & Ors
Decided on: October 13, 2020

The Petitioner filed the special leave petition before the Hon'ble Supreme Court challenging the interim order passed in two interlocutory applications by the High Court.

The Hon'ble Supreme Court observed that "As rightly pointed out by the High Court, the election petitioner cannot be allowed to suddenly wake up to the reality of lack of pleading of material facts related to his rights in terms of Section 101 after more than 18 months of filing of the election petition. The same is also barred by limitation. Therefore, the High Court did the right thing in disallowing the second part of the proposed Para 30(a) and in striking off prayers."

The Hon'ble Supreme Court observed that "Once it is found that neither the original election petition nor the amended election petition contains any pleading of material facts which would enable the High Court to form an opinion in terms of Section 101, there was no alternative for the High Court but to strike off prayer.

The Hon'ble Supreme Court further observed that "There is one more reason why the petitioner cannot succeed. In the elections in question, there were 14 candidates in the fray, including the petitioner herein and the first respondent. {relied on Vishwanath Reddy V/s konappa Rudrappa Nadgouda}.

The Hon'ble Supreme Court held that the order of the High Court does not call for any interference and dismissed the Special Leave Petition.

Civil Appeal No: 3247 of 2020
Sugandhi (dead) by Lrs. & Anr. v. P. Rajkumar, represented by his power agent, Imam Oli.
Decided on: October 13, 2020

Appellants herein are the defendants in the civil suit O.S. No. 257 of 2014 filed before

the Pr.Sub-Judge, Pudokottai, by the respondent herein (plaintiff) seeking injunction, alleging that the defendants are attempting to grab the suit property. When the suit was posted for defendant's evidence, they moved the application before the trial court under Order 8 rule 1A(3) CPC, seeking leave of the court to produce additional documents which as per them they could not produce earlier with the written statement since they recently had been able to trace the same and had a vital bearing on the case. The said application was dismissed by the trial court, and revision petition against the said dismissal before the High Court also came to be dismissed vide order dated 19.02.2019. Hence the instant appeal before the Supreme Court.

After hearing both the sides, and perusing the relevant provision of law, the Hon'ble Supreme Court said that" as per the law, i.e., sub-rule (3) of Rule 1A of Order 8, a document which is not produced at the time of filing of the written statement , shall not be received in evidence except with the leave of the court. Further Rule (1) of order 13 again makes it mandatory for the parties to produce their original documents before the settlement of issues.

Therefore, Sub-rule(3) provides a second opportunity to the defendant to produce the required documents but with the discretion of the court, and this discretion has to be exercised judiciously, there being no straight jacket formula for it. So, this leave can be granted on showing good cause.

It is often said that procedure is the hand made of justice and the procedural and technical hurdles shall not be allowed to come in the way of doing substantial justice…….We should not forget that litigation is nothing but a journey towards the truth. Therefore Courts should take a lenient view when an application is made for production of documents under Order 8 rule 1A (3) CPC.."

Accordingly, in the instant case the Court held that appellants/defendants had shown cogent reasons for not having produced the said documents earlier since they were recently traced and had a vital bearing on the case, therefore deserve to be taken on record.

The appeal was allowed and the impugned orders set aside.

Civil Appeal No. 3397 of 2020
Branch Manager, Bajaj Allianz Life Insurance Company Ltd and Others v. Dalbir Kaur
Decided on: October 09, 2020

Elucidating the law on the contract of insurance, Supreme Court in the present case laid down that a contract of insurance is one of utmost good faith and a proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed.

Court said that it is with this principle in view that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk.

Court was hearing an appeal arising from judgment and order dated 20th March of the National Consumer Disputes Redressal Commission. Factual background of the case, in brief, was that the proposer failed to disclose the vomiting of blood which had taken place barely a month prior to the issuance of the policy of insurance and of the hospitalization which had been occasioned as a consequence. The investigation by the insurer indicated that the assured was suffering from a pre-existing ailment, consequent upon alcohol abuse and that the facts which were in the knowledge of the proposer had not been disclosed.

The respondent had instituted a consumer complaint before the District Consumer Disputes Redressal Forum. The District Forum had allowed the complaint and had directed the appellants to pay the full death claim together with interest. The first appeal was rejected by the State Consumer Disputes Redressal Commission and the revision before the National Consumer Disputes Redressal Commission was also dismissed.

Apex Court disposing off the appeal and setting aside the judgment of the NCDRC held that the judgment of the NCDRC did not lay down the correct principle of law. It observed:

"The medical records which had been

obtained during the course of the investigation clearly indicate that the deceased was suffering from a serious pre-existing medical condition which was not disclosed to the insurer. In fact, the deceased was hospitalized to undergo treatment for such condition in proximity to the date of his death, which was also not disclosed in spite of the specific queries relating to any ailment, hospitalization or treatment undergone by the proposer in Column 22 of the policy proposal form."

Court relied on a number of its earlier judgments' from Reliance Life Insurance Co. Ltd. v Rekhaben Nareshbhai Rathod 5 (2019) 6 SCC 175 to Life Insurance Corporation of India v Asha Goel (2001) 2 SCC 160, P.C. Chacko v Chairman, Life Insurance Corporation of India (2008) 1 SCC 321 and Satwant Kaur Sandhu v New India Assurance Company Limited (2009) 8 SCC 316.

However, Court in the present case having regard to the age of the respondent and the death of the assured on whom she was likely to be dependent, utilized its jurisdiction under Article 142 of the Constitution, by directing that no recoveries of the amount which has been paid shall be made from the respondent.

Civil Appeal No. 8980 of 2017
M/S Arun Kumar Kamal Kumar & Ors. v. M/S Selected Marble Home & Ors.
Decided on: October 01, 2020

The present case is an appeal where the appellants have raised question regarding the legality and correctness of the order passed by the Division Bench of Delhi High Court dated 11.2.2010 whereby it dismissed the appeal filed against the judgment of Single Judge of High Court under which it also rejected the objections raised by appellants and declared the award dated 16.03.1998 as the rule of the Court. However, the Division Bench through its impugned judgment lowered the rate of interest from 16% to 9 %p.a. which is applicable on future interest subject to the appellants paying the complete decretal amount to respondents or before 30.06.2010., failing which the award and interest would stand as it is.

The issues involved in the instant case was that –

Whether the appellants are liable to pay any damages to the respondents?

Whether the vacant possession of the premises is to be handover by the appellants to the respondents?

The Supreme Court while dismissing the present appeal reduced the interest rate from 16% p.a. to 9% from the date of Award till this date, subject to appellants paying complete decretal amount to respondents on or before 31.12.2020., failing which the Award along with interest would stand the same.

Civil Appeal No. 8564 Of 2015
State of Madhya Pradesh v. Amit Shrivas
Decided on: September 29, 2020

The appellants in this case approached the Supreme Court against the Division Bench order of the High Court of Madhya Pradesh, wherein the respondent was given the benefit of Compassionate Appointment.

It is pertinent to mention that the only issue which was to be examined was whether the late father of the respondent who admittedly was employed as a work-charged/contingency employee in the Tribal Welfare Department was entitled to the compassionate appointment as per the existing policy on the date of his demise.

The Hon'ble Supreme Court observed that there cannot be any inherent right to compassionate appointment but rather, it is a right based on certain criteria, especially to provide succor to a needy family. This has to be in terms of the applicable policy as existing on the date of demise, unless a subsequent policy is made applicable retrospectively. The Court observed that the impugned order misses the point of distinction between a work-charged employee, a permanent employee, and a regular employee. The late father of the respondent was undoubtedly a work charged employee and it is nobody's case that he has not been paid out of work-charged/contingency fund. He attained the status of a permanent employee on account of having completed 15 years of service, which entitled him to certain benefits including pension and krammonati (promotion). This will, however, not ipso facto give him the status of a regular employee.

The Court referred to the case of Ram

Naresh Rawat v. Ashwini Ray & Ors., (2017) 3 SCC 436, which opined that a 'permanent' classification does not amount to regularisation. Thus, the classification of the late father of the respondent as a permanent employee, and this distinction between a 'permanent' status and a 'regular' status appears to have been lost sight of in the impugned judgments.

The Supreme Court also referred to the case of Indian Bank & Ors. v. Promila & Anr. (2020) 2 SCC 729 wherein this issue of compassionate appointment was also dealt and referred to relevant paras 3, 4, & 5 which are as under:

"3. There has been some confusion as to the scheme applicable and, thus, this Court directed the scheme prevalent, on the date of the death, to be placed before this Court for consideration, as the High Court appears to have dealt with a scheme which was of a subsequent date. The need for this also arose on account of the legal position being settled by the judgment of this Court in Canara Bank & Anr. v. M. Mahesh Kumar, (2015) 7 SCC 412, qua what would be the cut-off date for application of such scheme.

4. It is trite to emphasize, based on numerous judicial pronouncements of this Court, that compassionate appointment is not an alternative to the normal course of appointment, and that there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succor to the family in difficult times and, thus, the relevancy is at that stage of time when the employee passes away.

5. An aspect examined by this judgment is as to whether a claim for compassionate employment under a scheme of a particular year could be decided based on a subsequent scheme that came into force much after the claim. The answer to this has been emphatically in the negative. It has also been observed that the grant of family pension and payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The crucial aspect is to turn to the scheme itself to consider as to what are the provisions made in the scheme for such compassionate appointment."

Accordingly, the appeal was allowed, and the impugned order was set aside but the respondent was given some succour in terms of this Circular dated 29.9.2014, wherein the compassionate grant amount was increased from Rs. 1,00,000/- to Rs. 2,00,000/- in order to do complete justice between the parties according to Article 142 of the constitution of India.

J&K High Court Judgments

CMAM No.05/2015
Mohammad Yousuf Khan v. Bilal Ahmad Khan & Ors.
Decided on: October 27, 2020

The present appeal was preferred against the Award of Motor Accident Claims Tribunal, Anantnag (for short "Tribunal") seeking grant of compensation of Rs.10.00 Lacs, on account of injuries sustained in the accident on the ground of wrong application of multiplier.

The Hon'ble Court observed that the Tribunal has, even after quoting pertinent passage of the judgment rendered by the Supreme Court in Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121, vis-à-vis application of multiplier, has applied multiplier of 11 instead of 14 as is to be applied in terms of the said judgment. In that view of matter, there is substance in submission of appellant that multiplier of 11 has been wrongly applied by the Tribunal instead of applying the multiplier of 14, and to this extent instant appeal is to be allowed and the compensation has been enhanced accordingly.

MA 06/2009
National Insurance Company Ltd. v. Thoru Ram
Decided on: October 15, 2020

This is an appeal filed by the National Insurance company against the award dated 29.09.2008 passed by the motor accident claims tribunal Jammu whereby tribunal has awarded a sum of Rs 4,11,000 along with interest @7.5% per annum to the claimants from the date of filling till final payment is made.

Though several grounds have been raised in this appeal to challenge the impugned award, however during the course of hearing learned

counsel for the insurer has restricted his challenge to the ground that insurer cannot be saddled with the responsibility of indemnifying the claimants as the driver at the time of accident was not possessing a valid and effective driving license and therefore the vehicle in question was being driven in contravention to the terms and conditions of the Insurance policy.

Hon'ble High Court while dismissing the instant appeal held that a person holding driving licence to drive heavy goods vehicle can be treated competent to drive passenger service vehicle. Both are in any case transport vehicles and therefore belonging to one class. PSV endorsement or no PSV endorsement is immaterial.

Otherwise also it is well settled that if a person is holding driving licence authorizing him to drive heavy goods vehicle, he is competent to drive heavy passenger vehicle too and absence of specific endorsement on the licence is not a ground to absolve the insurance company of its liability to indemnify the insurer. Admittedly the driver of the offending vehicle was holding a valid driving licence authorizing him to drive heavy goods vehicle and therefore in view of the settled legal position he was competent to drive passenger service vehicle i.e. Bus in the instant case. Absence of PSV endorsement on his licence will not in any manner affect the expertise and competence of the driver to drive the similar type of vehicle, though designed for carrying passengers instead of goods. A reference to Hon'ble Supreme Court judgment in case titled Mukund Dewangan v. Oriental Insurance Company Ltd, AIR 2017 SC 3668 is also made while dismissing the appeal.

CM(M) No.89/2020
Mohammad Abdullah Mir & Ors. v. Mohammad Akram Ganie
Decided on: October 13, 2020

In this case the petitioners have assailed the order dated 29-02-2020 passed by the Munsiff, by virtue of which the trial court has permitted the respondent/plaintiff to incorporate in the plaint his claim with regard to dispossession from the part of the suit property during the pendency of the suit and also the amendment in the relief part claiming the relief of possession of the land of which the respondent was dispossessed.

The High Court explained that the scope of interference under article 227 of Constitution of India is limited. The Apex Court has laid down the parameters for exercising the powers under article 227 in para 49 (c), (d) of the judgment in case titled Shalini Shyam Shetty v. Rajendra Shankar Patil, reported in 2010 (8) SCC 329.

High Court's cannot, at the drop of a hat, in exercise of its powers of superintendence under article 227 of the constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it in exercise of this power act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative Statutory mode of redressal has been provided that would also operate as restraint on the exercise of this power by the High court.

The interference by the High Court in exercising of the power of superintendence must be guided by the principles laid down by the constitution Bench of the Supreme Court in Waryam Singh (AIR 1954 SC 215.)

The High Court referred to the case law Sampath Kumar v. Ayyakannu, (2002) 7 SCC 559, and held that it is settled law that the plaint can be amended to introduce a cause of action that arose during the pendency of the suit. The Court also reproduced para 17 of judgment of the Apex Court in Rajesh Kumar Agarwal v. K.K Modi, (2006) 4 SCC 385, and held that since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because basic structure of the suit has not been changed and that there was merely change in the nature of relief claimed.

MA 88/2018
Nazir Ahmad Sofi. v. Chairman J&K Bank Limited and others
Decided on: October 09, 2020

Hon'ble High Court observed in this case that the trial court has correctly held that the liability of the guarantors in case of loan is joint and several and it is always in the discretion of

the lender to proceed against all or any of them. As is seen, the guarantors are persons of means and, therefore, the Bank committed no illegality in deducting the amount of instalment from their salary accounts. Since the Bank was able to recover the instalments from the guarantors, there was no occasion for declaring the account of the appellant as NPA.

The High Court further held that the appellant has not been able to demonstrate convincingly that either under some statutory provision or even under the guidelines issued by RBI, the appellant, as a matter of right, was entitled to have his account declared as NPA. It is trite that no one can claim benefit of his own wrong. Under the aegis of RBI, there are schemes floated from time to time providing an opportunity to the defaulters of the Banks to go for one time settlement and in that eventuality certain remission in the rate of interest too is granted. But this benefit is envisaged only for those who have genuinely not been able to pay their debts and the Banks have failed to recover the amounts. Such schemes, however, cannot be claimed by the persons by deliberately going in default and then claiming declaration of their loan account as NPA, only to avail of the benefit of one-time settlement and interest remission.

FAO No. 06/2020
Kashmir Chamber of Commerce & Ors. v. Zubair Mahajan & Ors.
Decided on: October 01, 2020

Appeal was preferred against an order, whereby the trial court has allowed the prayers for interim relief. The order passed by the trial court reveals that defendants had filed their respective written statements. There was a specific plea taken by defendants, that the suit against it was not maintainable as, according to the plaintiffs, defendant No.1 was a company incorporated under Indian Companies Act, and that any controversy which relates to any company, cannot be dealt with by a civil court. It was averred that the civil court has no jurisdiction to grant any injunction. In the instant case, defendants raised a specific proposition of law about the lack of jurisdiction of the trial court.

The Court observed that - Sub-rule (2) of Rule 2 of Order 14 of the CPC says that where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to the jurisdiction of the Court, or a bar to the suit created by any law for the time being in force and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue. So, once an averment was taken about the lack of jurisdiction of the trial court and bar created by the Companies Act, and that it was likely that the case or any part thereof could be disposed of on such issue of law, it was incumbent upon the trial court to frame an issue in relation thereto as a preliminary issue and return a finding thereon, instead of returning a finding on such objection/ averment while deciding the application for interim relief this Court is of the view that it would be appropriate to require the trial court to frame an issue with regard to the jurisdiction of the court, treat it as a preliminary issue and proceed to hear and determine the same in accordance with law, and, thereafter, to consider the final disposal of the application for interim relief and application for appointment of receiver filed by the plaintiffs.

The Court reiterated the principle of law that when question as to lack of jurisdiction of the court is raised, before finally deciding interim application it is requisite to determine the question of jurisdiction of the court.

Consequently, to the above extent the order impugned in this appeal was set aside. However, the lis was thought to be preserved by making appropriate direction till passing of fresh orders in the application(s) for grant of interim relief, and it was ordered that the orders of interim stay passed by the trial court shall continue to be in operation.

Webinar on "NDPS Act: Post Recovery Proceedings"

On 6th of October 2020, J&K Judicial Academy organized webinar on "NDPS Act: Post Recovery Proceedings". Programme was conducted by Mr. Pradeep Mehta, Joint Director Prosecution (Retd.), presently Senior Faculty Member Chandigarh Judicial Academy. Mr. Mehta has very rich experience in imparting training to Judicial Officers and Public Prosecutors. He was invited by national level institutions to deliver lectures and address the stake-holders in justice delivery system at all levels. It was continuation of series of programmes on the nuances of NDPS Act, sessions guided by Mr. Pradeep Mehta.

Mr. Pradeep Mehta took the discussion forward by referring to various provisions of NDPS Act pertaining to search and seizure, falling in the domain of post recovery proceedings. In this, Mr. Mehta highlighted the importance of various provisions of the NDPS Act relating to handling of Contrabands after these are recovered and seized. It includes taking of samples from the seized materials, sending the samples to the Forensic Science Laboratory for testing and then safe custody of the seized materials. Relating these provisions to various landmark decisions of the Supreme Court and some useful judgments rendered by various High Courts, Mr. Mehta explained the whole mechanism of post recovery proceedings. He also discussed the practical problems and technical difficulties faced by the investigating agency. Mr. Mehta explained that the Central Government has come up with various Standard Operating Procedures (SOPs) and proformas for making search and seizure. These SOPs and proformas act as sufficient guide for the investigating agency and if followed in spirit, can ensure fair degree of transparency and reasonableness in the investigation mechanism under NDPS Act. He also highlighted the need to keep intact the chain of custody so that it can be ensured that from the time of seizure of the Contraband to the conclusion of trial of the case, there is no scope to interpolate the material evidence. Integrity of the samples and of the seized materials is necessary to prove the case before the court. Any chance of interpolation can put the prosecution case in serious doubt. It was highlighted by Mr. Mehta that the person responsible to keep the seized Contraband in custody has to ensure that every authorized instance of dealing with the seized materials is recorded in the book specially kept for the purpose and also to record the manner in which it was dealt.

Webinar on "NDPS Act: Importance of Link Evidence"

On 23rd of October 2020, J&K Judicial Academy organized webinar on "NDPS Act: Importance of Link Evidence". Programme was conducted by Mr. Pradeep Mehta, Joint Director Prosecution (Retd.), presently Senior Faculty Member Chandigarh Judicial Academy. This was fifth session in the series of programmes conducted on the nuances of the NDPS Act.

Mr. Mehta initiated the discussion by stating that in the cases of recovery of material evidence, chain of custody is very material. Every link in the chain of custody, post recovery, has to be proved in the court of law. Any loose link in leading such evidence can render a fatal blow on proof of the case, especially of recovery of Narcotic substances providing for serious punishment. It is more a necessity in such cases to prove every circumstance in the chain of evidences, to satisfy the court trying such case that really Contraband was recovered from the possession of accused named in the case.

Mr. Mehta said that law provides for presumption as to possession of Contraband in terms of Section 15, but that does not absolve the prosecution of its responsibility of proving that Contraband was so recovered from the accused. Initial burden of proof is never taken away from the prosecution and always rests on them. Only when sufficiently satisfactory evidence is lead by the prosecution, burden would shift to the accused to displace the presumption as to possession.

It was further deliberated by Mr. Mehta that every piece of evidence collected by the Investigating Officer needs to be proved in the

court, both by oral and documentary evidence. There are by and large six sets of documents which are required to be proved in the cases of Contraband recovery. Every person dealing with such documents is necessary to be produced in the court to give oral evidence to prove the documents prepared during the course of investigation of the case. Most important document post recovery, is the daily diary of the police station and then the register maintained for safe custody of seized materials in the police station. Every entry in such books has to be proved to satisfy the court about chain of custody.

It not only necessary to prove the recovery of Contraband but it is equally important to prove that the seized materials are really such as can be described as Narcotic or Psychotropic substance. In this regard evidence of the expert from Forensic Science Laboratory is of utmost importance. In that also, it is necessary to prove that the samples examined and report in respect of them given by the expert, were really drawn from the seized materials and that integrity of the samples was maintained throughout. Then it is also important for the expert to prove his report and also to tell to the court that he really is expert within the scope of Section 45 of the Evidence Act. All these things put together in the link evidence can seal the fate of the accused facing the trial.

Academic activities of the High Court of J&K for the Law Interns

Webinar on "Cyber Law & Cyber Crimes"

On 3rd October, J&K Judicial Academy organized 2020 Webinar on "Cyber Law & Cyber Crimes", in the series of progrmmes on domain subjects proposed to be conducted by the High Court for the benefit of Law Interns. The programme was conducted by Shri Nisheeth Dixit, Advocate.

The resource person discussed various aspects of cyber law and cyber crimes. He initiated the discussion by giving introduction of computer, computer resources, information technology and working of the internet regime. He highlighted the salient features of the Information Technology Act, 2000, and also discussed the circumstances which necessitated bringing in the special legislation on the subject. He also discussed the regime of dealing with the electronic or digital evidence before the IT legislation. Then he discussed the circumstances leading to amendment of the IT Act, 2000, in the year 2008. He discussed various aspects covered by the amended provisions of IT Act and the changes that have been brought about and if the changes are sufficient to cater the dynamics of IT regime.

Mr. Dixit then talked about the cyber crimes, in that he discussed the crimes specifically defined and provided in the IT Act, and crimes under Penal Code and other legislations those are committed with the aid of computer resources and internet technology. He enlisted such offences and discussed the area covered by such offences. He also discussed the trial procedure for such offences.

Mr. Dixit also discussed open source and premium resources available and being utilized by cyber security experts to detect cyber crimes. He talked about the emerging field of Cyber Forensics and the area of operation of Cyber Forensics in detection of crimes. He cited various case studies where Cyber Forensic had provided useful clues in unravelling of truth during investigation of complicated cases.

Webinar on "Nuances of Right to Privacy"

On 7th October, 2020 J&K Judicial Academy organized a Webinar on "Nuances of Right to Privacy". The programme was conducted by Shri Vishal Gogne, Additional District Judge, Dwarka District, Delhi Judicial Service. Mr. Vishal has served as Additional Director at Delhi Judicial Academy till very recently. He has worked in the area of 'Right to Privacy' and has delivered talks on the subject. He also specializes in the field of Judicial Education, having been trained at Common-wealth Judicial Education Institute, Canada.

Mr. Vishal opened the discussion with his statement that the right to privacy flows from the right to life and personal liberty enshrined in the Constitution of India. Though it was considered to have been originated as common law principle but actually it is an important facet of life and personal liberty. He discussed

varying facets of right to privacy and demonstrated as to how this right works differently in different circumstances.

Mr. Vishal referred to various judgments of the Supreme Court of India and traced the journey of right to privacy from 'Kharak Singh v. State of UP (1954) to 'Puttaswami v. Union of India', being recognized as an important fundamental right. He elaborated upon the judgment handed down by the Supreme Court in case "Puttaswami v. Union of India", wherein a nine Judges bench has declared right to privacy as fundamental right protected by the Constitution. He said that this judgment shall have repercussions across both State and non-State actors. It likely that enunciation of law in this judgment will lead to a comprehensive legislation being brought by the Parliament.

Mr. Vishal discussed various issues touching upon the right to privacy in the domain of civil and criminal matters.

Webinar on "Career in Judiciary"

On 10th October, 2020 J&K Judicial Academy organized a Webinar on "Career in Judiciary". The programme was conducted by Dr. Aditi Choudhary, District & Session Judge (Registrar Vigilance), Delhi High Court, and Shri Bharat Chugh, Advocate. This programme was organized by the High Court under the series on 'Careers in Law' where the Law Interns are given insight into various career options available to them after they complete their law studies.

In this programme the panelists interacted with Mr. Pravin Pandoh, Civil Judge (Senior Division) and Ms. Farah Bashir, Civil Judge (Junior Division), and talked about different career options available in judicial service. They spoke on all the aspects of judicial service including service conditions and rules of ethics and behaviour for the judges. The panelists highlighted that judicial service is quite different from any other Government service. Judicial service involves public faith, trust and confidence. A member of judicial service is required to demonstrate an impeccable character to uphold the confidence of the public in judicial institution. It is not a fixed time job but it needs full time attention of a judicial officer.

The panelists then enlisted the traits of a judge which are pre-requisites for aspiring to become member of judicial service. They also talked about the challenges and difficulties faced by the members of judicial service and the changes that have taken place in the pay and perquisites of the judges over a period of time.

Webinar on "Career in Practice Criminal Law"

On 17th October, 2020 J&K Judicial Academy organized a Webinar on "Career in Practice of Criminal Law". The programme was conducted by Ms. Rebecca John, Shri Sidharth Luthra and Shri Mohit Mathur, Senior Advocates. In conversation with them was Shri Bharat Chugh, Advocate. The programme was meant to give in-depth knowledge to the Law Interns as to the requirements for a law professionals to choose criminal litigation as a career option.

The panelists Ms. Rebecca John, Shri Sidharth Luthra and Shri Mohit Mathur talked about their journey from coming out of law institutes as fresh law graduates to becoming renowned faces in conducting criminal litigation with profound success. They apprised the participants as to how they developed interest in criminal side of litigation and how they rode their dream after deciding to practice criminal law.

The panelists told the participants that practice of criminal law requires special skills which can be achieved by hard work, proper guidance from seniors and lot of study of books written by celebrated authors. To achieve success in this field one requires to constantly update the knowledge of law, oratory and cross-examination skills. It takes a lot of time to develop these skills and it is needed to show a great amount of patience in doing so.

Mr. Bharat moderated the discussion and asked very pertinent questions to the panelists to get their views on the subject of discussion. He also moderated the questions posted by the participants.

Webinar on "Constitution Vision of Justice"

On 18th October, 2020 J&K Judicial Academy organized a Webinar on "Constitution Vision of

Justice". The programme was conducted by Dr. Balram K. Gupta, Director (Academics), Chandigarh Judicial Academy.

Dr. Gupta referred to Constitutional Assembly debates and the profound impact of these debates in shaping up the Constitution of India. He quoted from historic speeches of the tall leaders of freedom struggle and highlighted the vision of justice which such leaders wanted to place in the golden letters of the Constitution. He then discussed the Preamble and the provisions of the Constitution contained in Part –III and Part—IV, relating to Fundamental Rights and Fundamental Duties. Dr. Gupta said that every citizen in the country needs to care about the corresponding duty imposed by the Constitution when one talks about Fundamental Rights. These are complementary and supplementary provisions for giving full effect to rights available to the citizens in India. Provisions of the Constitution enjoin upon every citizen and every institution in governance to live upto the expectations set out in the Preamble and uphold sanctity of the Constitutional Vision to infuse life into its letters.

Webinar on "Career in Judicial Education"

On 24th October, 2020 J&K Judicial Academy organized a Webinar on "Career in Judicial Education". The programme was conducted by Prof. (Dr) C. Rajkumar, Vice Chancellor, Jindal Global University, Noida, Prof. (Dr.) Mehraj-ud-din Mir, Vice Chancellor, Central University, Kashmir, Prof. (Dr.) Ved Kumari, Campus Law Center, Delhi University, as panelists and Dr. Aparna Chandra, Associate Professor, National Law School, Bangluru, moderating the discussion. This was the most illustrious panel for discussion on the field of legal education.

The focus of discussion was on option of law as legal education professional. The panelists gave their views on what transpired them to choose legal education as career. They also narrated their experiences while working in their chosen field and satisfaction drawn by them by being in the most respectable job. Each of the panelists told about their reasons for opting legal education as career and cited many anecdotes from their professional life that inspired them to do wonderful things in their lives. They also spoke about their association with great thinkers, philosophers and writers during their journey in legal education field that kept their interest intact and inspired to engage with students with great zeal.

Panelists gave the participants insight into what is required to become successful professionals in legal education. Dr. Aparna moderated the discussion and asked very thought provoking questions to the panelists and also shared her personal experiences in the field.

Webinar on "Career in Corporate Law"

On 31st October, 2020 J&K Judicial Academy organized a Webinar on "Career in Corporate Law". The programme was conducted by Ms. Pratibha Jain, Ms. Alina Arora, Advocates and Ms. Kalindee Mehta, General Counsel, SAP India, as panelists. Shri Bharat Chugh, Advocate moderated the discussion.

Conversation in the session opened with each of the panelists talking about their journey from passing out from law colleges and going on to become successful professionals in the field of Corporate Law. They cited their reasons of opting Corporate Law as a career. They also spoke about the amount of hard work and struggle put in by them to achieve their present positions. The panelists gave the Law Interns useful tips to go about in the profession after choosing Corporate Law as career. They also suggested some important specialized courses required to be undertaken and special skills to be developed before making final decision to join Corporate Law. They also apprised the participant about various options available to the law professional in the Corporate Law as well, and the special requirements of each branch of Corporate Law.

Mr. Bharat took questions from the participants and sought responses from the panelists. The deliberations were very useful in making the participants understand the filed of Corporate Law and the essential requisites for the law professionals to go for Corporate Law as a career option.

Jammu and Kashmir Reorganisation Act, 2019--Union Territory of Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Second Order, 2020

S.O. 3465(E) of 2020, dated 05.10.2020, Ministry of Home Affairs (Department of Jammu, Kashmir and Ladakh Affairs)

In exercise of the powers conferred by Section 96 of the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), and of all other powers enabling it in that behalf, the Central Government hereby makes the Union Territory of Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Second Order, 2020 in respect of the Union territory of Jammu and Kashmir.

Changes have been effected in the following Central Legislations:

1. THE BANNING OF UNREGULATED DEPOSIT SCHEMES ACT, 2019 (21 of 2019)
2. THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1996 (27 of 1996)
3. THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970 (37 of 1970)
4. THE FACTORIES ACT, 1948 (63 of 1948)
5. THE INDUSTRIAL DISPUTES ACT, 1947 (14 of 1947)
6. THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946 (20 of 1946)
7. THE MOTOR TRANSPORT WORKERS ACT, 1961 (27 of 1961)
8. THE PHARMACY ACT, 1948 (8 of 1948)
9. THE SALES PROMOTION EMPLOYEES ACT, 1976 (11 of 1996)
10. THE STREET VENDORS (PROTECTION OF LIVELIHOOD AND REGULATION OF STREET VENDING) ACT, 2014 (7 of 2014)
11. THE TRADE UNIONS ACT, 1926 (16 of 1926)

Jammu and Kashmir Reorganisation Act, 2019--Union Territory of Jammu and Kashmir Reorganisation (Adaptation of State Laws) Third Order, 2020

S.O. 3466(E) of 2020, dated 05.10.2020, Ministry of Home Affairs (Department of Jammu, Kashmir and Ladakh Affairs)

In exercise of the powers conferred by Section 96 of the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), and of all other powers enabling it in that behalf, the Central Government hereby makes the Union Territory of Jammu and Kashmir Reorganisation (Adaptation of State Laws) Third Order, 2020 in respect of the Union territory of Jammu and Kashmir.

Changes have been effected in the following State Legislations:

1. THE JAMMU AND KASHMIR MUNICIPAL ACT, 2000 (XX of 2000)
2. THE JAMMU AND KASHMIR MUNICIPAL CORPORATION ACT, 2000 (XXI of 2000)
3. THE JAMMU AND KASHMIR SCHOOL EDUCATION ACT, 2002 (XXI of 2002)
4. THE JAMMU AND KASHMIR BOARD OF SCHOOL EDUCATION ACT, 1975 (XXVIII of 1975)
5. THE JAMMU AND KASHMIR COOPERATIVE SOCIETIES ACT, 1989 (X of 1989)
6. THE JAMMU AND KASHMIR SELF-RELIANT COOPERATIVES ACT, 1999 (X of 1999)
7. THE SALARIES AND ALLOWANCES OF MEMBERS OF JAMMU AND KASHMIR STATE LEGISLATURE ACT, 1960 (XIX of 1960)
8. THE SALARY AND ALLOWANCES OF LEADERS OF OPPOSITION IN THE STATE LEGISLATURE ACT, 1985 (XVI of 1985)
9. THE JAMMU AND KASHMIR GOODS AND SERVICES TAX ACT, 2017 (V of 2017)
10. THE JAMMU AND KASHMIR METROPOLITAN REGION DEVELOPMENT AUTHORITIES ACT, 2018 (Governor Act No. XLIX of 2018)

Jammu and Kashmir Reorganisation Act, 2019--Union Territory of Jammu and Kashmir Reorganisation (Adaptation of State Laws) Fourth Order, 2020

S.O. 3654(E) of 2020, dated 16.10.2020, Ministry of Home Affairs (Department of Jammu, Kashmir and Ladakh Affairs)

In exercise of the powers conferred by Section 96 of the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), and of all other powers enabling it in that behalf, the

Central Government hereby makes the Union territory of Jammu and Kashmir Reorganisation (Adaptation of State Laws) Fourth Order, 2020 in respect of the Union territory of Jammu and Kashmir.

Changes have been effected in the following State Legislations:

1. THE JAMMU AND KASHMIR PANCHAYATI RAJ ACT, 1989 (Act No. IX of 1989)

Jammu and Kashmir Reorganisation Act, 2019--Union Territory of Jammu and Kashmir Reorganisation (Adaptation of State Laws) Fifth Order, 2020

S.O. 3808(E) of 2020, dated 26.10.2020, Ministry of Home Affairs (Department of Jammu, Kashmir and Ladakh Affairs)

In exercise of the powers conferred by Section 96 of the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), and of all other powers enabling it in that behalf, the Central Government hereby makes the Union territory of Jammu and Kashmir Reorganisation (Adaptation of State Laws) Fifth Order, 2020 in respect of the Union territory of Jammu and Kashmir.

Changes have been effected in the following State Legislations:

1. THE JAMMU AND KASHMIR AERIAL ROPEWAYS ACT (XII of 2002)
2. THE JAMMU AND KASHMIR AGRARIAN REFORMS ACT (XVII of 1976)
3. THE JAMMU AND KASHMIR ALIENATION OF LAND ACT (V of Samvat 1995) (Repealed as a whole)
4. THE JAMMU AND KASHMIR BIG LANDED ESTATES ABOLITION ACT (XVII Samvat 2007) (Repealed as a whole.)
5. THE JAMMU AND KASHMIR COMMON LANDS (REGULATION) ACT, 1956 (XXIV of 1956) (Repealed as a whole.)
6. THE JAMMU AND KASHMIR CONSOLIDATION OF HOLDINGS ACT, 1962 (V of 1962) (Repealed as a whole.)
7. THE JAMMU AND KASHMIR DEVELOPMENT ACT (XIX of 1970)
8. THE JAMMU AND KASHMIR FLOOD PLAIN ZONES (REGULATION AND DEVELOPMENT) ACT (XVII of 2005) (Repealed as a whole.)
9. THE JAMMU AND KASHMIR LAND GRANTS ACT (XXXVIII of 1960) (Repealed as a whole.)
10. THE JAMMU AND KASHMIR LAND REVENUE ACT (XII of Samvat 1996)
11. THE JAMMU AND KASHMIR PREVENTION OF FRAGMENTATION OF AGRICULTURAL HOLDINGS ACT (XXV of 1960) (Repealed as a whole.)
12. THE JAMMU AND KASHMIR PROHIBITION ON CONVERSION OF LAND AND ALIENATION OF ORCHARDS ACT (VIII of 1975) (Repealed as a whole.)
13. THE JAMMU AND KASHMIR RIGHT OF PRIOR PURCHASE ACT [II of Svt. 1993 (1936 A.D.)] (Repealed as a whole.)
14. THE JAMMU AND KASHMIR TENANCY (STAY OF EJECTMENT PROCEEDINGS) ACT (XXXIII of 1966) (Repealed as a whole.)
15. THE JAMMU AND KASHMIR UTILIZATION OF LANDS ACT (IX of Samvat 2010) (Repealed as a whole.)
16. THE JAMMU AND KASHMIR UNDERGROUND PUBLIC UTILITIES (ACQUISITION OF RIGHTS OF USER IN LAND) ACT (IV of 2014) (Repealed as a whole.)
17. THE JAMMU AND KASHMIR STATE EVACUEES' (ADMINISTRATION OF PROPERTY) ACT (VI of Samvat 2006)
18. THE JAMMU AND KASHMIR CONTROL OF BUILDING OPERATIONS ACT, (XV of 1988)
19. THE JAMMU AND KASHMIR NATIONAL LAW UNIVERSITY ACT, 2018 (II of 2019)
21. THE JAMMU AND KASHMIR PROPERTY TAX BOARD ACT, 2013 (XI of 2013)
22. THE JAMMU AND KASHMIR FISCAL RESPONSIBILITY AND BUDGET MANAGEMENT ACT, 2006 (XII of 2006)
23. THE JAMMU AND KASHMIR MUNICIPAL ACT (XX of 2000)
24. THE JAMMU AND KASHMIR MUNICIPAL CORPORATION ACT (XXI of 2000)
25. THE JAMMU AND KASHMIR CIVIL SERVICES DECENTRALIZATION AND RECRUITMENT ACT (XVI of 2010)
26. THE STAMP ACT, SAMVAT 1977 (1920 A.D) (XL of Svt. 1977)

(These are abridged versions of the legislations. For complete details please see the original text — Editor)

Some important issues under SARFAESI Act

When the Banking or Financial Institutions seek recovery of amount lent, having declared the account 'Non-performing Asset' (NPA), merely on issuance notice by such Banking or Financial Institutions, the borrowers rush to Debt Recovery Tribunal (District Courts in J&K) with application under section 17(1) of SARFAESI Act. Objection is raised by the secured creditor that such application could not have been filed at this stage when only a 'symbolic possession' as against the 'actual possession' of the property secured in favour of the secured-creditor has been taken. The legal position on the point now stands settled by the Hon'ble Supreme Court of India by virtue of its ruling, in: 'M/s Hindon Forge Pvt. & Anr. v. State of Uttar Pradesh through District Magistrate, Ghaziabad & Anr.' (Civil Appeal no. 10873 of 2018 arising out of SLP(Civil) No. 5895 of 2018, delivered on Ist of November 2018.

The point for consideration before the Apex Court was : Whether an application under Section 17(1) of the SARFAESI Act, at the instance of borrower, is maintainable even before physical or actual possession of the secured property is taken by banks/financial institutions in exercise of their power under section 13(4) of the Act read with Rule 8 of the Security Interest (Enforcement) Rules 2002? This question was replied by the Apex Court in the affirmative by accepting the plea of the appellant that once symbolic possession is taken, after compliance with sub-rules (1) and (2) of the Rule 8 of 2002 Rules (supra) and publication of possession notice, in the form contained in the Appendix IV to the rules, is made then the right of the borrower to approach the Debts Recovery Tribunal for relief under section 17 gets crystallized. In the said context, it is profitable to reproduce what has been observed by the Hon'ble Supreme Court of India in the following paragraphs of the judgment :

"9. The judgment in Mardia Chemicals [(2004) 4 SCC 311] had made it clear in paragraph 80 that all measures having been taken under section 13(4) and before the date of sale-auction, it would be open for the borrower to file a petition under section 17 of the Act. This paragraph appears to have been missed by the Full Bench in the impugned judgment.

10. A reading of section 13 would make it clear that where a default in repayment of a secured debt or any instalment thereof is made by a borrower, the secured creditor may require the borrower, by notice in writing, to discharge in full his liabilities to the secured-creditor within 60 days from the date of notice. It is only when the borrower fails to do so that the secured creditor may have recourse to the provisions contained in section 13(4) of the Act. Section 13(3-A) was inserted by the 2004 Amendment Act, pursuant to Mardia Chemicals (supra), making it clear that if on receipt of the notice under section 13(2), the borrower makes a representation or raises an objection, the secured creditor is to consider such representation or objection and give reasons for non-acceptance. The proviso to section 13(3-A) makes it clear that this would not confer upon the borrower any right to prefer an application to the Debts Recovery Tribunal under section 17 as at this stage no action has yet been taken under section 13(4).

11. When we come to section 13(4)(a), what is clear is that the mode of taking possession of the secured assets of the borrower is specified by rule 8. Under section 38 of the Act, the Central Government may make rules to carry out the provisions of the Act. One such rule is Rule 8. Rule 8(1) makes it clear that the authorised officer shall take or cause to be taken possession. The expression 'cause to be taken' only means that the

authorised officer need not himself take possession, but may, for example, appoint an agent to do so. What is important is that such taking of possession is effected under sub-rule (1) of rule 8 by delivering a possession notice prepared in accordance with Appendix IV of the 2002 Rules, and by affixing such notice on the outer door or other conspicuous place of the property concerned. Under sub-rule (2), such notice shall also be published within 7 days from the date of such taking of possession in two leading newspapers, one in the vernacular language having sufficient circulation in the locality. This is for the reason that when we come to Appendix IV, the borrower in particular, and the public in general is cautioned by the said possession notice not to deal with the property as possession of the said property has been taken. This is for the reason that, from this stage on, the secured asset is liable to be sold to realize the debt owned, and title in the asset is divested from the borrower and complete title is given to the purchaser, as is mentioned in section 13(6) of the Act . There is, thus, a radical change in the borrower dealing with the secured asset from this stage. At the stage of a section 13 (2) notice, section 13(13) interdicts the borrower from transferring the secured asset (otherwise than in the ordinary course of his business) without prior written consent of the secured creditor. But once a possession notice is given under rule 8(1) and 8(2) by the secured creditor to the borrower, the borrower cannot deal with the secured asset at all as all further steps to realize the same are to be taken by the secured creditor under the 2002 Rules."

"Concluding Paragraph:

This appendix makes it clear that statutorily, constructive, or physical possession may have been taken, pursuant to which a sale-notice may then be issued under rule 8(6) of the 2002 Rules. Appendix IV-A, therefore, throws considerable light on the controversy before us and recognizes the fact that rules 8(1) and 8(2) refer to constructive possession whereas rule 8 (3) refers to physical possession. We are therefore of the view that the Full Bench judgment is erroneous and is set aside. The appeals are accordingly allowed, and it is hereby declared that the borrower/debtor can approach the Debts Recovery Tribunal under section 17 of the Act at the stage of the possession notice referred to in rule 8(1) and 8 (2) of the 2002 Rules. The appeals are to be sent back to the Court/ Tribunal dealing with the facts of each case to apply this judgment and thereafter decide each case in accordance with the law laid down by this judgment."

The Apex Court accordingly ruled that the borrower/ debtor can approach the Debts Recovery Tribunal under section 17 of the Act at the stage of possession notice referred to in rule 8(1) and 8(2) of the 2002 Rules.

Another question that confronts the courts is, condonation of delay in moving application under section 17(1) of the SARFAESI Act. Neither there is any specific provision in the SARFAESI Act enabling extension of time to an applicant aggrieved of notice under Sub-section (4) of the 13 of the SARFASEI Act nor recourse can be taken to Section 5 of the Limitation Act and, therefore, any application which is not filed within the statutory period of 45 days is considered to be not maintainable. Even if it is assumed that the application of Section 5 of the Limitation Act is excluded, still the plea of an applicant for condonation of delay can be considered. In this regard reliance can be placed on a ruling handed down by Hon'ble Supreme Court of India in: 'Baleshwar Dayal Jaiswal v. Bank of India' (Civil Appeal No. 5924 of 2015, decided on 5th of August 2015, as reported in 2015 AIR(SCW) 4594, wherein the Hon'ble Supreme Court while dealing with the question that, whether the Appellate Tribunal under the SARFARESI Act has the power to condone the delay in filing an appeal under section 18(1) of the said Act, replied in the affirmative. It is profitable to reproduce the relevant portion of para 14 of the

ruling, as under:

"14..... We are also in agreement with the principle that even though Section 5 of the Limitation act may be impliedly inapplicable, principle of Section 14 of the Limitation Act can be held to be applicable even if section 29 (2) of the Limitation Act does not apply, as laid down by this Court in: 'Consolidated Engineering Enterprises v. Principal Secretary Irrigation Department' [(2008) 7 SCC 169] and 'M.P. Steel Corporation v. Commissioner of Central Excise' [(2015) SCALE 505]."

In view of the ratio of the ruling (supra), the Appellate Tribunal under the SARFARESI Act has the power to condone the delay in filing an appeal under Section 18(1) of the said Act (supra). Taking that into account, it needs no emphasis to observe that by analogy, court can condone the delay in of institution of an application, beyond 45 days, under section 17/17(1) of the SARFAESI Act.

– Mr. Jatinder Singh Jamwal
Additional District Judge, Kathua

Principle of Lis pendens (Section 52 of the Transfer of Property Act)

Lis pendens simply means that nothing new should be introduced in pending litigation.

Where a suit or proceeding is pending between two persons with respect to immovable property and one of the parties thereto sells, or otherwise transfers subject matter of litigation, then transferee will be bound by result of suit or proceeding, whether or not, he had notice of suit or proceeding. This rule is known as the rule of lis pendens. This rule affects the purchaser not because the pending suit or proceeding amounts to notice but because the law does not allow litigants to give to others pending the litigation any right to property in dispute so as to prejudice the other party.

Thus, the rule of lis pendens is based on the necessity for final adjudication: It aims at prevention of multiplicity of suits or proceedings. A transaction entered in to during pendency of a suit cannot prejudice the interests of a party to suit who is not party to transaction. The object of the rule is to protect one of the parties to a litigation against act of the other.

The doctrine of lis pendens cannot be availed of by the transferor and it is really intended for the protection of the other party, that is the party in the suit other than the transferor.

Suits decreed exparte also falls within the scope of doctrine of lis pendens, provided they are not collusive. Compromise decree also falls within the scope of doctrine of lis pendens, provided compromise is not result of fraud.

The rule of lis pendens does not apply to a transfer by a person who subsequent to transfer is added as a party to the pending suit. A transfer by a person before he is made a party is not affected by rule of lis pendens.

It may be noted that the effect of the rule of lis pendens is not to invalidate or avoid the transfer, but to make it subject to the result of the litigation. This provision operates even if the transferee pendente lite had no notice of pending suit or proceeding at the time of transfer.

Its essentials-

In order to constitute a lis pendens, the following six elements must be present:

1.There should be a suit or a proceeding.

2.The suit or proceeding must be one in which a right to immovable property is directly and specifically in question.

3.The suit or proceeding must not be a collusive one.

4.The suit or proceeding must be pending.

5. The property directly and specifically in question in the suit must be transferred during such pendency.

Pending litigation-

The pendency continues from the time the plaint is presented to the proper court till it is finally disposed of, and complete satisfaction or discharge of the decree is either obtained or has become unobtainable.

It may be noted here that pendency of suit must be in competent court in India. The reason behind this rule is that in foreign court, not only the procedure, but even the remedy may be different from that prevailing in India.

Bonafide litigation-

The suit or proceeding must not be collusive.

Right to property must be in dispute-

The right to an immovable property must be directly and specifically in issue in the suit or proceeding. This will happen in a suit for specific performance of contract to transfer immovable property.

Transfer during pendency of litigation only-

For the purpose of this doctrine, the transfer must be made only during pendency of suit or proceeding. Naturally there a transfer before the suit will not be affected by lis pendens. It does not matter that the deed is registered after suit is filed, provided it was executed prior to its institution.

The decree of first court does not always put an end to the litigation. Therefore, even after dismissal of a suit, a purchaser is subject to lis pendens if an appeal is thereafter fled. Thus, the rule of lis pendens applies to a transfer made after decree of the court but before filing of an appeal.

– Mr. Mohammad Ashraf Bhat
Sub-Judge, Bijbehara

(Guest Column)

FROM A SUB-JUDGE TO A JUDGE OF THE SUPREME COURT : JUSTICE R.S.SARKARIA

Many start their career as a lawyer. Some after some time choose to join the District Judiciary. In due course of time, some get elevated to the High Court. Rarely, one goes to the summit court. It would not be wrong to say, only in the rarest of the rare cases. During the last 70 years, in this region, only three names come to my mind who reached the apex court of the country; JJ Ranjit Singh Sarkaria, H.R. Khanna and A.D. Koshal. Justice H.R. Khanna from the District Judiciary would have been in the normal circumstances the Chief Justice of India. He was superseded. He resigned as the senior most judge of the Supreme Court. A lot has been written about his long journey. JJ. Sarkaria and Koshal retired as Judges of the Supreme Court. In this piece, I intend mapping up the hugely contributory journey of Justice R.S. Sarkaria. A journey multifaceted. Inspiring and motivating. Many lessons to be learned. The present generation of judges does not seem to know how much Justice Sarkaria contributed. He had retired from the Supreme Court almost four decades back. It is firmly believed that our Judges must be given a peep into the meaningful journey of Justice Sarkaria.

Justice R.S. Sarkaria was born on January 16, 1916. In a highly educated family. He graduated from Government College, Lahore in 1936. Graduated-in-Law from the University Law College, Lahore during 1937-39. He practiced at Patiala as Pleader and thereafter as Advocate of the Patiala High Court (1940-43). He joined Patiala Judicial Service as Sub-Judge in 1943. He came to PEPSU Judicial Service from 1948-1951. He was in the superior judicial service of PEPSU from 1951-1956 and that of Punjab from 1956-1962. He remained on deputation as Registrar, Punjab High Court during 1962-1967. Therefore, he remained with

the District Judiciary at different levels for almost 24 years. He was elevated as a Judge of Punjab High Court on June 13, 1967. He was elevated as Judge of the Supreme Court of India on September 17, 1973. This means, he reached the Apex Court in a span of 6 years from being a Judge of the High Court. He did supersede his seniors in the High Court. He retired from the Supreme Court on January 15, 1981. He remained Judge of the Supreme Court for more than 7 years. The beauty of his journey is, he spent more time in the summit court than in the High Court.

He started his judicial career at the threshold as sub-judge. It would be appropriate to mention some special qualities which made him from being a good to a great judge. As sessions judge in Patiala, he had to try a corruption case of the richest landlord of the State. The landlord wielded great influence. K.M. Munshi was engaged to defend the accused. A.S. Sarkaria, the father of Sessions Judge Sarkaria happened to mention the name of the accused. The sessions judge (Sarkaria) went inside. He wrote his resignation letter. It was handed over to his father. The father could see that his son was very upset. He tore the letter. He expressed his apology. Their relationship remained cold for a few months. This incident speaks of the sensitivity of Justice Sarkaria. The parents and the elders have to play a very positive role particularly during the initial years of judicial officers/judges. This is something what needs to be nurtured in their minds.

Justice Sarkaria was very popular with the Bar both at Chandigarh and New Delhi. He enjoyed the most cordial relationship with the Bar. His courtesy and humility were exemplary both in and outside the court. He always kept his cool. He would even tolerate an irritating remark by the counsel with a smile. His smile would convey much more than a harsh word from him. Justice Sarkaria was a knowledgeable and a scholarly judge. In a meeting of judges and lawyers, a senior advocate of the Supreme Court remarked: "Seldom has a judge of this caliber, particularly in criminal law, adorned the bench". His clarity of mind, thought process and grip over the language were unique. It would be highly educative to make reference to some of his quotable quotes from different judgments in the Supreme Court:

"Human judgment is fallible and a judicial officer is no exception. Consequently, so long as a judicial officer in the discharge of his official duties, acts in good faith and without any motive to defeat, obstruct or interfere with the due course of justice, the courts will not, as a rule, punish him for a 'criminal contempt'".

S. Abdul Karim v. M.K. Prakash (1976)

2. "The audi alteram partem rule,……. is a very flexible, malleable and adaptable concept of natural justice.

Swadeshi Cotton Mills v. Union of India (1981)

"A wooden equality as between all classes of employees regardless of qualifications, kind of jobs, nature of responsibility and performance of the employees is not intended, nor is it practicable if the administration is to run". South Central Rly. v. A.V.R.Siddhantti (1974)

"Retreading of old tyres is just like resoling of old shoes. Just as resoling of old shoes does not produce a commercially different entity having a different identity, so from retreading no new or distinct article emerges. The old tyre retains its basic structure and identity". P.C. Cheriyan v. Barfi Devi (1980)

"The prefix 'undue' indicates that there must be some abuse of influence. 'Undue influence' is used in contra-distinction to 'proper influence'".

Bachan Singh v. Prithvi Singh (1975)

"Legal proof is not necessarily perfect proof; often it is nothing more than a prudent

man's estimate as to the probabilities of the case".

Collector of Customs v. D. Bhoormull (1974)

This reproduction is only to demonstrate how well each aspect is knitted in simple language in different judgments. Easy to understand. Easy to digest. It must be added that Justice Sarkaria during his sojourn with the Supreme Court delivered a plethora of judgments. Many landmark judgments.

Justice Sarkaria was a linguist. He was equally comfortable with English, Hindi and Punjabi. He was a member of two member committee set up by the PEPSU Government to translate the Constitution of India into Punjabi. He authored; English – Hindi – Punjabi Dictionary of Legal and Administrative Terms (1950) : Ik Lapp Hussan Di "Handful of Beauty", a rendering of famous English poems into Punjabi verse (1969) : Shakespeare's King Lear translated into Punjabi, published by Punjabi University, (1973).

Justice Sarkaria after retirement was asked to head the Commission to study Center State relations in 1983. This Sarkaria Commission monumental report was submitted in 1988. This report was a colossal work. It dealt with various aspects of Center – State relationship including the imposition of President's Rule. This Report is referred by all political parties. Most sought after Report throughout the world. It was debated in India. It was also debated in universities outside India. Reference to this Report is often made in Parliament and in State Legislatures on constitutional controversial issues. I had a copy of this Report. I had shifted from the Panjab University to the legal profession in the High Court. Professor S.Dayal, former Professor and Head, Department of Laws, Panjab University had to deliver lectures in Delhi. He came home to take the Report. Professor Dayal was also my guide for my doctoral work. We must have spent two to three hours discussing various aspects and the Report. I gave him the copy of the Report. The very next day, his son rang me up in the later part of the afternoon. He told me, Papa is no more. He was having a nap after lunch. He died in sleep. I have shared this episode because this happened to be my last meeting with my most revered teacher in law. He was my model of a teacher. I feel that this meeting would not have been possible but for the Report.

Justice Sarkaria also served as the Chairman of the Press Council of India from January 19, 1989 to July 24, 1995. He was a true guide to the Indian media. His contribution is deeply acknowledged.

He had settled in Chandigarh. His love for horticulture and for flowers was well known. The lawns in his house in Chandigarh as well as in Delhi were always a site to refresh yourself. He had a collection of exotic variety of flowers and fruit trees at his farm. After his retirement I had the opportunity of meeting and interacting with him. These meetings always left me with a special flavour of Justice Sarkaria.

Justice Sarkaria was no more on October 12, 2007. He was close to 92. My object of sharing his journey particularly with the District Judiciary is to acquaint them with such hugely contributory innings. We have a lot to imbibe from his journey. Let his legacy be translated into action. He would continue to be remembered for times to come.

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- Editor