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From the Editor's Desk

Article 21 of the Constitution of India is repository of all the basic rights which a human being inherently possesses to live his life with dignity. It provides that no person shall be deprived of his life or personal liberty, which, however, can be curtailed only in accordance with the procedure established by law. The 'procedure established by law' through the interpretative tool of the Supreme Court, has been recognized as concomitant of 'due process of law'. Due process of law though is not contained in the Constitution of India, has found its way in the spirit of the Constitution. Therefore, the procedure established by law for depriving the life and personal liberty must be tested on the touchstone of due process of law i.e. a process which is fair, reasonable and conforming to the basic Constitutional Principles and human values.

The Judiciary especially the district judiciary is the guardian of life and personal liberty. Being an important organ of State, it must uphold the Constitutional principle laid down under Article 21. Statutory provisions, more pertinently the Criminal Procedure Code provide for the judicial interventions for protection of life and personal liberty. This role is more obvious in the case of the Judicial Magistrates who are the first face in the judicial institution before whom a person accused of violation of law and a person complaining of the violation of his right have to appear. At every stage in the procedural law during the course of inquiry, investigation or trial, the statutory provisions do provide for assurance of due process of law and the Magistrate seized of the matter is required to discharge the constitutional duty of protection of life and personal liberty. In all the provisions pertaining to arrest, detention and production of accused before the Magistrate, remand proceeding, bail plea, lodgment of complaint, summoning of accused, framing of charge, taking of evidence, hearing the accused in his defence and hearing him on sentence post-conviction, provide for procedural safeguards ensuring the protection of life and personal liberty. Every such provision of Criminal Procedure has backing of Article 21. A Magistrate following these procedures should have in mind the importance of the constitutional duty of protecting life and personal liberty and his every action should conform to this onerous responsibility.

To every victim of human rights violation, either at the hands of State or private individual, judiciary is the guardian angel. To strengthen the trust and confidence of the citizens, the judicial institution must first ensure the upholding of the most important among the rights i.e. right to life and personal liberty. Various landmark judgments of the Supreme Court are constant reminder to all the functionaries in the judicial institution that it is for them to uphold the Constitutional values and thereby to protect the spirit of the Constitution. Afterall, the citizens have no place elsewhere to go except to knock the doors of justice. By turning them away we do the disservice to the Constitution of India, of the highest order.

LEGAL JOTTINGS

"A decision which curtails fundamental rights without appropriate justification will be classified as disproportionate. The concept of proportionality requires a restriction to be tailored in accordance with the territorial extent of the restriction, the stage of emergency, nature of urgency, duration of such restrictive measure and nature of such restriction. The triangulation of a restriction requires the consideration of appropriateness, necessity and the least restrictive measure before being imposed."

N.V. Ramana, J. ***in Anuradha Bhasin v. Union of India, (2020) 3 SCC 637, para 80***

CRIMINAL

Supreme Court Judgments

Criminal Appeal No. 635 of 2020
Maheshwar Tigga v. the State of Jharkhand
Decided on: September 28, 2020

The Supreme Court in this Criminal appeal acquitted an accused who was convicted by the Trial Court for raping a woman on the pretext of marriage. The accused was tried for offences under sections 376, 323 and 341 of IPC and sentenced to imprisonment for seven years, one year and one month, respectively, in the said offences. The High Court dismissed the appeal mainly on the ground that letters written by the appellant to the prosecutrix, their photographs together and the statements of the appellant recorded under section 313 CrPC were sufficient to sustain the conviction.

The prosecutrix in this case had alleged that she was having love affair with the accused and the accused under the pretext of marriage developed physical relations with her.

The Supreme Court taking note of the evidence on record observed that "it stands well settled that circumstances not put to an accused under section 313 CrPC cannot be used against him, and must be excluded from consideration. In a criminal trial, the importance of questions put to an accused are basic to the principles of natural Justice as it provides him the opportunity not only to furnish his defence, but also to explain incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt."

As regards the promise of marriage and physical relations in the pretext thereof, the Supreme Court observed:

"The misconception of fact arising out of promise to marry has to be in proximity of time to the occurrence and cannot be spread over a long period of time coupled with a conscious positive action not to protest."

In this case the Court found that the consent of prosecutrix was but a conscious and deliberate choice, as distinguished from an involuntary action or denial and which opportunity was available to her, because of her deep seated love for the appellant leading her to willingly permit him liberties with her body. Consequently, allowing the appeal, the Court acquitted the accused.

Criminal appeal No. 1121 of 2016
Anwar Ali v. State of Himachal Pradesh
Decided on: September 25, 2020

In this criminal appeal the Supreme Court set aside the conviction of two accused persons recorded by the High Court and the trial court in murder of one Deepak. The main contention raised before the Supreme Court on behalf of appellants was that the prosecution has failed to establish and prove the motive for which reason accused deserved acquittal. The Court observed that:

"It is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true as held by this Court in the case of Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80, that if motive is proved that would supply a link in the chain of circumstantial evidences but the

absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in the case of Babu (Supra) absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of accused."

The Apex Court further observed:

"The High Court without giving any cogent reasons interfered with the findings of fact recorded by the learned trial court solely by observing that those contradictions were minor contradictions and therefore the learned trial court was not justified in acquitting the accused solely on the basis of such minor contradictions. However, on considering the entire evidence on record, we are in complete agreement with the view taken by the learned trial court. The contradictions which came to be considered by the learned trial court cannot be said to be minor contradictions".

The Court agreed with the conclusion drawn by the trial court that the prosecution has failed to establish and prove the complete chain of events, it being a case of circumstantial evidence. Reversing the Judgment of the High Court, the Supreme Court restored the Judgment of acquittal recorded by the trial court.

Criminal Appeal No. 630 of 2020
Mohan v. State of Madhya Pradesh
Decided on: September 24, 2020

In this criminal appeal the Supreme Court held that the conspiracy cannot be assumed from a set of facts which are unconnected or from a set of conduct at different places and times without a reasonable link.

The accused in this case was alleged to be involved in a conspiracy to commit the offence of kidnapping. He is said to have provided Sim card to another accused. On behalf of the accused it was contented that there is no substantial evidence to establish that the appellant was aware of the fact that Sim card would be used in commission of offence of kidnapping.

Criminal Appeal No. 616 of 2020
Jugut Ram v. State of Chhattisgarh
Decided on: September 16, 2020

The Supreme Court in this case altered the conviction of the appellant from Section 302 IPC to Section 304 Part II, IPC. Further, the appellant was in custody since 2004 and had already undergone the maximum period of sentence prescribed; therefore, he was directed to be released. The Court observed that in a case of an assault on the head with a lathi, it is always a question of fact in each case whether there was intention to cause death or only knowledge that death was likely to occur. It laid down that a lathi is a common item carried by a villager in this country, linked to his identity. The fact that it is also capable of being used as a weapon of assault, does not make it a weapon of assault simpliciter. The circumstances, manner of assault, nature and number of injuries will all have to be considered cumulatively to decipher the intention or knowledge as the case may be.

The Apex Court relied on the previous judgments which dealt with death due to lathi blow: Virsa Singh v. The State of Punjab (1958 SCR 1495), Joseph v. State of Kerala [(1995) SCC (Crl.) 165], Chamru Budhwav. State of Madhya Pradesh (AIR 1954 SC 652), Gurmukh Singh v. State of Haryana [(2009) 15 SCC 635] and Mohd. Shakeel v. State of A.P. [(2007) 3 SCC 119].

Criminal Appeal No. 688 of 2013.
Jeet Ram v. The Narcotics Control Bureau, Chandigarh.
Decided on: September 15, 2020.

On 18.06.2001 the Intelligence Officer in the Narcotics Control Bureau (NCB), Chandigarh was proceeding to Theog from Shimla. He was travelling along with P.W. 3 and other officials. In the transit they stopped at the dhaba to have meals. In the meanwhile, the Zonal Director of NCB, Chandigarh who was examined as P.W.1 also reached the said Dhaba. Then they questioned the appellant – accused about the smell of charas and on such questioning he became nervous. The owner of the Dhaba disclosed his name to be Jeet Ram and on further questioning he tried to run away. Then he was apprehended and taken to the counter of the Dhaba. Just below the counter of the Dhaba a gunny bag was found. When asked, appellant told that there was

nothing in it. Notice under Section 50 of the NDPS Act was given to the accused and appellant has consented to search the same by the NCB officials. Further, in the statement recorded as contemplated under Section 67 of the NDPS Act, the appellant admitted that for various reasons he was indulged in the trade of charas to enhance his income. The appellant – accused was charged, tried and acquitted for the Offence under Section 20 of the NDPS Act.

The Supreme Court reiterated while affirming the conviction of the accused that Section 50 of the NDPS Act is applicable only in the case of personal search. One of the contentions raised by the accused in this case was about the non-compliance of Section 50 of NDPS Act. According to him, the samples were handed over to an officer who himself gave the sample to another officer or carrying the same to the Central Laboratory at Delhi and these seals remained with the Director, as such the chances of tampering could not be ruled out and also on the ground that the case of the prosecution was unnatural and improbable. The High Court, later, set aside acquittal and convicted the accused.

The Supreme Court referred to a three judge bench judgment in State of HP v. Pawan Kumar which considered the issue whether the safeguards provided by Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985, regarding search of any "person" would also apply to any bag, briefcase or any such article or container etc. which is being carried by him. The Court noted that the evidence on record established that the counter of the dhaba which was constructed on the land owned by his wife near the temple and the charas was found in the counter of the dhaba in a gunny bag. The facts of the case show that accused not only had direct physical control over charas, he had the knowledge of its presence and character.

Criminal Appeal No. 615 of 2020
Abhilasha v. Parkash & Ors.
Decided on: September 15, 2020

In this petition/appeal, the appellant, daughter of respondent Nos. 1 and 2, challenged the order of the High Court of Punjab and Haryana at Chandigarh dated 16.08.2018 by which order the High Court dismissed the application under Section 482 Cr.P.C. filed by the appellant praying for setting aside the order of the Judicial Magistrate First Class, Rewari dated 16.02.2011 as well as the order dated 17.02.2014 passed by the Additional Sessions Judge, Rewari

The main point of law which came up for consideration before the Hon'ble Supreme Court was whether the appellant, who although had attained majority and is still unmarried is entitled to claim maintenance from her father in proceedings under Section 125CrPC, although she is not suffering from any physical or mental abnormality/injury?

The Hon'ble Supreme Court dealt with this matter in detail and also compared section 125 of CrPC with section 20of the Hindu Adoptions & Maintenance Act read with Section 3(b) of Act, 1956 to make it very express and clear. The Court laid down that the purpose and object of Section 125 CrPC is to provide immediate relief to applicant in a summary proceedings, whereas right under Section 20 read with Section 3(b) of Act, 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under Section 20, the proceedings need to be initiated under Section 20 of the Act and the legislature never contemplated to burden the Magistrate while exercising jurisdiction under Section 125 CrPC to determine the claims contemplated by Act, 1956.

The Hon'ble Supreme Court further observed that as a proposition of law, an unmarried Hindu daughter can claim maintenance from her father till she is married relying on Section 20(3) of the Act, 1956, provided she pleads and proves that she is unable to maintain herself, for enforcement of which right her application/suit has to be under Section 20 of Act, 1956. However, under section 125 of CrPC the right to claim maintenance stands extinguished on attaining majority provided she is not suffering from any physical or mental abnormality/injury.

Since, in the instant appeal, the appellant had approached the subordinate court under section 125 of CrPC the appeal got dismissed

but she was given the liberty to take recourse to Section 20(3) of the Act, 1956 for claiming any maintenance.

Cr. Appeal No: 580/2020
Rizwan Khan v. The State of Chhattisgarh
Decided on: September 10, 2020.

The accused/appellant had been convicted by the Special Court under Section 20 (b)(ii)(B) of the NDPS Act, 1985, having been found in possession of 20 kg of Narcotic substance, sentencing him to undergo a rigorous imprisonment of five years and Rs.25,000/- fine, and in default to undergo further one year's rigorous imprisonment. His conviction was upheld in the appeal, by the High Court of Chhattisgarh vide its judgment dated 01.10.2018, which was impugned in the instant Criminal Appeal before the Apex Court.

Challenge to the said judgment was thrown by the accused primarily on the grounds that:

The ASI who had received the information, seized the articles and filed the FIR also later participated in the investigation, thereby vitiating the trial {as per earlier law Mohan Lal vs State of Punjab, (2018)17, SCC 627}

The marks/numbers put on the samples at the time of seizure were different from the ones shown in letter sent to SP, and also the registration number of the motor cycle from where articles were seized, did not match its documents.

All the independent witnesses of prosecution had turned hostile hence only police officers' testimonies were relied upon by the trial court.

The mandate of section 42 and 55 of the NDPS Act was allegedly not followed.

The Hon'ble Supreme Court after having gone through the entire evidence on record, and findings of the court below was of the opinion that the prosecution had been successful in proving its case against the accused beyond reasonable doubt and held that it is a settled law that the testimony of the official witnesses, cannot be rejected on the ground of non-corroboration by the independent witnesses, if they are found to be reliable and trustworthy, and hence it is not fatal to the prosecution case {State of Himachal Pradesh v. Pradeep Kumar, (2018) 13, SCC, 808}, {Surinder Kumar v. State of Punjab, (2020)2, SCC, 563}.

Further the evidence on record showed sufficient compliance of the mandates of section 42 and 55 by the prosecution, and the discrepancies in the markings of the samples were shown to be mere clerical errors. [para9]

As far as the allegation of the ASI seizing the article, filing the FIR and also participating in the investigation, leading to the vitiating of trial is concerned, same is no longer applicable because the law laid down in Mohan Lal (supra) stands over ruled by the Apex Court in Mukesh Singh v. State (Narcotic Branch) Special Leave Petition (Criminal Diary No. 39528/ 2018, decided on 31.08.2020. Even otherwise in the present case it was found that the ASI filing the FIR, never participated in the investigation later and another ASI was involved in the investigation. Hence the trial was not vitiated in any way. [para 10]

As regards the ownership of the vehicle (motorcycle herein) having not been established was concerned, the court held that accused was found in possession of the contraband articles on spot which alone was sufficient to book him under the NDPS Act and ownership of the vehicle was not required to be established or proved.

Accordingly the appeal was dismissed and the conviction was upheld.

Criminal Appeal No – 577 of 2020
Stalin v. State represented by the Inspector of Police
Decided on: September 09, 2020

The appeal was filed by the appellant before the Hon'ble Supreme Court against the judgment of the High Court of Judicature of Madras in which the High Court dismissed the Appeal filed by the appellant against the order of conviction passed by the Session Court, convicting the accused for the offence punishable under section 302 IPC.

The Question before the Hon'ble Supreme Court was that whether the appellant - accused has committed an offence punishable under section 302 IPC or any other lesser

offence, more particularly, section 304 part II IPC?

The Hon'ble Supreme Court observed that "There is no hard and Fast rule that in a case of single injury section 302 IPC would not be attracted. It depends upon the facts and circumstances of each case. The nature of injury, a part of the body where it is caused, the weapon used in causing injury are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not. It cannot be laid down as a rule of universal application that whenever the death occurs on an account of single blow, section 302 is ruled out."

The Hon'ble Supreme Court further observed that the motive is always in the mind of the person authoring the incident when there are definite evidence proving an incident and eyewitness account prove the role of accused, absence in proving the motive by the prosecution does not affect the prosecution case {Jafel Biswas v. State of West Bengal (2019) 12SEC 560}.

The Hon'ble Supreme court held that "considering the totality of the facts and circumstances of the case and more particularly that the accused inflicted the blow with a weapon like knife and he inflicted the injury on the deceased on the vital part of the body, it is to be presumed that causing such bodily injury was likely to cause the death. Therefore, the case would fall under section 304 Part I of the IPC and not under section 302 Part II of the IPC."

The Hon'ble Supreme court allowed the appeal in part and modified the offence punishable under section 302 IPC to section 304 Part I of IPC. The accused was held guilty of the offence punishable under section 304 Part I of the IPC and sentenced to undergo 8 years R.I with a fine of Rs. 10,000 and in default, further undergo 1-year R.I.

Criminal Appeal No. 575 of 2020
Ashoo Surendranath Tewari v. The Deputy Superintendent of Police, EOW, CBI & Anr.
Decided on: September 08, 2020

On the basis of FIR registered on 09.12.2009 with regard to MSME Receivable Finance Scheme operated by the Small Industries Development Bank of India (SIDBI), a charge sheet was filed on 26.07.2011 before the Court of Special Judge, CBI Cases, on account of diversion of funds against the accused persons. It was alleged in the charge sheet that appellant received an email on 25.05.2009 having RTGS details of account with Federal Bank, Thripporur and same was forwarded to accused No. 5 (Muthu Kumar) involved in the crime. On Muthu Kumar's approval, the appellant signed cheques which were forwarded to other accounts. The Special Judge, CBI (ACB Pune) vide order dated 27.06.2012 held that in view of no sanction obtained under Prevention of Corruption Act, the appellant/accused cannot be proceeded under that Act and discharged the appellant to that extent. No sanction is required under Section 197 of CrPC as prima–facie case is made out against the appellant and refused to discharge the appellant for offences under I.P.C. The High Court vide impugned judgment dated 11.07. 2014 upheld the finding of the Special Judge. The High Court also considered an order dated 22.12.2011 passed by the Central Vigilance Commissioner whereby it was held that no offence under the Penal Code was made out and so merit no sanction under Penal Code.

The Apex Court while relying upon P.S. Rajya vs State of Bihar, (1996) 9 SCC 1, and Radheshyam Kejriwal v. State of West Bengal and Another, (2011) 3 SCC 581, held that in case of exoneration of accused in adjudication proceedings on merits and allegation is found to be not sustainable at all, the criminal prosecution on the same set of facts cannot be allowed to continue against the person held innocent. The Apex Court further held that in view of bleak chances of conviction as observed by the CVC in its order dated 22.12.2011 which is based on same facts as in the criminal trial, the judgment of the High Court and the Special Court are set aside and appellant accused of offences under Penal Code is discharged.

Criminal Appeal No. 562 0f 2020
Raghav Gupta v. State (NCT of Delhi & Another)
Decided on: September 04, 2020

Supreme Court while dealing with the

question of "prosecution" against appellant under Rule 32(e) of the Prevention of Food Adulteration Rules, 1955, framed under the Prevention of Food Adulteration Act, 1954, in the present case, noted that if the relevant information under Rule 32(e) with respect to the lot/code/batch identification to facilitate it being traced to the manufacturer is available in the barcode and can be decoded by a barcode scanner, then there is no point allowing the prosecution to continue against the appellant as same would be an abuse of the process of law, causing sheer waste of time and unnecessary harassment to the appellant.

Brief factual background of the case is that the Food Inspector had purchased sealed samples of Snapple juice drink for analysis. The report of the Public Analyst had stated that the sample confirmed to the standards but was misbranded being in violation of Rule 32(e), lacking in necessary declaration of lot/batch numbers. The appellant was stated to be one of the Directors of the Beverage Company which imported the drink from the foreign manufacturer.

A complaint case was registered against the appellant. Appellant had preferred an application for discharge under the relevant provisions of CrPC on the ground that the product had necessary barcode on it and contained all the relevant information requisite under Rule 32(e) such as batch no./code no./lot no. The application having been rejected was again presented by the appellant before the concerned High Court on the same ground and it also failed to consider the same. Appellant eventually questioned his prosecution under Rule 32 (e) of the Prevention of Food Adulteration Rules, 1955 before the Supreme Court.

Supreme Court while allowing the appeal quashed the prosecution of the appellant on the single undisputed ground of barcode (and relevant information traceable thereon) being available on the sample.

Criminal Appeal Nos. 546-550 of 2017
M/S Bandekar Brothers Pvt. Ltd. & Anr. v. Prasad Vassudev Keni
Decided on: September 02, 2020

The proceedings in this case arise out of two criminal complaints under Section 340 read with Section 195 of the Code of Criminal Procedure alleging offences under Sections 191 and 192 IPC. The main issue dealt is that whether the bar provided under Section 195 CrPC is mandatory? And whether S.460 CrPC apply to cases in which S.195, CrPC is involved?

It was alleged in the matter that the accused had given false evidence, and had forged debit notes and made false entries in books of accounts. The complainant filed an application praying that the complaints be converted to private complaints. The magistrate converted the complaints into private complaints and thereby issued process under Sections 191, 192 and 193 of the IPC. The revision was filed by the accused, whereby the Additional Sessions Judge held that the bar under Section 195(1)(b)(i) of the CrPC was attracted, and that the provisions under Section 340 of the CrPC, which were mandatory, had to be followed.

The Hon'ble Apex Court observed that the provisions under section 195 of the CrPC has been construed to be mandatory, being an absolute bar to the taking of cognizance under Section 190 of the CrPC, unless the conditions of the section are met. However, under Section 340 of the CrPC, the procedure in cases mentioned in Section 195 of the CrPC is set out.

The Hon'ble Court observed that it is important to understand the difference between the offences mentioned in Section 195(1)(b)(i) and Section 195(1)(b)(ii) of the CrPC. Where the facts mentioned in a complaint attracts the provisions of Section 191 to 193 of the IPC, Section 195(1)(b)(i) of the CrPC applies. What is important is that once these sections of the IPC are attracted, the offence should be alleged to have been committed in, or in relation to, any proceeding in any Court. Thus, what is clear is that the offence punishable under these sections does not have to be committed only in any proceeding in any Court but can also be an offence alleged to have been committed in relation to any proceeding in any Court. The Chapter heading of Chapter XXVI of the CrPC, which contains Sections 340 and 341 was then referred to – the heading reading "Provisions as

to Offences Affecting the Administration of Justice", which according to the Court also indicated that the offences mentioned in Section 195(1)(b)(ii) are offences which directly affect the administration of justice.

The Hon'ble Court then said that Section 195 of the CrPC is an exception to the general provision contained in Section 190 thereof, and creates an embargo upon the power of the Court to take cognizance of certain types of offences enumerated under Section 195, which must be necessarily follow the drill contained in Section 340 of the CrPC. An important reason is then given by the Court, which is that the victim of a forged document which is forged outside the court premises and before being introduced in a Court proceeding, would render the victim of such forgery remediless, in that it would otherwise be left only to the court mentioned in Section 340 of the CrPC who decides as to whether a complaint ought or ought not to be lodged in respect of such complaint.

The Hon'ble Court in the case observed that it is equally important to remember is that if in the course of the same transaction two separate offences are made out, for one of which Section 195 of the CrPC is not attracted, and it is not possible to split them up, the drill of Section 195(1)(b) of the CrPC must be followed.

Criminal Appeal no. 1285 of 2010
Ilangovan v. State of Tamil Nadu
Decided on: September 02, 2020

The present appeal is directed against the judgment of Madras High Court whereby the High Court modified the conviction under Section 302, IPC, and sentence imposed there under, to one under Section 304 Part II, IPC, on the ground that the case of the appellant fell under Exception 4 to Section 300, IPC, that is, there was a free fight between the two parties.

Regarding the testimonies of related witnesses, Hon'ble Supreme Court held that it is settled law that the testimony of a related or an interested witness can be taken into consideration, with the additional burden on the Court in such cases to carefully scrutinize such evidence [See Sudhakar v. State, (2018) 5 SCC 435]

The Court further held that there is no such principle of law, that requires automatic acquittal of an accused because of the acquittal of the co-accused. The same is a settled position of law, which has been reiterated by this Court in numerous judgments, including the case of Yanob Sheikh v. State of West Bengal (2013) 6 SCC 428 wherein it was held:

"Where the prosecution is able to establish the guilt of the accused by cogent, reliable, trustworthy evidence mere acquittal of one accused will not lead to the acquittal of another accused."

Relying on Nisar Ali v. The State of Uttar Pradesh, AIR 1957 SC366, the Court held that "the doctrine 'falsus in uno falsus in omnibus' merely involves the question of weight of evidence which a court may apply in a given set of circumstances but it is not what maybe called "a mandatory rule of evidence". This principle has been consistently followed by this Court, most recently in Rohtas v. State of Haryana, (2019) 10 SCC 554 and needs no reiteration.

After considering all these points the Supreme Court found no merit in the appeal and dismissed the same.

J&K High Court Judgments

Crl. R No. 55/2019
Rajesh Madan Lal Anand v. Rakesh Madan Lal Anand
Decided on: September 21, 2020

The petitioner herein had filed complaint before the trial court alleging offences under various sections of the Ranbir Penal Code, which revolved around a cheque issued by the mother (now deceased) of the parties to petition, in favour of the petitioner herein and which could not be realized by the petitioner for certain reasons for which the respondent is allegedly held responsible by the petitioner-complainant. The trial court dismissed the complaint with the observation that cause of action has not arisen to the petitioner-complainant in Jammu and that the courts at Mumbai have the Jurisdiction to try the same as the alleged cheque and other documents were executed in Mumbai.

Complainant filed revision petition in Court of Session, which was dismissed on same

grounds i.e. lack of jurisdiction. Hence, the present petition in the High Court. The contention of respondents alleging that the petition has wrongly been styled as 'Criminal Revision Petition' was overruled and the Court held that it may be treated as having been filed under section 561-A CrPC. The main contention of the petitioner is that the trial court and the revisional Court have not taken care of the contents of the complaint and did not take notice of the facts. Citing the provisions of Chapter XV of the erstwhile J&K Criminal Procedure Code, the Hon'ble Court held that in exercise of inherent jurisdiction vested in it under section 561-A CrPC can pass such order as to secure the ends of justice. However, the objection of respondent pleading that Court will not ordinarily fathom the disputed questions of fact while exercising inherent jurisdiction was accepted and the Court refrained from giving any finding on the factual aspects of the case including the one whether the Courts at Jammu have jurisdiction to entertain the complaint of the petitioner herein as it is only dealing with the limited question of illegality, if any, committed by the trial court and the revisional court while dismissing the complaint and the revision petition respectively. The Court set aside the impugned order of trial Court and the revisional Court with the direction that the trial court shall will hear it afresh while deciding the jurisdictional issue.

CRM(M) No.322/2019
Ghulam Nabi Bhat v. Union Territory of J&K & Ors.
Decided on: September 18, 2020

In the instant case Hon'ble Court while dismissing two petitions, one challenging the order dated 21.12.2019 passed by learned Sessions Judge, Anantnag, and the other challenging the order dated 27.06.2018 passed by the same court. Held that, from a perusal of the Section 540 of the J&K Code of Criminal Procedure., it is clear that at any stage of enquiry trial or other proceedings, the Court has discretion to summon any person as a witness or to re-call and reexamine any person already examined. In fact, the second part of the provision casts a duty upon the Court to summon and examine or re-call and re-examine any such person if it appears to the Court that his evidence is essential to the just decision of the case. So even if a case is at final hearing stage and the Court feels that the evidence of a person is essential to the just decision of the case, it is the duty of the Court to examine or re-call and re-examine such person. It is the statutory function of the Court to dispense justice and to achieve this objective, the Court is well within its jurisdiction to examine or recall and re-examine a person.

The Court further held that, a Court has to make every endeavour to examine all the important witnesses including the Investigating Officer. The court cannot remain as a mute spectator and wait for the prosecution to produce its witnesses. The court has to play an active role in ensuring that truth is unraveled and if it requires the summoning and examination of an important witness at any stage of the proceedings, it has no option but to summon and examine such a witness.

CRM(M) No. 483/2019
Waryam Singh v. M/S Jammu Ess Lee Finance
Decided on: September 07, 2020

Through this petition the petitioner challenged the cognizance order of the court passed under section 138 of NI Act on the grounds that the procedure adopted by the Court is not as per law. The Hon'ble Court observed that the trial court seemingly erred initially while summoning the petitioner/accused however, subsequently corrected the proceedings upon recording preliminary statement of the respondent/complainant and upon passing fresh cognizance and summoning order notwithstanding the earlier summoning of the petitioner herein. The Court held that "the aforesaid errors committed by the trial court by no sense of imagination could be said to be fatal to the entire proceedings, in that, even if same are treated as nullity or are set aside the further proceedings subsequently conducted by the trial court would not get affected. Therefore, complaining of suffering a prejudice or injustice

on this account by the petitioner is insignificant and legally of no consequence."

With regard to legality of procedure, the Hon'ble Court relied on the judgement of Apex Court reported in "2008 (2) SCC 492 titled as S. K. Sinha Chief Enforcement Officer v. Videocon International Limited and held that that the trial court has passed the order validly and legally, upon hearing the learned counsel for the complainant and after taking into account the contents of the complaint material attached therewith as also pre-summoning statement of the complainant. The trial court validly appears to have proceeded in the matter in tune with chapters XIV (sections 190-199 CrPC), chapter XV (section 200-203) and Chapter XVI of the CrPC. The petitions in hand are found to be without any merit and are accordingly dismissed.

CRM(M) No.113/2020
Sami-ullah Naqashbandi v. Sadaf Niyaz Shah
Decided on: August 31, 2020

The foremost question, thus, arises as to whether the Magistrate was right in issuing direction for investigating the matter in terms of Section 156(3) of CrPC, after the process was deferred till completion of enquiry in terms of Section 202 of CrPC. Perusal of the order reveals that the Magistrate had on the consideration of the complaint on motion hearing, deferred the issuance of process and directed enquiry to get satisfied about the correctness of the allegations. On receipt of the report, the Magistrate instead of proceeding further in tune with the mandate of law, has in terms of Section 156(3) of CrPC, directed investigation, which is the question as to whether the Magistrate has abused the powers of the Court or not.

The arguments of appearing counsel for the petitioner that the Magistrate has first deferred issuance of process and then reverted back to direction under Section 156(3) of Cr. PC, is illegal. The Magistrate on the motion hearing of the complaint has issued directions to SSP, Srinagar, to investigate the matter in terms of Section 202 Cr. PC. The Court dealt with the question as to whether the Magistrate ought to have proceeded under Section 156(3), after receipt of enquiry report from Senior Superintendent of Police, Srinagar, sought on taking cognizance of complaint and after deferment of process or was required to proceed under Section 202(1) and what are the parameters for exercise of power under the two provisions, as under -

"The two provisions are in two different chapters of the Code, though common expression 'investigation' is used in both the provisions. Normal rule is to understand the same expression in two provisions of an enactment in same sense unless the context otherwise requires. Heading of Chapter XII is "Information to the Police and their Powers to Investigate" and that of Chapter XV is "Complaints to Magistrate". Heading of Chapter XIV is "Conditions Requisite for Initiation of Proceedings". The two provisions i.e. Sections 156 and 202 in Chapters XII and XV respectively Cognizance is taken by a Magistrate under Section 190 (in Chapter XIV) either on "receiving a complaint", on "a police report" or "information received" from any person other than a police officer or upon his own knowledge. Chapter XV deals exclusively with complaints to Magistrates. Reference to Section 202, in the said Chapter, shows that it provides for "postponement of issue of process" which is mandatory if accused resides beyond the Magistrate's jurisdiction (with which situation this case does not concern) and discretionary in other cases in which event an enquiry can be conducted by the Magistrate or investigation can be directed to be made by a police officer or such other person as may be thought fit "for the purpose of deciding whether or not there is sufficient ground for proceeding. Chapter XII, dealing with the information to the police and their powers to investigate, provides for entering information relating to a 'cognizable offence' in a book to be kept by the officer in charge of a police station (Section 154) and such entry is called 'FIR'. If from the information, the officer incharge of the police station has reason to suspect commission of an offence which he is empowered to investigate subject to compliance of other requirements, he

shall proceed, to the spot, to investigate the facts and circumstances and, if necessary, to take measure, for the discovery and arrest of the offender (Section 157(1). In Lalita Kumari v. Govt. of U.P., reported in (2014) 2 SCC 1 (AIR 2014 SC 187), the Hon'ble Supreme Court dealt with the following questions : (i) Whether the immediate non-registration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a complaint immediately investigated upon allegations being made; and (ii) Whether in cases where the complaint/information does not clearly disclose the commission of a cognizable offence but the FIR is compulsorily registered then does it infringe the rights of an accused." Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

CRMC No. 181/2013
Vipan Aggarwal and others. v. State of J&K
Decided on: August 31, 2020

In this petition the petitioner challenged the trial court order on the ground that the court has not applied its mind with regard to the contents of the complaint and in a mechanical manner issued the process against the petitioners. The Hon'ble High Court placed reliance on the decision of the Apex Court in case titled M/s Pepsi Food Limited and another v Special Judicial Magistrate and others, AIR 1998 SC 128, and held that while issuing process the Magistrate must be alive to the facts of the complaint and the order summoning the accused must reflect that the court has applied its mind and has come to the conclusion that prima facie case for issuance of process against the accused is made out. The Court, thus, held the order impugned to be contrary to the law laid down by the Apex Court.

"The principle of fair trial now informs and energises many areas of the law. It is a constant, ongoing, evolutionary process continually adapting itself to changing circumstances, and endeavouring to meet the exigencies of the situation — peculiar at times — and related to the nature of crime, persons involved, directly or operating from behind, and so many other powerful factors which may come in the way of administration of criminal justice, wherefore the endeavour of the higher courts, while interpreting the law, is to strike the right balance."

Navin Sinha, J. *in Varinder Kumar v. State of H.P.*, (2020) 3 SCC 321, para 14

CIVIL

Supreme Court Judgments

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

Hon'ble Supreme Court in this case reiterated the legal position that there is no inherent right to a compassionate appointment and that the compassionate appointments has to be in terms of the applicable policy as existing on the date of demise, unless a subsequent policy is made applicable retrospectively.

In this case the Madhya Pradesh High Court had a loud the claim to compassionate appointment of son of a deceased employee working as a driver in the Tribal Welfare Department. The court observed that -

"It is tried to say that there cannot be inherent right to compassionate appointment

but rather, it is a right based on certain criteria, especially to provide to 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"

Accepting the appeal, the Supreme Court set aside the order of the High Court.

Civil Appeal No: 3249 of 2020
Union of India v. M/S G S Chatha Rice Mills
Decided on: September 23, 2020

In the instant civil appeal, the Supreme Court while upholding the judgment of Punjab and Haryana High Court in a set of writ petitions by various importers, dealt with the issue of determining the time of enforceability of the gazette notifications published through electronic mode. The Supreme Court while considering the notification issued by Central Government under Section 8A(1) of the Customs Tariff Act, 1975, referred to various judgements, provisions of the General Clauses Act and the Information Technology Act and observed that-

"With the change in the manner of publishing gazette notifications from analog to digital, the precise time when the gazette is published in the electronic mode assumes significance. Notification 5/2019, which is akin to the exercise of delegated legislative power, under the emergency power to notify and revise tariff duty under Section 8A of the Customs Tariff Act, 1975, cannot operate retrospectively, unless authorized by statute. In the era of the electronic publication of gazette notifications and electronic filing of bills of entry, the revised rate of import duty under the Notification 5/2019 applies to bills of entry presented for home consumption after the notification was uploaded in the e-Gazette at 20:46:58 hours on 16 February 2019."

The Court rejecting the contention of the Central Government that a Central Act or Regulation, unless expressed otherwise, comes into force on the expiration of the day preceding its commencement, held that that a piece of delegated legislation issued in exercise of a legislatively conferred power does not bring the delegated legislation within the ambit of the phrase "Central Act" as defined in Section 3(7) of the General Clauses Act.

The apex court upholding the judgment of the High Court, observed:

"The rate of duty which was applicable was crystallized at the time and on the date of the presentation of the bills of entry in terms of the provisions of Section 15 read with Regulation 4(2) of the Regulations of 2018. The power of reassessment under Section 17(4) could not have been exercised since this is not a case where there was an incorrect self-assessment of duty. The duty was correctly assessed at the time of self-assessment in terms of the duty which was in force on that date and at the time. The subsequent publication of the notification bearing 5/2019 did not furnish a valid basis for re-assessment."

Civil Appeal Nos. 7220-7221 of 2011
Beli Ram v. Rajinder Kumar & Anr.
Decided on: September 23, 2020

The only question of law for consideration in the present appeals before the Supreme Court was, whether in case of a valid driving licence, if the licence had expired, the insured was absolved of its liability?

The Court while dismissing the appeals observed that where the appellant (owner of the vehicle) has permitted to let the driver drive the truck with a valid license that too for commercial vehicle with an expired licence for almost three years, he cannot brush aside his liability by saying that when the driver was engaged he had a valid driving licence. The employer has a responsibility of having due knowledge of the date of expiry as well, hence it is clearly a case of lack of reasonable care to see that employee gets his licence renewed. However, there would be some other proceedings initiated as under Motor Vehicles Act but so far as the present appeal in hand is concerned it is just under the Workmen Compensation Act and those provisions are for the benefit of the workmen like the first respondent, even though he may be at fault. Compensation is to be paid by the employer to the workman, of which he cannot be absolved.

The only exception is in the proviso to section 3 of the Compensation Act, which is not factually present in the case in hand.

Civil Appeal No. 3574 of 2009
Santoshamma & Anr. v. D. Sarala & Anr.
Decided on: September 18, 2020

These appeals were filed against a common judgment and order passed by the High Court of Judicature of Andhra Pradesh at Hyderabad. The case relates to the contract of sale of Immovable property vis-à-vis its specific performance. In this case, the vendor, after execution of the sale agreement with the Vendee, executed a registered deed of conveyance transferring 100 sq. yards of the suit land in favour of another person Pratap Reddy. This made Vendee file a suit for specific performance of the agreement of sale, but did not array Pratap Reddy as a party. The trial court held that the Vendee, was not entitled to seek specific performance of the agreement in respect of 100 sq. yards covered by the sale deed, but entitled to relief of specific performance in respect of the remaining 200 sq. yards of the suit land. The High Court dismissed the appeals. It was observed that under the Limitation Act, 1963, the period of limitation for filing a suit for specific performance is three years from the date fixed for performance of the contract, or if no date is fixed, then three years from the date on which the Vendee is put to notice of refusal to perform the agreement. It was held that a transferee to whom the subject matter of a sale agreement or part thereof is transferred, is a necessary party to a suit for specific performance. In the present case, the Vendee omitted to implead Pratap Reddy. It was held that by the time she filed an application to implead Pratap Reddy, in 1989, the suit for specific performance of the agreement dated 21.3.1984 had become barred by limitation as against Pratap Reddy.

The Supreme Court observed that Section 12 of the Specific Relief Act is to be construed and interpreted in a purposive and meaningful manner to empower the Court to direct specific performance by the defaulting party, of so much of the contract, as can be performed. It was held that to hold otherwise would permit a party to a contract for sale of land, to deliberately frustrate the entire contract by transferring a part of the suit property and creating third party interests over the same. Even though the power of the Court to direct specific performance of an agreement may have been discretionary, such power could not be arbitrary. The discretion had necessarily to be exercised in accordance with sound and reasonable judicial principles. While discussing section 10 of the Specific Relief Act, 1963 the Court observed that the Relief of specific performance of a contract is no longer discretionary, after the amendment of section 10 in the year 2018.

It was further held by the Supreme Court that the clubbing of suits for hearing them together and disposal thereof by a common judgment and order is for practical reasons. It was held that such clubbing together of the suits do not convert the suits into one action as argued. The suits retain their separate identity. The suits retain their separate identity as held in 'Mahalaxmi Coop'. Reliance placed on 'Housing Society Ltd. and Ors. v. Ashabhai Atmaram Patel', (2013) 4 SCC 404, wherein the Supreme Court had observed that the clubbing together is done for convenience, inter alia, to save time, costs, repetition of procedures and to avoid conflicting judgments.

The Supreme Court also observed that the plea of bar under Order II Rule 2 of the CPC is a technical plea which must be pleaded and satisfactorily established. Relying on R.A. Oswal v. Deepak Jewelers and Ors. (1999) 6 SCC 40 and Dalip Singh v. Mehar Singh Rathee and Ors. (2004) 7 SCC 650, the Court held that if the plea of bar under Order II Rule 2 is not taken, the Court should not suo moto decide the plea.

The Court therefore confirmed the specific performance of the contract in part as directed by the Judgments passed by the High Court and the Trial court.

Civil Appeal No. 3194 of 2020
M/S MSD Real Estate LLP v. The Collector of Stamps & Anr.
Decided on: September 17, 2020.

The property in question in this appeal is

Lantern Hotel, Indore regarding which a Deed of Assent was executed by the Trustees of HC Dhanda Private Trust. The Collector of stamps issued notice stating that there is deficiency in the stamp duty on deed and passed an order holding the deed to be a gift deed and determined a deficiency of stamp duty to the extent of Rs. 1,28,09,700/- and imposed penalty of the ten times to the tune of Rs. 12,80,97,000/-

The Trustees filed writ petition in the High Court challenging the said order, which was dismissed in 2017. An SLP was filed by the Trustees against the judgment of the Madhya Pradesh High Court. During the pendency of the case, the deficiency of stamp duty was deposited through the Treasury Challan but the penalty was not deposited and only post-dated cheques were submitted.

The Supreme Court held that facility to deposit the penalty by post-dated cheques cannot be approved and the appellant being subsequent purchaser was liable to deposit the amount of penalty which was outstanding against the property and which was subject matter of the gift deed dated 21.04.2005. The Court further held that it is not necessary that a penalty of ten times must be imposed in all circumstances, and modified the order of the Collector of Stamps and reduced the penalty by half. In view the building permission being cancelled, the Court observed that the High Court had amply protected the rights of the appellant, as deposit being made by the appellant towards the penalty, the appellant is free to apply for building permission which is to be considered by the Municipal Corporation. The Court gave the liberty to the parties to seek such remedy regarding subsequent actions and orders as permissible by law.

Civil Appeal No. 3185 of 2020
Government of India v. Vedanta Limited (Formerly Cairn India Ltd.), Ravva Oil (Singapore) Pvt. Ltd., Videocon Industries Limited
Decided on: September 16, 2020

The Supreme Court in this case held that applications for enforcement of foreign awards will be "deemed decrees" and hence, the residuary limitation period of three years will apply for filing a petition to enforce them.

The Court also clarified that a foreign award does not become a "foreign decree" at any stage of the proceedings. Further, that a foreign award is not executable as a decree by itself, but it is only after the stages of Sections 47 and 48 of Arbitration and conciliation Act,1996 are complete, that the award becomes enforceable as a deemed decree, as provided by Section 49.

The executing court is not to correct the errors in the award under Section 48, or undertake a review on the merits of the award, but is conferred with the limited power to "refuse" enforcement if the grounds are made out. If the court is satisfied that the application under Section 48 of Arbitration and conciliation Act, 1996 is without merit, and the foreign award is found to be enforceable, then under Section 49, the award shall be deemed to be a decree of "that Court". The limited purpose of the legal fiction is for the purpose of the enforcement of the foreign award.

Enforcement of a foreign award may be refused only if it violates the enforcement State's most basic notions of morality and justice, which has been interpreted to mean that there should be great hesitation in refusing enforcement, unless it is obtained through "corruption or fraud, or undue means".

The Court held that Article 136 of the Limitation Act would not be applicable for the enforcement/execution of a foreign award, since it is not a decree of a civil court in India. The enforcement of a foreign award as a deemed decree would be covered by the residuary provision i.e. Article 137 of the Limitation Act. The period of limitation for filing a petition for enforcement of a foreign award under Sections 47 and 49 of Arbitration and conciliation Act, 1996 would be governed by Article 137 of the Limitation Act, 1963 which prescribes a period of three years from when the right to apply accrues.

The court further reiterated that the bar contained in Section 5 of the Limitation Act which excludes an application filed under any of the provisions of Order XXI of the CPC, would not be applicable to a substantive petition filed under the Arbitration Act, 1996.

Consequently, a party may file an application under Section 5 of Limitation Act for condonation of delay, if required in the facts and circumstances of the case.

Civil Appeal No. 2567 of 2020
Pappu Deo Yadav v. Naresh Kumar
Decided on: September 17, 2020

In this appeal arising out of judgment passed by Delhi High Court the moot question involved was:

"Whether while computing Compensation under the head 'loss of income' the tribunals should also take into consideration the loss of future prospect of injured victim in case of permanent disability also"

Appellant assailed the judgment of Delhi High Court which denied the compensation to him on account of loss of future prospect on the ground that genesis of awarding future prospect is well explained in Pranay Sethi's case wherein the victim was not injured but succumbed to the injuries and as in the present case the victim is alive, as such the judgment supra has no applicability in the present case.

Overturning the decision of Delhi High Court, the Court held that compensation for "loss of future prospect" can also be awarded in case involving serious injuries resulting in permanent disablement and the ratio of Pranay Sethi's case should not be restricted to death cases only. The Court deciding appeal observed in para 8 that "this court has emphasized time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives"

Besides this the amount determined as income and extent of disability was also under challenge and the Court enhancing the income to 10000/- from 8000/- as determined by High Court, observed that at the relevant time such self employed professionals (stenographer in District Court in the present case) were not obliged to file income tax return in the AY 2011 -12 when no tax was required to be paid by the person earning less than 1.6 lac P.A. Regarding the extent of disability the Court observed that it should be determined taking into notice the impact of injury upon the income generating capacity of the victim and as such increased the disability from 45 % to 65%.

Civil Appeal No. 3093 of 2020
The New India Assurance Company Limited V Smt. Somwati & Ors.
Decided on: September 07, 2020.

These appeals involved common questions of law and were heard together and decided by this common judgment. In these appeals, judgments of High Courts were questioned which arose out of the awards by the Motor Accident Claims Tribunal (MACT) with regard to compensation awarded in favour of claimants under two heads i.e., "loss of consortium" and "loss of love and affection". With regard to consortium, the question was whether only wife is entitled or consortium can be allowed to children and parents as well.

The Hon'ble Supreme Court took the view that order of the High Court awarding compensation towards loss of love and affection is unjustified and was thus set aside. Relying on the Constitution Bench judgment in National Insurance Co. Limited v Pranay Sethi and Others (2017) 16 SCC 680, the Supreme Court observed that it is well settled that no compensation can be awarded under this head i.e., "loss of love and affection".

With regard to loss of consortium, the Supreme Court observed that apart from spousal consortium, parental and filial consortium is also payable as has been laid down by two judge bench in Magma General Insurance Co. Limited v. Nanu Ram alias Chuhru Ram and Others (2018)18 SCC 130, which was reiterated by three judge bench in United India Insurance Co. Ltd v. Satinder Kaur alias Satvinder Kaur and others (2020) SCC Online 410. Therefore, the Tribunal can grant compensation on account of 'loss of consortium, to children and parents also.

J&K High Court Judgments

CM(M) No. 84/2020
Mohammad Ishaq & Ors v. Union of India & Ors.
Decided on: September 23, 2020

The facts of the case are that respondents no 9 to 13 in the instant petition had filed a suit before Munsiff Sankoo against some of the petitioners herein. The trial court vide its order dated 09.06.2020 directed the parties to maintain status quo on spot. Thereafter, the trial court upon hearing the parties passed order dated 27.08.2020, thereby vacating the order of status quo and dismissing the application of the plaintiffs under order 39 Rules 1&2 read with Section 151 of CPC.

The aforesaid order of the trial court was challenged by the plaintiffs by way of an appeal before the court of District Judge Kargil. The appellate court while admitting the appeal issued notice to the other side and in the meanwhile operation of the order dated 27.08.2020 passed by the trial court was stayed till filling of the objections and the status quo order dated 09.06.2020 on spot was to remain in force till next date of hearing.

It is the aforesaid order of the appellate court which was challenged by way of instant petition and the question before the Hon'ble High Court was whether the existence of an alternative remedy, particularly by way of civil proceedings, creates a bar to the maintainability of a petition under Article 227 of the Constitution of India. After discussing the various judgements of Hon'ble Supreme Court on the subject Hon'ble High Court held that the existence of an alternative remedy particularly by way of civil proceedings creates a bar to the maintainability of a petition under Article 227 of the constitution of India. Applying the aforesaid law to the facts of the present case Hon'ble High Court held that petitioners in the instant petition without appearing before the learned appellate court and without placing their contentions before the said court, have rushed to the Court by way of petition under Article 227 of the constitution. It was open to the petitioners to approach the appellate court and place before it their side of the case and get the order of status quo vacated. In this backdrop, it can safely be said that the petitioners herein despite having the remedy of approaching the appellate court and contesting the appeal as well as the application accompanying the said appeal and getting the order of status quo vacated have approached the High Court without exhausting the said remedy. The remedy available to the petitioners is by way of civil proceedings and without exhausting the said remedy the instant petition under Article 227 of the Constitution of India cannot be resorted to. The instant petition is held to be not maintainable.

MA No. 301/2012
National Insurance Company Limited v. Rani Devi and another
Decided on: September 21, 2020

It was an appeal against the award passed by the Motor Accident Claims Tribunal, Jammu in Rani Devi v. Hans Raj and another, whereby respondent has been held entitled to a sum of Rs.5,10,000/- along with pendente lite and future interest @ 7.5% as compensation for the injuries received by her in the accident involving the offending vehicle. The main ground raised in this appeal was that on the date of accident, the driver of the offending vehicle was not possessed of any valid driving license. The Court after pursuing the record held that the findings of the Tribunal on the said issue are in total accord with the evidence on record.

The Court while rejecting the appeal said "it does not find it a case where the Tribunal has gone astray in appreciating the evidence on record, as is sought to be projected by the appellant-insurer. The evidence on record, when considered in its entirety, does point out unequivocally that the driver of the offending vehicle, at the time of accident, was holding a valid and driving license authorizing him to drive the offending vehicle.

CSA No. 06 of 2017
Abdul Rashid Rather v. Ghulam Nabi & Ors
Decided on: September 14, 2020

This Civil Second Appeal was filed by the plaintiff against the concurrent judgment and decree passed by the District Judge, Kishtwar

(1st Appellate Court) and Munsiff, Kishtwar wherein suit of plaintiff was dismissed.

The Hon'ble Court observed that in this case no substantial question of law is involved for determination as held in Veerayee Ammal v. Seeni Ammal (2001) SC 2920 and as in a recent judgement of the Supreme Court delivered in the case of Illoth Valappil Ambunhi (D) by Lrs. v. Kunhambu Karanavan (2019) SC 1336. Hence, questions proposed by appellant are not substantial questions of law arising in this appeal nor does any substantial question of law arise in this case.

The appeal filed by appellant was dismissed.

RSA No. 07/2020
Nazir Hussain v. Mohd Rashid & Anr.
Decided on: September 14, 2020

The appellant has filed the Civil Second appeal against the judgment & decree dated 02-11-2019 passed by the Distt. Judge whereby allowing the appeal, judgment & decree passed by the trial court has been set aside on the ground that the jurisdiction of the trial court to try and decide the suit was barred under the provisions of section 25 of Agrarian Reforms Act.

The case was that the plaintiff filed a suit claiming that he is in possession of the land from last more than 12 years and has become the owner, so his claim is based on the adverse possession against the defendants. The Hon'ble High court observed that there is no dispute or doubt with regard to the applicability of section 25 of the Agrarian Reforms Act which bars the jurisdiction of the civil court and also the claim of the plaintiff of being in adverse possession against the defendant falls within the clause (e) sub-section (3) of section 19 of the Agrarian Reforms Act and is to be disposed off by the collector. The High Court referred to the case law AIR 1962 SC 1314, handed down by the Supreme Court which laid down that if the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is mere question of applying these principles or the plea raised is palpably absurd, the question would not be a substantial question of law. The Hon'ble High Court held that there is no substantial question of law involved and the appellate court has rightly held that the trial court has passed the decree in violation of the provisions of section 25 of the Agrarian Reforms Act and the jurisdiction is barred under section 25 of the said Act, and hence dismissed the appeal.

CM No. 4899/2019
State of J&K & Anr. v. Vijay Kumar alias Raj Krishen & Ors.
Decided on: September 06, 2020

In instant case an application filed by the appellants for condonation of delay in filing the Civil First Appeal, against the order dated 24.03.2017 and exparte judgment and decree dated 27.06.2016 passed by the Principal District Judge, Budgam, in civil suit titled Vijay Kumar v. State &Ors, was considered.

The defendants had failed to contest the suit and they were set exparte and the trial court proceeded to record exparte evidence of the plaintiff. After recording exparte evidence, the learned trial court vide its judgment and decree dated 27.06.2016, passed a decree. Application of the defendants in the suit, seeking setting aside the exparte decree rejected by the trial court.

Held that - Section 5 of the Limitation Act provides for extension of period of limitation in certain cases. The extension can be granted in terms of the said provision, if the applicant satisfies the court that he had —sufficient cause for not preferring the appeal or making an application within the prescribed period of limitation.

In the instant case, it is clear that the explanation given by the appellants depicts casual approach on the part of officials/officers of the appellant department. In fact, negligence is writ large on the part of appellants in the manner they have approached this case right from its inception. In the first place, the appellants, after putting in appearance before the trial court stopped appearing in the case, as a result whereof, they were set exparte and an exparte judgment and decree came to be passed against them. Thereafter they did not approach the trial court for setting aside of exparte

judgment and decree within the prescribed period of limitation and they had to apply for condonation of delay, which luckily was accepted by the trial court and their application for setting aside exparte decree was considered on merits. Unfortunate for the appellants, they could not succeed in convincing the learned trial court to set aside the exparte judgment and decree. Despite facing this situation in the learned trial court, the appellants did not learn any lesson and they continued with their casual approach towards the case. After a lapse of more than two years of passing of the impugned order by the learned trial court they woke up from the deep slumber and filed the instant application and appeal before this Court without proper explanation for filing the appeal after a delay of more than two years.

The Court observed:

"For what has been discussed hereinbefore, I do not find any reason, much less a sufficient reason, for condoning the delay in filing the appeal. For all the aforesaid reasons, I do not find any merit in this application. The same is dismissed. As a necessary corollary, the appeal along with connected CM(s) is dismissed with no order as to costs."

CM(M) No. 49/2020
Indian Oil Corporation Limited & Ors. v. South Kashmir Petroleum Dealers Association & Ors.
Decided on: September 03, 2020

This petition has been filed under Article 227 of the Constitution of India seeking quashing of order of trial court for extending the time for fulfilling the conditions of Expression of Interest (EOI).

The question that arises is whether by extending the time vide impugned order, the trial court has interfered with the terms of the invitation of tender which is not open to judicial review in view of the para 23 of the Michigan Rubber Ltd. (Supra) and then specifically in Tata Cellular V. Union of India, (Supra), ignored Sub-para 94(6) of the said judgment.

Therefore, if decree as prayed for cannot be passed, whether the trial court could interfere in the time fixed by the petitioners' in EOI for submitting tender. Hon'ble High Court has held that the Legal position was accepted by the trial Court but still it travelled beyond its jurisdiction by holding that keeping into account peculiar and unhealthy circumstances of South Kashmir, it is necessary to extend three months more time for fulfilling the condition of EOI from 04.07.2020

Hon'ble High court has held that the trial court has, thus, acted without jurisdiction by directing extension of time by three months with effect from the date of the order of Court dated 04.07.2020.For this Hon'ble court has placed reliance on Jagdish Mandal v. State of Orissa and others, (2007) 14 SCC 517, their lordships held as under :-

"Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala-fides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succor to thousands and millions and may increase the project cost manifold".

NDPS Act: Pre-search proceedings

J&K Judicial Academy started its activities in the month of September, 2020 with webinar on NDPS Act: Pre search proceedings, on 2nd September, 2020. This programme was second in the series on online programmes proposed to be conducted on the Law on Narcotic Drugs and Psychotropic Substances Act. Mr. Pradeep Mehta, Retired Joint Director Prosecution, Punjab and presently Faculty Member, Chandigarh Judicial Academy was the Resource person. Earlier programme on "Overview of NDPS Act with special emphasis on mens-rea and presumptions was also guided by Mr. Pradeep Mehta. The programme on 2nd September was continuation of the discussions and this programme shall be followed by two more session on various aspects of NDPS Act.

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 recovery proceedings. In these provisions, Mr. Mehta highlighted the importance of sections 41, 42, 43, 47 and section 50. 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 search and seizure relating to narcotic drugs and psychotropic substances. He also discussed the practical problems and technical difficulties faced by the investigating agency and also referred to various judicial pronouncements on the subject. Mr. Mehta explained that NDPS Act is stringent law and the procedure prescribed is rigorous, as such the investigating agency is required to observe the statutory mandate and to ensure substantial compliance of the provisions of law. He also told the participants that on the suggestions of Narcotic Control Bureau, 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.

Mr Mehta highlighted various procedural lapses and non-compliance of the technical procedure by the investigating agency which can impact the outcome of trial of NDPS cases. He pointed out that majority of such cases are dismissed by courts only for the reason that the investigating agency has not been careful in observing the compliance of mandatory procedural aspects. To have effective trial of such cases, it is needed first to have proper investigation and compliance of mandatory statutory provisions.

Mr Mehta discussed the provisions pertaining to giving option to the accused to be searched in presence of a Magistrate or a Gazetted Officer. In that, he drew distinction between the cases of personal search and search of baggage and other belongings etc. He also highlighted that in the chance recovery cases, giving option to be searched in presence of Magistrate etc. is not necessary and more so it is required only in personal search cases including wearing apparels.

In next session Mr. Mehta would take up post-recovery proceedings.

Online awareness programme on "Rights of the Prisoners and Corresponding Duties of the Jail Custodians – A Legal Analysis"

On 3rd September, 2020, J&K Judicial Academy in collaboration with J&K State Legal Service Authority organized Online awareness programme on "Rights of the Prisoners and Corresponding duties of the Jail Custodians – A Legal Analysis". Mr. Ajay Verma, Advocate, a Panel Lawyer with Delhi State Legal Services Authority was the resource person. Among the participants were Judicial Officers working under the jurisdiction of J&K High Court, Secretaries, District Legal Service Authority, Jail Superintendents and other Officials from Jail Department, Panel Lawyers working with JKSLSA and PLVs.

Mr. Ajay Verma in his presentation referred to various provisions of the Constitution of India and other enactments pertaining to the Rights of Prisoners including under trials. He

highlighted that the prisoners also enjoy all the fundamental rights which are available to the free citizens, except that their liberty to move out of Jail is curtailed by the process of law. They also have equal right to life and personal liberty which includes enjoying life with dignity. Mr. Verma told the participants that life of Jail inmates is regulated by two important legislations viz, the Prisons Act and the Prisoners Act. These provisions also define the statutory duties of Jail Custodians. In discharge of their statutory duties the Jail Custodians are under Constitutional and legal obligation to protect the rights of the jail inmates. Protecting the fundamental rights of the prisoners is of foremost importance for the Jail Custodians.

Mr. Verma referred to various landmark judgments of the Supreme Court pertaining to arrest and detention, rights of the prisoners and the conditions of Jails. Among these landmark judgments he pointedly referred to 'D.K Basu', 'Sunil Batra', 'Nilbati Behra' and 'Re: Inhuman condition in jails'.

Addressing the Jail Custodian, Mr Verma said that the Jail Custodians are like parents for the jail inmates and law enjoins upon them an onerous responsibility of treating the jail inmates with requisite care, dignity and honour. By losing the liberty to move out, the prisoners do not surrender their dignity and honour. They continue to enjoy the right to have meaningful life. He also said that the Jail Custodians have a responsibility to make the prisoners responsible citizens and to prepare them for the life after completing their jail tenure.

Mr. M. K. Sharma, gave an overview of the activities of the Legal Services Institution regarding the prisoners and the undertrials, and exhorted the District Secretaries, Panel Lawyers and PLVs to work in tandem to ameliorate the conditions of prisoners and help them settle in social life after completion of jail tenure. He also proposed vote of thanks.

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

Interaction of Hon'ble the Chief Justice and Hon'ble Judges of the High Court with Law Interns

High Court of J&K recently approved a scheme for engaging Law Interns at the High Court. Pursuant to this scheme various Law students from the Universities and Law colleges across India made applications for internship with the Hon'ble Judges of the High Court. About 225 Law students have already been assigned the internship under Hon'ble Judges. Before the commencement of internship programme, Hon'ble the Chief Justice Ms. Justice Gita Mittal directed the Academy to organize interaction of Hon'ble the Chief Justice and Hon'ble Judges of the High Court with Law Interns. The interaction was organized on 16th September, 2020 in which more than 150 Law Interns participated. Hon'ble Chief Justice, Hon'ble Mr. Justice Rajesh Bindal, Hon'ble Mr. Justice Tashi Rabstan, Hon'ble Ms. Justice Sindhu Sharma, Hon'ble Mr. Justice Rajnesh Oswal, Hon'ble Mr. Justice Vinod Chaterjee Koul, Hon'ble Mr. Justice Sanjay Dhar, Hon'ble Mr. Justice Puneet Gupta and Hon'ble Mr. Justice Javid Iqbal Wani interacted with the Law Interns. Trainee Judicial Officers and many Judicial Officers working under the Jurisdiction of High Court of J&K also participated.

Hon'ble the Chief Justice formally launched the internship programme and while speaking with the participants she highlighted the purpose of the internship scheme. She shared her experience of interns working with her in Delhi High Court and talked about the usefulness of internship. She expressed her satisfaction that Law students from prestigious Universities and Law colleges from all the States and Union Territories have shown their keen desire to intern at the High Court of J&K. This gives them opportunity to learn the Court culture and get an insight into the justice delivery system. She also said that the programme would be useful for Law students from Jammu and Kashmir as they would get a chance to closely work with the Law students from outside. She exhorted that the internship may be made a permanent feature in the High Court of J&K and may be further expanded to take it to the District Courts as well

Hon'ble Mr. Justice Rajesh Bindal while speaking in the programme lauded the efforts of Hon'ble the Chief Justice in putting in place the internship scheme. Justice Bindal shared his personal experience of working with the Law Interns at Punjab and Haryana High Court. He said that Law students need to be given opportunity to interact with all stake holders in the justice delivery system in order to introduce them to the Judicial System while they complete their Law Studies. By doing so, it is inevitable that many Law students would be attracted to serve in the Judicial Institution.

Hon'ble the Chief Justice and Hon'ble Judges of the High Court responded to many questions posed by the participating Law Interns and addressed their genuine concerns pertaining to Legal and Judicial Education.

Based on the deliberations in the interaction programme, Hon'ble the Chief Justice directed the Judicial Academy to devise academic programme for the Law Interns to involve them in the important online programmes on various facets of Legal System in India.

Webinar on "Wildlife Conservation in India"

Hon'ble the Chief Justice Ms. Justice Gita Mittal took a novel imitative of engaging the Law Interns in useful academic discourses. She devised two sets of programmes for the Law students interning with the High Court. In one series of programmes on "Careers in Law", the Law students would be made aware of various options available to them after graduating in Law. About 8 programmes are proposed to be conducted under this series. In another series of programmes on domain subjects, the Law students would be given insight into various important subjects of Law which are not given much importance during the study of Law.

In the first programme in the series of programmes on domain subjects, the High Court of J&K organized two sessions of Webinar on "Wildlife Conservation in India" in collaboration with WildlifeSOS Organisation, on 26th and 28th September 2020.

A series of programmes was inaugurated by Hon'ble the Chief Justice on 26th September. In her address Hon'ble the Chief Justice talked about the importance and necessity of Wildlife conservation. She also talked about the importance of engaging the Law students in discussion on Wildlife Conservation. She shared her experiences of engaging with WildlifeSOS while hearing a PIL in Delhi High Court.

Mr. Kartick Satyanarayan, CEO and Co-founder of WildlifeSOS Organisation was the resource person. He was assisted by Ms. Shirina Sawhney, Associate at WildlifeSOS.

In two days of deliberations the resource person in his presentations discussed the regime of wildlife conservation, and in that he referred to various enactments viz Wildlife Protection Act, Prevention of Cruelty of Animals Act etc. He discussed the historical perspective of wildlife regime and the initiation of conservation of wildlife sometime after Independence of India. He told the participants that in older times wildlife was used as sports and entertainment activity. Hunting of animals was allowed to cater that purpose. After realization of the importance of wildlife protection, law was enacted which shifted the focus from sports and entertainment to conservation of wildlife for ecological and environmental balance.

Mr. Kartick traced the efforts made by the Governments and private individuals in conservation of wildlife. He also made a presentation of the activities carried out by his organization and the success achieved in such efforts was also highlighted. Mr. Kartick made special emphasis on the conservation needs in J&K and told the participants about the conservation efforts being made to protect the wildlife. He made special mention of involvement of and the activities of his organization in Dachigam Forest Reserve. He shared some videos on wildlife protection activities of his organization in relation to elephants, bears, monkeys, dogs, deers and many other wild animals.

The participants were greatly benefited by the two days of deliberation on the very important subject and they felt encouraged to engage in wildlife conservation activities in future.

Domestic Violence in Live-Relationship

Cohabitation between two partners as living together for a long time is presumed to be live-in-relationship couple. There is no law binding the partners together and subsequently either of the partners can walk out of relationship. The legal status of such type of relation is uncertain. In fact it is an arrangement whereby couples those are unmarried actually decide to live together, cohabit in order to conduct a long-term relation in nature to that of marriage.

Adult couple can live together without marriage. This was observed by the Supreme Court while hearing a plea filed by one Nand Kumar against a Kerala High Court order annulling his marriage with Thushara. The Court held that a 20 years old Kerala women whose marriage had been annulled could choose whom she wanted to live with. The Court held that live in relationships were now even recognized by the legislature and they have found a place under the provisions of the protection of women from domestic violence Act 2007. A bench of Justice A. K. Sikri & Ashok Bushan on 07.05.2018, in Criminal Appeal No 597 of 2018 in case titled "Nand Kumar & Anr. Vs. State of Kerala & Ors" Criminal Appeal No. 597 of 2018 said their marriage could not be said to be "null and void" merely because Nanda Kumar was less than 21 years of Marriage at the time of marriage. Appellant no. 1 as well as Thushar are Hindus.

Right of maintenance to women in live-in-relationship

Since in live in relationships couples cohabit outside marriage without any legal obligation towards each other. Hon'ble Supreme Court has ruled that any couple living together for a long term will be presumed as legally married unless proved otherwise. Thus, the aggrieved live-in partner can take shelter under the Domestic Violence Act, 2005 which provides protection and maintenance and thereby grant the right of alimony.

When we talk about social transformation, law on live in relationship is also another step to meet such requirements being humanism and universalism, therefore society needs comfortable and secure environment with their needs addressed. I may with all humility say that the judgment rendered by Hon'ble Supreme Court has protected the interest of minority as less than one percent of the population is facing such kind of problems to live with dignity and honour being in live-in-relationship though such relationship are still considered taboo and unacceptable by majority.

Although the legal status of live-in-relationship in India is unclear, the Supreme Court has ruled that any couple living together for a long term will be presumed as legally married unless proved contrary and a married man also be in live-in-relationship with an unmarried women which does not attract the charge of adultery but in that case his legal wedded wife can file a divorce suit on the ground of cruelty based on the conduct of the married man. Similarly, if an unmarried girl is interested in a married man she is at liberty to take her own decisions in life and can take police help by filing complaints under Section 504, 506 IPC.

In fact the concept of live-in-relationship develops from the pervasive mind-set of those who yearn for compatibility relationships. There is no legal definition in Indian Law which describe the hypothesis as live-in relationship. Many people believe that the bond that binds them in marriage is very obligatory for them and they feel comfortable in a relationship that resembles marriage but without his obligations and responsibilities. This arrangement is usually entered into by consent either to test compatibility before marriage or simply to avoid the hassle of a

formal marriage, thus keeping in mind the reason, the number of couples choose a live-in-relationship before marriage is increasing as they feel that there is no fear of getting divorced, and there is a mutual respect, lesser responsibilities and the main issue is no legal hassles. The couples live as a married couple and celebrate each occasion with love but there are no obligations towards each other, they become so accustomed to each others company more than anything. It is the kick that keeps live-in-relationship going. It is also a test of commitment towards each other. Law leans in favour of legitimacy and frowns upon bastardy and therefore children born out of live-in-relationships are legitimate and not illegitimate and thus this type of child has a right to property also as per Justice V.R. Krishna Iyer in "Badri Prasad vs Dy. Director of consolidation, AIR 1978 SC 1557; (1978) 3 SCC 527", wherein they have differentiated between bastardy and legitimacy. It was held that presumption is in favour of valid marriage as law leans in favour of legitimate. If man and woman live for a long period as husband and wife in society, a strong presumption arises in favour of the wedlock. Similarly in "Khushboo vs Kannmiammal, AIR 2006 SC 2522", a three judge bench consisting of Chief Justice K. G. Balakrishnan, Justice Deepak Verma and Justice B.S. Chauhan, it was held that living together is not an offence and there is no law which prohibited live-in-relationship or pre-marital sex. The apex court while quashing all the criminal complaints filed against south Indian actress Khushboo held that living together is right to life hence right to life and liberty is a fundamental right of two individuals living together similarly in "Chanmuniya vs. Varinder Kumar Singh Kushwaha, decided on 07.10.2010" the apex court said that a man and a women living together as husband and wife for a considerable period of time would raise presumption of a valid marriage between them, therefore a strict proof of marriage should not be a precondition for maintenance under Section 125 CrPC so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125 CrPC. Now often the cases of domestic violence between the couples in live-in-relationships are also reported. Since domestic violence is a pattern of behaviour, a pattern is abuse in a domestic setting by another partner or his/her family. Abuse may be emotional, economic, verbal, physical or sexual. In most of the cases the violence is suffered by a women by the hands of her partner. In case of "Indra Sarma vs V.K.V Sarma, decided on 26.11.2013, it has been held that "live-in-relationship" would amount to a "relationship in the nature of marriage" falling within the definition of "domestic relationship" under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005, and the disruption of such a relationship by failure to maintain a women involved in such a relationship amounts to "domestic violence" within the meaning of Section 3 of the D.V. Act and therefore women is also entitled for compensation under Section 22 and 23 of D.V. Act. Thus we can say safely that live-in or marriage-less relationship is neither a crime nor a sin, though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal, though law of the land comes to rescue to legalize such relationships. Hence, partners can also draw a live-in together agreement about how they share their property. In my humble view live-in-relationship has its own challenges so far as compatibility and societal acceptance is concerned despite Supreme Court's green signal. Although such type of relationships are legalized but it requires change of mind-set and attitudinal change.

— Ms. Bala Jeoti

(District & Sessions Judge)

Member, J&K Special Tribunal

Mandate for the Civil First Appellate Court

Appellate Court, in dealing with Civil First Appeal has the powers clearly delineated in Section 107 of the Code of Civil Procedure, and further regulated in terms of Rule 33 of Order XLI. As per these provisions the Appellate Court has the power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require. That said, it is further pertinent to advert to rule 31 of Order XLI of CPC which provides for the contents, date and signature of judgment. It is envisaged, in the rule (supra), that the judgment of Appellate Court shall state: a) the point/s for determination; b) the decision thereon; c) reasons for the decision and d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. In the said context, it is pertinent to reproduce what has been observed in para 9 of the ruling handed down by the Hon'ble Supreme Court of India in: 'M/s United Engineers and Contractors v. Secretary to Government of Andhra Pardash', AIR 2013 SC 2239, as under:

> "9. This court has considered the scope of the order 41 rule 31 of CPC in: 'H. Siddiqui (dead) by Lrs. Vs A. Ramalingam', AIR 2011 SC 1492 and held, as under:
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> "18. The said provisions provide guidelines for the Appellate Court as to how the Court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of Appellate Court that the Court has properly appreciated the facts/ evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance of the said provisions if the Appellate Court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the finding of the Appellate Court are well-founded and quite convincing. It is mandatory for the Appellate Court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on these points. Being the final Court of fact, the First Appellate Court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of said provisions and the Court must proceed in adherence to the requirements of the said statutory provisions. (Vide: Thakur Ukhpaul Singh Vs Thakur Kalyan Singh and Anr., AIR 1963 SC 146; Girijanandni Devi and Ors Vs Brijendra Narian Choudhary, AIR 1967 SC 1124; G. Amalorpavam and Ors VS R.C. Diocese of Madurai and Ors. (2006) 3 SCC 224; Shiv Kumar Sharma Vs Santosh Kumari 2007 AIR SCW 6384; and Gannmani Anasuya and Ors Vs Parvatini Amarendra Chowdhary and ors., AIR 2007 SC 2380.)
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> 19. In 'B.V. Nagesh and Anr. Vs H.V Sreenivasa Murthi', AIR2010 SCW 6184, while dealing with the issue, this Court held as under (para 4 of AIR SCW):
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> "The Appellate Court has the jurisdiction to reverse or affirm the finding of the trial court. The first appeal is valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on question of fact and law. The judgment of the Appellate Court must, therefore, reflect conscious application of mind and record findings supported by reasons on all the issues arising along with the contentions put forth and pressed by the parties for decision of the Appellate Court. Sitting as Court of Appeal, it was the duty of

High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is valuable right and parties have a right to be heard both on questions of law and or facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide: Santosh Hazari Vs Purushottam Tiwari, AIR 2001 SC 965 and Madhukar and ors VS Sangram and ors., AIR 2001 SC 2171)".

Thus, it is evident that the first appellate court must decide the appeal giving adherence to the statutory provisions of Order 41 Rule 31 of CPC"

The first appellate court, therefore, has the mandate not just to see the correctness of the findings of the trial court but while doing so it is required to exercise the same powers and perform as nearly as may be the same duties as are conferred and imposed on the trial court which has disposed of the suit. As such, the first appellate court is under an obligation to independently assess and appreciate the evidence on record and then to correlate its findings with the decision rendered by the trial court. In case where the appellate court does not uphold the findings of the trial court and finds the decree to be not sustainable, it is required under law to determine the case finally if the case could be disposed of on the basis of the material available on record. The first appellate court has extremely limited power to remand a case to the trial court. Mere fact that decision rendered by the trial court is not based on correct appreciation of evidence or law cannot be a ground for remand of the case. The appellate court has a mandate to determine the case finally, as the trial court would otherwise do in regular trial proceedings.

– Mr. Jatinder Singh Jamwal

Additional District Judge, Kathua

Procedure to be followed by the court in suit instituted by mentally ill or minor through next friend

In a suit of representative character under Order I Rule 8 of the Code of Civil Procedure, one person may sue or defend on behalf of all in the same interest with the permission of the Court. This is why even in these cases; the plaint is accompanied by an application praying for permission under Order 1 Rule 8 CPC. If Court grants permission, then and then only a suit in the representative capacity becomes maintainable. Even under the provision of Order VII Rule 1, the particulars to be contained in a plaint are laid down. In Clause-(d) of the said rule it is provided that whether the plaintiff or the defendant is a minor or a person of unsound mind, the statement to that effect must be given in the plaint. This being a necessary requirement, even a failure to comply with the same may result in rejection of plaint under Order VII Rule 11 of the CPC. Reverting to Rule15 of Order XXXII it appears that it is the Court who is to adjudge a party to be incapable by reason of any mental infirmity. So, holding someone incapable by mental infirmity is the task given to a Court and it cannot be taken for granted by merely describing someone as mentally unsound by self-proclaimed next kin. Rule 3 of the same order indicates that in case where a defendant is a minor, the Court shall not only specify status of minority of such defendant but also the Court shall also appoint a proper person to be the guardian ad-litem. This is because under Clause (3) of the said Rule, Court is also to satisfy itself as to whether a person is fit to be so appointed as guardian of the minor defendant. If it is a case that a defendant is of unsound mind, by operation of Rule 15, the Court would have been saddled with two responsibilities, first to hold enquiry and to determine as to whether the defendant is really a person of unsound mind and then to make appointment of guardian ad-litem on being satisfied that such a person is fit to be so appointed. Qualification

for being a close friend of the plaintiff or of being appointed as guardian ad-litem is laid down in Rule 4 of the Order XXXII. This, inter-alia, requires that such person does not have any interest adverse to the minor or the person of unsound mind. The first part of Rule 4 relates to plaintiff and so Rule 15 has to be understood keeping in view the provision of Rule 4 of the CPC. This means that once a plaintiff presented to a Court describing the plaintiff to be a person of unsound mind and such plaint is presented by a person claiming to be a next kin of the plaintiff, the Court is duty bound to ascertain as to whether the plaintiff is really a person of unsound mind, and if so, to say as to whether the person who has approached the Court claiming to be a next friend of the plaintiff is qualified in terms of Rule 4 of Order XXXII, to be next friend of such plaintiff. Once the provision of Order XXXII is viewed from such angle there is no doubt that this provision is not a merely procedural one but it has essential judicial components also. Apart from using the word 'shall' in Order XXXII Rule 15, the judicial exercise of the Court required by the provision placed this rule at a higher pedestal then a procedural provision. This Rule, therefore, is mandatory and failure to comply with the same would make the plaint unentertainable and consequently the suit would become not maintainable.

– Mr. Mohammad Ashraf Bhat

Sub-Judge, Bijbehara

(Guest Column)

Courts Must Apply Stringent Tests While Understanding the Complexity of Section 319 CrPC

In Criminal Justice System from the initial stage of investigation some time it happens that those who are actually committed the offence easily escape the boundaries of Penal Law, by one way or the other. Most commonly it happens so during the investigative stage of the offence which results in filling of improper charge-sheet, due to laxity in investigation. But their names are deleted before filing of charge-sheet under Section 173 (2) of Code of Criminal Procedure, 1973, and then the victim or the Complainant left with no option except to record his or her evidence before the Court and then move an application under Section 319 of CrPC for summoning of accused involved in crime, named in First Information Report but not charge-sheeted before the Court or the Victim or Complainant have to opt for filing of a separate Complaint otherwise then of Police report, against the remaining accused who were not charge-sheeted. If the Victim or the Complainant does not opt either way then also Court is empowered to precede Suo – Muto, if a Magistrate hearing a case against certain accused finds from the evidence that some person, other than the accused before him, is also concerned in that very offence or in a connected offence. So there comes an issue that, if the Complainant has stated the person's name in the Police report and such person is the main root cause of the crime has not been summoned before the Court Of Law due to lack of evidence then he cannot be questioned. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial.

The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the Court to give full effect to the words used by the legislature so as to encompass any situation which the Court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot-free by being not arraigned in the trial in spite of the possibility of his complicity which can be gathered from the documents presented by the prosecution.

The Court is the sole repository of Justice

and a duty is cast upon it to uphold the Rule Of Law and, therefore, it will be inappropriate to deny the existence of such powers with the Courts in our Criminal Justice System where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/ or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

Section 319 of CrPC & Its Objective

The Section reads as:

319. "Power to proceed against other persons appearing to be guilty of offence -

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summon, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then -

(a) the proceedings in respect of such person shall be commenced a fresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or the trial was commenced.

Section 319 CrPC. springs out of the doctrine "Judex Damnatur Cum Nocens Absolvitur" meaning thereby that "Judge is condemned when guilty is acquitted" and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC. In Criminal Justice System, there are always chances that the real culprit or accomplice may be rescued either by the collusion of Police or due to poor and incompetent investigation. In order to bring such culprits under the hammer of Justice, the power of summoning the additional accused is provided to Courts trying the case. This power under Section 319 CrPC may be used by Court suo-moto or on an application by the Complainant. The person who is summoned may be arrested or taken into custody if the Court deems fit.

The legislative policy behind framing of this Section in the Criminal Procedure Code, 1973 is multi-fold. The Constitutional mandate under Articles 20 & 21 of the Constitution of India provides a protective umbrella for the smooth Administration of Justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to the society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the Courts to ensure that the Criminal Administration of Justice works properly, the law was appropriately codified and modified by the legislature under the CrPC.

This is indicative of how the Courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution of India and our laws that have led to addition of Sections like 319 in Criminal Procedure Code, 1973 to

find out the real truth and to ensure that the guilty does not go unpunished.

Necessity & Object Of Power To Summon Additional Accused

It happens sometimes that a Court which includes a Magistrate or a Judge, hearing a case against certain accused finds from the evidence that some person other the accused before him, is also concerned in that very offence or in a connected offence.

Once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; it is his duty to find out who the offenders, really are and once he comes to the conclusion that apart from the persons sent up by the police, some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceedings initiated by him taking cognizance of an offence. ["Raghubans Dubey Vs State of Bihar", 1967 Cri. L. J 1081; "Hareram Satpathy Vs Tikaram Agarwal & Ors", AIR 1978 SC 1568; "S. K. Latifur Rehman & Ors. Vs State of Bihar", 1985 Cri. L. J 1238 (FB)].

Power under Section 319 of Code of Criminal Procedure, 1973 is conferred on the Court to ensure that Justice is done to the society by bringing to book all those guilty of an offence. One of the aims and purpose of the criminal justice system is to maintain social order. It is necessary in that context to ensure that no one who appears to be guilty escapes a proper trial in relation to that guilt. There is also duty upon the Court to render Justice to the victim of an offence. It is in recognition of this that CrPC as specifically conferred power on the Court to proceed against others not arrayed as accused in the circumstances set out by Section 319 CrPC. It is a salutary power enabling the discharge of a Court's obligation to the society to bring to book all those guilty of a crime. ["Rajendera Singh Vs State of U. P", 2007 Cri. L. J 4281 (SC) followed in "Hardeep Singh Vs State of Punjab & Ors", (2014) 3 SCC 92].

Twin Requirements For Summoning An Additional Accused under Section 319 CrP C

As regards the satisfaction of the Court before it exercises the power under Section 319, the Constitution Bench in ["Hardeep Singh Vs State of Punjab & Ors", (2014) 3 SCC 92] held:

> "105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.
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> 106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused." The words used are not "for which such person could be convicted". There is, therefore, no scope for the Court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."

Twin requirements for summoning an additional accused under Section 319 CrPC are

as under:

(i) That from the evidence it appears to the Court that such person has committed any offence.

(ii) That such a person could be tried together with the accused already facing trial. ["R. Dineshkumar Vs. State & Ors.", (2015) 7 SCC497].

Who Can Use Section 319 Of Code of Criminal Procedure, 1973

The Constitution Bench of Supreme Court in ["Hardeep Singh Vs State of Punjab & Ors", (2014) 3 SCC 92] held;

> "It is at this stage the comparison of the words used under Section 319 CrPC. has to be understood distinctively from the word used under Section 2 (g) defining an inquiry other than the trial by a Magistrate or a Court. Here the legislature has used two words, namely the Magistrate or Court, whereas, under Section 319 CrPC, as indicated above, only the word Court has been recited. This has been done by the legislature to emphasize that the power under Section 319 CrPC. is exercisable only by the Court and not by any Officer not acting as a Court. Thus, a Magistrate not functioning or exercising powers as a Court can make an inquiry in a particular proceeding other than a trial but the material so collected would not be by a Court during the course of an inquiry or a trial. The conclusion, therefore, in short, is, that in order to invoke the power under Section 319 CrPC, it is only a Court of Sessions or a Court of Magistrate performing the duties as a Court under the CrPC. that can utilize the material before it for the purpose of the said Section."

Therefore, from the Para quoted above it can be safely concluded that only the Court is empowered to summon the additional accused under this Section and not any other Magistrate who doesn't act as Court thereof.

Can Session Court Summon An Additional Person To Try Without Committal Proceedings Under Section 319 of Code Of Criminal Procedure, 1973?

As per Section 193 of the CrPC, the Session Court will not take cognizance of any offence originally and all the cases shall be committed to by Magistrate. The procedure of committal is discussed under Section 209 of CrPC. Now a question arises, whether Session Court is competent to summon or to take cognizance of offence of any additional person (under Section 319) who was not made the accused initially as there is an express bar under Section 193 of CrPC for Session Court to take any cognizance.

This issue was answered by the Constitution Bench in the case of ["Dharam Pal Vs State of Haryana", AIR 2013 SC 3018], wherein, it was held that a Court of Session can with the aid of Section 193 CrPC, proceed to array any other person and summon him for being tried even if the provisions of Section 319 CrPC. could not be pressed in service at the stage of committal.

The Court clarified that the opening words of Section 193 CrPC. categorically recite that the power of the Court of Sessions to take cognizance would commence only after committal of the case by a Magistrate. The said provision opens with a non-obstante clause except as otherwise expressly provided by this code or by any other law for the time being in force. The Section, therefore, is clarified by the said opening words which clearly means that if there is any other provision under CrPC, expressly making a provision for exercise of powers by the court to take cognizance, then the same would apply and the provisions of Section 193 CrPC. would not be applicable. Hence, session court is competent to summon or take cognizance of the additional accused even when the case of that particular person was not committed to it.

At What Stage The Power Of Section 319 CrPC Can Be Used?

Two words are used under Section 319 CrPC - enquiry and trial. It says that Court can summon any additional person to try with accused during the course of enquiry and trial. It is clear that the power of Court can't be used during investigation as the Police report has not filed and cognizance or committal is yet to be taken.

As trial commences after the framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 CrPC. and under Section 398 CrPC. are species of the inquiry contemplated by Section 319 CrPC. The Court under this Section can summon at any stage either during enquiry or trial. Trial generally starts from framing of charge and lasts upto the Judgment of the case in the form of an acquittal or conviction . The Court under sec 319 can summon any person appears to be guilty even when trial has completed but Judgment is reserved.

Now question arises that whether the Court can summon accused under Section 319 when the Judgment has been pronounced or delivered by Court. This question was raised recently in the case of Sukhpal Singh Khaira vs The State Of Punjab (2019) that can the Court summon any accused under Section 319 CrPC once the Judgment against one accused is pronounced. In the case of Sukhpal Singh (supra), the Judgment against one accused was delivered and another accused was absconding and hence the trial had bifurcated. The Honourable Supreme Court referred this matter to a Larger Bench and now it is sub-judice, but as of now the settled rule is that the stage on which the power of Section 319 CrPC can be used are from inquiry to trial but before the judgment is passed.

Against Whom the Power of Section 319 CrPC Can Be Used?

The plain language of Section 319 CrPC says that it can be used against any person who is not accused but it appears from evidence that he committed the offence. Such person may or may not be named in the FIR or was named in FIR but his name was dropped in Police report submitted under Section 173 (2) of CrPC the power under Section 319 can be used against them.

In ["Joginder Singh Vs. State of Punjab", AIR 1979 SC 339], a three-Judge Bench of Apex Court held that the argument that any person not being the accused occurring in Section 319 CrPC, excludes from its operation an accused who has been released by the Police under Section 169 CrPC. and has been shown in Column 2 of the charge-sheet needs to be rejected outrightly. The said expression clearly covers any person who has not been tried already by the Court and the very purpose of enacting such a provision like Section 319 (1) CrPC. clearly shows that even persons who have been dropped by the Police during investigation but against whom evidence showing their involvement in the offence comes before the Criminal Court, are included in the said expression.

Similarly, in ["Anju Chaudhary Vs. State of U.P.", (2013) 6 SCC 384], a two-Judge Bench of Supreme Court held that even in the cases where report under Section 173 (2) CrPC. is filed in the Court and investigation records the name of a person in Column 2, or even does not name the person as an accused at all, the Court in exercise of its powers vested under Section 319 CrPC. can summon the person as an accused and even at that stage of summoning, no hearing is contemplated under the law.

Again in ["Suman Vs. State of Rajasthan", AIR 2010 SC 518], a two- Judge Bench of Apex Court observed that there is nothing in the language of this sub-section from which it can be inferred that a person who is named in the FIR or Complaint, but against whom charge-sheet is not filed by the Police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence, the Court finds that such person has

committed an offence for which he could be tried together with the other accused. However, it is pertinent to note that there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but was not charge-sheeted. So while summoning a person who has been discharged by Court, court needs high degree of evidences against such person to use the power under section 319 CrPC.

As per Hardeep Singh case (Supra) the power under Section 319 CrPC. can be exercised against a person not subjected to investigation, or a person placed in the Column 2 of the Charge-Sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 CrPC. without taking recourse to provisions of Section 300 (5) read with Section 398 CrPC.

What Should Be Nature Of Evidence To Summon An Additional Person As Accused Under Section 319 CrPC?

It is true that a prima facie case is to be established from the evidence led before the Court and not necessarily tested on the anvil of Cross-Examination, but it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is that the evidences should be more than prima facie establishing the guilt as exercised at the time of framing of charge but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC.

In ["Sarabjit Singh Vs. State of Punjab", AIR 2009 SC 2792] Court held that, "Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section 227 of the Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction. When a higher standard be set up for the purpose of invoking the jurisdiction under Section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative."

Hence the nature of evidence to summon any person under Section 319 should be more than prima facie but less than 'Surety of conviction'. Moreover, the evidence on the basis of which additional accused is summoned, should be taken during the trial and not necessarily that witnesses who gave such evidence need to be cross examined. If by examination in Chief, some material evidences surfaced against any person who is not tried, then court is competent under section 319 CrPC to summon such person and to try him jointly.

In the case of ["Periyasami Vs. S. Nallasamy", 2019 SCC OnLine SC 379], Court held that under Section 319 of the Code, additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused.

Similarly the Honourable Supreme Court in {Criminal Appeal No. 395 of 2019 (arising out of SLP (Crl.) No. 4626 of 2017 titled "Sunil Kumar Gupta & Ors. Vs State of Utter Pardesh & Ors."} found an occasion to conclude, that before the Court exercises its jurisdiction in terms of Section 319 of CrPC it must arrive at satisfaction that the evidence adduced by the prosecution, if unrebutted, would lead to conviction of the persons sought to be added as the accused in the case.

Supreme Court Guidelines For Exercising Powers Under Section 319 CrPC:

In the case of ["Sarojben Ashwin Kumar Shah Vs. State of Gujarat", 2011 (74) ACC 951 (SC) (Para 16)], the Hon'ble Supreme Court has drawn following guidelines for exercising the jurisdiction by Courts under Section 319 CrPC:

(i) The Court can exercise the power conferred on it under Section 319 of the Code suo motu or on an application by someone.

(ii) The power conferred under Section 319 (1) CrPC applies to all Courts including the Sessions Court.

(iii) The phrase "any person not being the accused" occurring in Section 319 CrPC does not exclude from its operation an accused who has been released by the police under Section 169 of the Code of Criminal Procedure, 1973 and has been shown in Column 2 of the charge-sheet. In other words, the said expression covers any person who is not being tried already by the Court and would include person or persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the Court.

(iv) The power to proceed against any person, not being the accused before the Court, must be exercised only where there appears during inquiry or trial sufficient evidence indicating his involvement in the offence as an accused and not otherwise. The word "evidence" in Section 319 CrPC contemplates the evidence of witnesses given in Court in the inquiry or trial. The Court cannot add persons as accused on the basis of materials available in the charge-sheet or the case diary but must be based on the evidence adduced before it. In other words, the Court must be satisfied that a case for addition of persons as accused, not being the accused before it, has been made out on the addition let in before it.

(v) The power conferred upon the Court is although discretionary but is not to be exercised in a routine manner. In a sense, it is an extraordinary power which should be used very sparingly and only if evidence has come on record which sufficiently establishes that the other person has committed an offence. A more doubt about involvement of the other person on the basis of the evidence let in before the Court is not enough. The Court must also be satisfied that circumstances justify and warrant that the other person be tried with the already arraigned accused.

(vi) The Court while exercising its power under Section 319 of the Code of Criminal Procedure, 1973 must keep in view full conspectus of the case including the stage at which the trial has proceeded already and the quantum of evidence collected till then.

(vii) Regard must also be had by the Court to be constraints imposed in Section 319 (4) CrPC that proceedings in respect of newly added persons shall be commenced afresh from the beginning of the trial.

(viii) The Court must, therefore, appropriately consider the above aspects and then exercise its judicial discretion."

- Mr. Dinesh Singh Chauhan,
Advocate, High Court of J&K

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- Editor