



SJA e-NEWSLETTER

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From the Editor's Desk

In criminal Justice administration efficiency of every stakeholder and efficacy of Judicial processes determines the final outcome of trial proceedings. More skillful the stakeholders are and more efficacious the Judicial processes are, more would be the just decision of the criminal trial. A Public prosecutor is very important link between the outcome of the criminal Investigation and the outcome of the criminal trial. Therefore, a Public Prosecutor plays very important role in taking the outcome of criminal investigation to its logical conclusion through the judicial processes. He has to constantly remain vigilant to ensure that all the evidence, ocular and material, having any sort of bearing is brought on record to enable the court to appreciate every piece of evidence produced before it for scrutiny. A Public Prosecutor discharges the statutory function and the statute allows him a considerable amount of independence in the course of conducting criminal trial on behalf of the State. This onerous responsibility as such, has to be discharged with utmost diligence and the functions adjoined upon the Public Prosecutor are to be carried out with all the requisite attitude, skill and knowledge. After all the function of Public Prosecutor is not merely to see that every accused sent up for trial on culmination of the investigation is sent to jail but a public Prosecutor has to stand for justice, even if it were at the cost of discharge or acquittal of the accused. His endeavor should only be to render missionary service to the cause of justice. During the course of investigation of a criminal case there needs to have some consultation of the investigating officer with the Prosecutor on legal aspects, to ensure that evidence is collected in a lawful manner. Prosecutor can guide the investigator as to what nature of evidence would be required to process the case for judicial scrutiny. This consultative process would then ensure that all the evidence that is lawfully collected can stand scrutiny of trial, and it would also ensure that all useless cases are not burdened on the court process just for formality of trial. It would require process re-engineering to be introduced in the investigation and prosecution mechanisms. A greater degree of supervision and accountability needs to be put in place for instilling professional competence and skill enhancement in the stakeholders of criminal justice administration.

LEGAL JOTTINGS

“While deterrence through threat of death may still be a promising strategy in some frightful areas of murderous crime, to espouse a monolithic theory of its deterrent efficacy is unscientific and so we think it right to shift the emphasis, accept composite factors of penal strategy and not to put all the punitive eggs in the ‘hanging’ basket but hopefully to try the humane mix.”

**V.R. Krishna Iyer, J. in *Ediga Anamma v. State of A.P.*, (1974).
4 SCC 433, para 24**

CRIMINAL

Supreme Court Judgments

Criminal Appeal No. 2433/2020

S. Kasi v. State through the Inspector of Police Samaynallur Police Station Madurai District

Decided on: June 19, 2020

The question before the Hon’ble Supreme Court was whether the appellant due to non submission of charge-sheet within the prescribed period by the prosecution was entitled for grant of bail as per section 167(2) of the Code of Criminal Procedure. The Court observed that without submission of charge sheet within 60 days or 90 days as may be applicable, an accused cannot be detained by the Police. The provision gives due recognition to the personal liberty. The Supreme Court Held that the accused was entitled to default Bail even during the lockdown. Time generally extended by the Supreme Court by a judicial order, would not extend the time for filing charge sheet.

Criminal appeal no. 2183 of 2011.

Subhash Sahebrao Deshmukh v. Satish Atmaram Talekar and others.

Decided on: June 18, 2020

The Supreme Court on June 18 2020 held that the restoration of complaint by the Additional Session Judge was undoubtedly to the prejudice of the appealing or accused.

It was further held by the Supreme Court that in a revision petition preferred by the complainant before the High Court or the

Sessions Judge challenging an order of the Magistrate dismissing the complaint under the section 203 of the Criminal Procedure Code at the stage under section 200 of the Code, after following the process contemplated under section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, it was held that where the complaint has been dismissed by the Magistrate under section 204 of the Code, upon challenge to the legality of the said order being laid by the complainant in revision petition before the High Court or the Sessions judge, the person who are arraigned as accused in the complaint have a right to be heard in such revision petition. It was held that this is a plain requirement of section 401(2) of the Code.

It was however held by the Supreme Court that if the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is resorted to the file of the Magistrate and it is sent back for fresh consideration. The person who are alleged in the complaint to have committed the crime have, however, no right to participate in the proceedings not are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process.

Criminal Appeal No. 458 OF 2020

D. Devaraja v. Owais Sabeer Hussain

Decided on: June 18, 2020

This appeal is against a judgment passed by the Karnataka High Court, disposing of the application of the appellant under Section 482 of the Crpc for quashing an order dated 27-12-2016 whereby cognizance was taken on a private complaint against the accused without following the due procedure laid down under S. 197 of CrPC.

The short question involved in this appeal is, whether the learned Magistrate could, at all, have taken cognizance against the appellant, in the private complaint in the absence of sanction under Section 197 of CrPC read with Section 170 of the Karnataka Police Act, 1963, and if not, whether the High Court should have quashed the impugned order of the Magistrate concerned, instead of remitting the complaint to the Magistrate concerned and requiring the accused appellant to appear before him and file an application for discharge.

The Hon'ble Apex Court observed that the object of sanction for prosecution, whether under Section 197 of CrPC is to protect a public servant/police officer discharging official duties and functions from harassment by initiation of frivolous retaliatory criminal proceedings. This Court was of the view that continuance of the proceeding would amount to the abuse of the process of law.

Hon'ble Court held that the sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of CrPC.

Hon'ble Court observed that to decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of

an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.

Criminal Appeal Nos. 488-489 of 2017
Mustak@Kanio Ahmad Sheikh v. State of Gujarat

Decided on: June 18, 2020

This criminal appeal was filed against the judgment of Gujarat High Court which had affirmed the conviction order of Additional City Sessions Judge, Ahmadabad but had enhanced the sentence of 6 years rigorous imprisonment to 7 years rigorous imprisonment for the offences under section 307 read with section 114 of Indian Penal Code and Section 25(1)(B)(a) of the Arms Act read with Section 135(1) of the Bombay Police Act, for attempting to murder one Dr. Jaydeep Patel.

The Learned counsel for the appellant had submitted that the test identification parade failed to establish the appellant's identity as it was conducted contrary to the rules of evidence. But, the Supreme Court observed that the appellant had been identified by two eye witnesses, as was evident from the judgment and order of the Session court, affirmed by the High Court. Besides, the testimony of an injured victim is sufficient for conviction.

The Supreme Court opined that the evidence of witnesses has to be read as a whole. Words and sentences cannot be truncated and read in isolation. The Supreme Court reiterated that conviction cannot be based on erroneous identification and faulty Test Identification Parade (as was observed in *Iqbal and Another v. State of Uttar Pradesh*, 2015 (6) SCC 623. It observed that in the instant case, both the victim and the complainant had identified the appellant, so the Test Identification Parade could not be said to be erroneous so as to vitiate

the identification itself.

Furthermore, the appellant's counsel submitted that the weapon was recovered from a place which is accessible to all and therefore, such recovery cannot be relied upon (Citing *Salim Akhtar@Mota v. State of U.P (2003)5 SCC 499 Paras 9-12*). But, the Supreme Court observed that recovery of the weapon from underneath the sand in an open ground could not be said to be recovery from a place accessible to all.

The Supreme Court opined that the prosecution had successfully established the chain of events, which linked the appellant with the crime.

Criminal Appeal no. 403 of 2010
Somusundram@Somu v. the State Rep By Deputy Commissioner Of Police
Decided on: June 03, 2020

The factual matrix of the case is that one M.K balan, an ex-MLA of tamilnadu was abducted and killed by the accused persons after hatching criminal conspiracy. The trial court convicted the accused persons, affirmed by the High Court and when the matter landed in Supreme Court in an appeal the Supreme Court gave split verdict, which leads to constitution of 3 judge bench and the three judge bench while dismissing the appeal have laid down following principles:

- 1.The combined result of sec. 133 read with explanation (b) to sec 114 of the evidence Act is that the courts have evolved as a rule of prudence the requirement that it would be unsafe to convict an accused solely based on uncorrobrated testimony of an accomplice. The corroboration must be in relation to the material particulars of the testimony of an accomplice. Hon'ble Supreme Court further held that every material circumstance against accused need not be independently confirmed. Corroboration must be such that it renders the testimony of the approver believable in the facts and circumstances of the given case.
- 2.Court held that statement recorded under sec

164 CrPC cannot be used as a substantive piece of evidence and can be used only for the purpose of contradicting and corroborating him. Further held that purpose of statement recorded under section 164 CrPC is twofold, in the first place to deter the witness from changing his stand by denying the contents of his previously recorded statement and secondly to tide over immunity from prosecution by the witness under section 164 CrPC.

3.In para 83 the Supreme Court held that in cases of abduction followed by murder in appropriate cases can enable a court to presume that the abductor is the murderer and the principle is that after abduction the abductor would be in a position to explain what happened to his victim and if he failed to do so it is only natural and logical that an irresistible inference may be drawn that he has done away with the hapless victim.

Criminal Appeal No. 57 of 2013
Sonu @ Sunil v. State of Madhya Pradesh
Decided on: 29th May 2020

Rationale laid down by the Hon'ble Apex Court in the above case; In theft and Murder case no inference can be drawn that person in possession of theft property has committed the Murder.

In this case the Hon'ble Supreme Court has deliberated upon two important legal provisions of criminal law i.e. section 34 of IPC and section 114 of Indian Evidence Act.

One Bharosi Lal was killed at his residence in village Bilaua. He was residing alone. His son was informed by one person that his father has not opened the door for a day. On receiving such information he went to his father's residence and found that his father was lying dead. On his complaint an FIR was lodged and on the basis of investigation conducted, five persons came to be charged under sections 394, 397,460 and 302 read with section 34 of IPC. The appellant was convicted under sections 394, 460,302 read with section 34 of IPC and was

also convicted under section 11 & 13 of MP Adhiniyam. He was sentenced to death by the trial court. The High Court later commuted the death sentence and awarded life imprisonment and also enhanced the amount of fine.

Regarding the presumption under Section 114 of Evidence Act, the Apex Court from para 23 to 26 relied upon various judgments i.e. 1) Sunderlal Alias Sundera v. State of MP, 2) Sanvant Khan & Anr v. State of Rajasthan, 3) Baiju Vs State of MP and 4) Shri Bagwhan v. State of Rajasthan, and observed that according to illustration (a) of Section 114 of Indian Evidence Act, when a person is found in possession of a stolen article, only two inferences can be drawn that either he is the receiver of stolen property or he has committed the theft. It cannot be deduced that both theft and murder took place at the same time.

As far as liability under section 34 IPC is concerned the Hon'ble Supreme Court observed that section 34 proclaims the principle of vicarious criminal liability. The soul of the section, and the principle which underlies criminal liability for the acts of another therein, is the shared intention or the common intention to commit the offense. The common intention must be for the very offence which the accused is charged with. In this case, it is to be noted that though there is charge of causing death by strangulation, the finding is that the death was caused as a result of the injuries inflicted with the knife. The Court in this regard took notice of the views expressed by the Hon'ble Supreme in Hardev Sing & Ors v. State of Punjab, wherein it was laid down; the common intention must be to commit the particular crime, although the actual crime may be committed by anyone sharing the common intention. Then only others can be held to be guilty. The Supreme Court also referred to the tests laid down in the decision in Dharampal v. State of Haryana and Arun v. State of Tamilnadu.

The bench observed that as far as the appellant is concerned the only evidence against him was the recovery of the mobile phone and

there is discrepancy in the number, there was also a gap of two months between date of recovery and date of incident. The number of phones stolen from the deceased is not the same as the number of phones recovered from the accused. The appellant is not mentioned as one of the persons who used to visit the deceased though three of the other accused were named. Appellant acquitted.

[I&K High Court Judgments](#)

CRMC No. 497 of 2016.

Ravi Kumar Sharma v. Yoginder Singh

Decided on: June 23, 2020.

The petitioner invoked the inherent jurisdiction of the High Court under Section 561 -A CrPC seeking quashing of the criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881 before the Sub-judge Special Mobile Magistrate, Jammu on the complaint filed by the respondent on 26.05.2015 before the said court.

The allegation in the complaint was that the petitioner had borrowed a sum of Rs. 2,50,000/- from the complainant allegedly paid in cash by the respondent to the petitioner, for liquidation of which the petitioner after some time issued a cheque bearing no: 710470 dated 05.02.2015 drawn on Ellaquai Dehati Bank, Branch, Lower Roop Nagar, Jammu but was dishonoured vide memo dated 20.03.2015.

At the trial, the statements of the complainant/ respondent and on PW Yoginder Singh had been recorded.

The two grounds on which the petitioner sought to seek quashing of proceedings under 138, NIA, were ;

1. That as per the Income Tax Act, Sec. 266(ss) every loan beyond Rs. 2,00,000/- could be advanced only via cheque and not cash, and that the complainant/ respondent has nowhere mentioned that he had advanced it through the cheque, therefore the said loan was in violation of law, besides also stating that the allegation of loan being advanced in cash is also false.

2. That post Cheque Truncated Scheme (CTS) introduced by the RBI in the year 2011, all non – CTS cheques were invalidated by RBI, and were not supposed to be presented before the Banks for encashment from December 2013. Therefore the disputed cheque being non- CTS cheque having been allegedly dated 05.02.2015, could not have been accepted by the Bank, at the first place, so no question of its being dishonoured. He alleged that the said cheque is manipulated by the respondent himself.

However the petitioner himself has stated that the said cheque was issued to him by Surinder Sharma, (PW) in 2006-2007, whose statements are also on record.

Held that - From the pleadings and record it transpired that the cheque dated 05.02.2015 was a non- CTS Cheque issued to the petitioner by PW Surinder in 2006-2007, as was certified by the Bank Manager, and is admitted by the petitioner and if that is the case then the advance of the loan of Rs. 2,50,000/- is also not disputed because PW Surinder Khanna admitted this fact also in his statement, besides stating that accused/ petitioner has to pay many other people from whom he had borrowed money. However that being a matter of evidence could not be gone into by the High Court under 561-A CrPC. Further the petitioner also did not deny his signatures on the said cheque.

The Hon'ble High Court thus dismissed the petition.

CRMC No. 27/2011

Nayeem Akhtar Andrabi v. The Public Prosecutor and another

Decided on: June 15, 2020

The Hon'ble High Court of J&K in the above titled case held that, the inherent powers cannot naturally be invoked with respect to any matter covered by specific provisions of the Code of Criminal Procedure, it is only where the High Court is satisfied either that an order passed under the code of Criminal procedure would be rendered ineffective or that the process of any court would be abused or that the ends of

justice would not be secured, and in such an eventuality the High court can and must exercise its inherent power under section 482 Criminal Procedure Code. This power can be invoked only in an event when aggrieved party is being unnecessarily harassed. The power under section 482 CrPC., is not intended to scuttle justice at threshold but to secure ends of justice.

CRAA No. 10/2006

State of J&K v. Ramprakash & Ors.

Decided on: June 12, 2020

The Hon'ble High Court of J&K while dealing with the present appeal has held that the trial court has rightly appreciated the evidence and made a correct decision of acquittal.

The prosecution alleged that one Anita Devi (now deceased) was married to Rajpal in 1988 and two children were born out of this wedlock. Uptill 1996 Anita apprehended her husband's illicit relation with his elder brother's wife Champa Devi due to which she was subjected to ill treatment which forced her to commit suicide in 1996. A case was registered accordingly and the charges were framed u/s 306 and 498-A of IPC but the trial court acquitted the accused.

The prosecution went in appeal against the acquittal order of the trial court on the ground that the trial court erred in appreciating the evidence produced by the prosecution correctly.

The first question which arose in the appellate court was that whether there was any abetment or inducement to the deceased to commit suicide? The appellate court held it in negative by observing that there is no reliable evidence regarding the allegations of her husband's extramarital relation as no one spoke about it prior to her death. The prosecution admitted of the mental imbalance (problem) of the deceased and hence the court observes that she was a weak minded woman having suicidal tendency. Reference here was made to Hon'ble Supreme Court's decision in Ganguly Mohan Reddy v. State of Andhra Pradesh, 2010 (1)

SCC 750 and Amalendu Pal alias Jhantu v. State of West Bengal, 2010 (1) SCC 707, their Lordships observed -Abetment involves a mental process of instigating a person in doing of a thing without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

The second question pertains to cruelty u/s 498-A. The court observed that the prosecution has not been able to provide any kind of concrete evidence to substantiate its claim.

Owing to the above reasons, the Appellate court held that there is no ground for interference in the judgment of acquittal passed by the Trial court which is well reasoned and as such the appeal is dismissed.

CRMC No. 101/2014

Thaker Lal and Others v. Dharam Chand

Decided on: June 12, 2020

In the instant case, the petitioner filed a petition for quashing of the order dated 13th December, 2013, on the ground that the trial court has not taken into consideration the police report stating that the complaint filed by the respondent is counter blast and the allegations are bogus because on the report of Pawan Kumar S/o Thaker Lal, a case has been registered regarding the occurrence that took place on the midnight of 16/17th of Nov. 2007 and respondents Dharam Chand, wife Chanchla Devi and his son Chetan Sharma have been charged under Sections 341/323/326/34 RPC by order dated 3rd May, 2008. Moreover, earlier the cognizance was taken by the trial court only under Sections 323 and 504 RPC against the Accused Nos. 1 to 3. But now all the accused persons have been summoned after the cognizance was taken.

Hon'ble Court has held that since taking cognizance of the complaint is a judicial order and the learned CJM has considered the allegations made in the complaint and the statements of the complainant and one witness, recorded prior to 02.04.2008, therefore, no fault

can be found with the taking of the cognizance and issue of process. The main grievance of the petitioners is that it is a counter blast. However, considering the fact that the Dharam Chand, filed the complaint on 20th Nov. 2007 in the Court of learned Chief Judicial Magistrate, Udhampur, which was forwarded to Station House Officer concerned under section 156(3) Cr.P.C and the complainant again approached the Court on 15th Dec. 2007 that the police has not taken any action which was also sent by the trial Court to the In-charge Police Station, Udhampur for report. Not only this, he again filed an application on 8th Feb. 2008, complaining that no action was taken on his earlier complaint. The complainant was pursuing the matter enthusiastically.

The Court has observed that the very important aspect of the case is that the cause of occurrence is admitted and the parties in both the cases are same, the time of occurrence is midnight. The only question is whether the occurrence took place as alleged by the police or as per the complainant at his house. There are all matters of appreciation of evidence of the witnesses. The occurrence has taken place but what is the cause of its origin can be decided only after evidence is produced. So there is substance in the case but the question is which Court has to try the case.

Furthermore, the court has held that so far as the delay is concerned, it is not on the part of the complainant, he has explained the delay by filing the copies of the complaint and the applications submitted from time to time. It is a matter of appreciation of evidence as to which party was aggressor and who the aggrieved party was.

CRM(M) No. 52-A/2020

Mohd Shafi Dar v. Union territory of Jammu & Kashmir and others

Decided on: May 27, 2020

The Hon'ble High Court reiterated that while exercising powers under section 482 of CrPC the Court has to keep in mind that it

should not ordinarily embark upon an enquiry whether the evidence in question is reliable or not. This is the function of the investigating agency / trial court.

In this case the petitioner challenges the FIR No. 04- 2020 dated 08-03-2020 u/s 5(1) (d) r/w section 5(2) P .C Act and section 465, 467, 471, 120-B RPC ACB Srinagar. The preliminary enquiry was conducted by Anti corruption Bureau Jammu into the allegations that the petitioner -chairman of J&K State Cooperative Bank has fraudulently sanctioned loan to the tune of Rs 250 Crore in favour of non-existent society named River Jehlum Cooperative Housing Colony at Shivpora, Srinagar which was not a registered with registrar cooperative society J&K.

The Hon'ble High Court relying upon the judgment passed by the Hon'ble Supreme Court in State of Haryana v. Bhajan Lal, AIR 1992 SC 604, and Pastor P. Raju v. State of Karnataka, AIR 2006 SC 2825, held that the petitioner fails to make out a case for exercise of inherent powers under section 482 CrPC to quash the FIR. The case being under investigation and in the process of collecting evidence cannot be stopped and hence dismissed the petition.

CrIa(AD) No. 10/2019

Syed Saiqa v. Union Territory of J&K and Others;

Decided on: May 29, 2020

The Hon'ble High Court disposed of an appeal against the order of Designated NIA Court, Srinagar (whereby the bail application of applicant was rejected), along with a fresh bail application.

On 28.10.2018, a body was recovered by Pulwama Police and FIR No. 288/2018 was registered. The charge sheet filed by police mentioned that one Ansarul Haq along with the appellant, had hatched a conspiracy with terrorists to kill SI Imtiyaz Ahmad Mir. From CDRs, CCTV footages and statements, offences under Section 302 RPC read with Section 7/27

Arms Act, Sections 13 and 18 UAPA and Section 120-B RPC were found established against Ansarul Haq and Saiqa, who were taken into custody on 22.11.2018 and 05.12.2018 respectively. The Learned Principal Sessions Judge, Pulwama who was designated NIA Judge, vide his order dated 27.02.2019 admitted the appellant to interim bail on medical grounds and on 25.03.2019, on account of SRO 149 dated 01.03.2019, the case and application was transferred to the designated NIA Court, Srinagar who rejected the bail application after hearing both parties on 28.09.2019. Ld. Special Judge, NIA came to the conclusion that taking into consideration the nature and gravity of the offence, the larger interest of the State coupled with security of the State, the accused is not entitled to concession of bail. Further, it was observed by him that the medical needs of applicant can be fulfilled in custody.

Qua the merits of the case, the Bench, after perusing the record, and taking note of provisions of clause (i) of Sub-section (1) of Section 437 CrPC., Section 43-D of UAPA Act, 1967 and judicial guidelines of Apex Court in NIA v. Zahoor Ahmad Shah Watali, 2019 (5) SCC 1, held that there are reasonable grounds to believe that the accusations made against the appellant are prima facie true and as such, the appellant has failed to make out a case for grant of bail in her favour. Qua the health condition of the appellant/accused, the Bench took note of the report of Medical Board dated 26.04.2019 and concurred that the ailment is not of such nature which cannot be taken care by medical facility in the jail.



“Independence, impartiality and fairness are qualities which have to be nurtured and developed and cannot be acquired overnight. The independence of members discharging judicial functions in a tribunal cannot be diluted.”

**R.V. Raveendran, J. in *Union of India v. Madras Bar Assn.*,
(2010) 11 SCC 1, para 114**

CIVIL

Supreme Court Judgments

Civil Appeal No. 2697 of 2020

Mohd. Inam v. Sanjay Kumar Singhal & Ors.

Decided on: June 26, 2020

The Supreme Court in the present case reiterated that no High Court can sit as a “court of appeal” and convert itself into one while hearing a petition under Article 227 of the Constitution. The Court was hearing an appeal challenging the judgment and order passed by the learned single judge of the Uttarakhand High Court, wherein the High Court allowing a petition under Article 227 of the Constitution filed by the landlord, had set aside the order of the District Judge on the ground that the District Judge had committed illegality in entertaining the joint revision filed against the vacancy order as well as the final order.

It was held that the learned single judge of the High Court has failed to consider correct position of law on this point which is enunciated by three judges’ bench judgment of the apex court in *Achal Misra v Rama Shanker Singh and others* (2005) 5 SCC 531, wherein it was held that an order notifying a vacancy which leads to the final order of allotment can be challenged in a proceeding taken out to challenge the final order, as being an order which is a preliminary step in the process of decision making in passing the final order. It was further held that in a revision against the final order of allotment which is provided for by the Act, the order notifying the vacancy could be challenged.

Placing reliance on a catena of cases from *Satyanarayan Laxminarayan Hegde & Ors v. Millikarjun Bhavanappa Tirumale* (1960) 1

SCR 890 to *Celina Coelho Pereira (Ms.) and others v Ulhas Mahabaleshwar Kholkar and others* (2010) 1 SCC 217, Supreme Court observed:

“It is a well settled principle of law, that in the guise of exercising jurisdiction under Article 227 of the Constitution of India, the High Court cannot convert itself into a court of appeal. It is equally well settled, that the supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and seeing that they obey law.”

Explaining powers under Article 227 further, Court noted:

“It has been held, that though the powers under Article 227 are wide, they must be exercised sparingly and only to keep subordinate courts and Tribunals within the bounds of their authority and not to correct mere errors.”

Civil Appeal No. 2624 Of 2020

Rajendra Singh And Others v. National Insurance Company Limited And Others

Decided On: June 18, 2020

These appeals have been preferred against the judgment of High Court in which both appeals for enhancement of compensation awarded by the MACT in two different awards were dismissed. The deceased were a house wife and a minor child.

The Apex Court observed that how the passengers who were in the horse cart can be held liable in any manner for contributory negligence. The deduction of 50% towards contributory negligence in both the appeals was held to be totally unjustified and unsustainable. The finding with regard to contributory negligence against both the deceased was set

aside.

Relying on judgment of *Lata Wadhwa v. State of Bihar* (2001) 8 SCC 197, the Apex Court enhanced the compensation in first appeal to ₹ 11,96,000/-.

Civil Appeal No. 2632 of 2020

Surendra Kumar Bhilawe v. The New India Assurance Company Limited

Decided on: June 18, 2020

Prior Proceedings

Surendra Kumar Bhilawe claimed the amount of insurance from the defendant company before the District Consumer Disputes Redressal Forum, Raipur. The District Forum found the Company liable to pay the claimed amount with interest and compensation.

Defendant Company appealed before the Chattishgarh State Consumer Disputes Redressal Commission Pandri, Raipur and the appeal of the Company against the said order of the district forum was dismissed and upheld the order of the State Commission.

Defendant Company thereafter filed a revision petition before the National Consumers Dispute Redressal Commission, New Delhi wherein the national commission set aside the orders passed by both the Forums the District Forum and the State Commission respectively and dismissed the complaint filed by the appellant.

The Appellant was the owner of the truck which covered an insurance policy by the Respondent company. The truck with the Ammonia Nitrate loaded met an accident and was extensively damaged. The accident was reported three days after the happening and then the appellant lodged a claim with the insurer. The insurer's independent Surveyor assessed loss of Rs. 4,93,500/-. However, instead of reimbursement of loss, the insurer issued a show cause to the Appellant as to why the claim of the Appellant should not be repudiated, on the allegation that, he had already sold the said truck before the date of accident. After due reply to

the show cause letter there was no reply from the side of the insurer. The Appellant again filed a motor claim but insurer refused to accept.

The Supreme Court held that the registered owner continues to remain owner and when the vehicle is insured in the name of the registered owner, the insurer would remain liable notwithstanding any transfer, would apply equally in the case of claims made by the insured himself in case of an accident. If the insured continues to remain the owner as per the definition provided by section 2(30) of The Motor Vehicles Act 1988, the insurer cannot evade its liability in case of an accident. The court comprehensively dealt with the definition of owner as defined under The Motor Vehicles Act, 1988 "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement" and held that the appellant remained the owner of the said truck on the date of the accident and the insurer could not have avoided its liability for the loss suffered by the owner on the ground of transfer of ownership.

Civil Appeal No. 2617 of 2020 (arising out of SLP (C) No. 9886 of 2019)

Siri Chand (deceased) THR. LRS. v. Surinder Singh

Decided on: June 17, 2020

Appeal was filed before the Hon'ble Supreme Court challenging the judgment of the Punjab and Haryana High Court dated September 9, 2018, in which the Appellate Court set aside the order of the Rent Controller. Appellate Court decided that the rent deed is compulsorily registrable under section 17(1)(d) of the Registration Act on the basis of a clause of rent deed mentioning the fact that the tenant

undertook to make the payment of rent money by increasing 10 percent each year. Therefore, on the basis of this clause, the Appellate Court decided that the rent deed is executed for more than a year as period was not clearly mentioned in the deed.

Hon'ble Supreme Court decided that when the rent deed does not specify the period of tenancy then the other conditions and intention of the parties are to be considered to find out the true nature of the rent as far as its registration is concerned. Relying on Kashi Nath and Ors. v. Abdur Rehman and Ors. AIR 1992 All. 54 and Mengh Raj v. Nand Lal and Ors AIR 1939 Lah. 558, as well as by applying the rule of construction provided under section 106 of Transfer of Property Act, Hon'ble Supreme Court observed that the rent deed in the present case mentioned that if rent is not paid up to 5th of the month, then the owner shall have the right to get the tenant evicted and an additional clause is there if owner is in need of shop then the owner by serving a notice of one month can get the shop vacated. Both these clauses clearly express that the rent deed is meant for the month to month tenancy. Whereas the promise of increasing the rent by 10 percent each year is a contingent condition depending upon the fact that if tenancy is continued for more than a year. Moreover, the rent deed does not confer any right to the tenant to continue in tenancy for more than a year.

Civil Appeal No. 2612 Of 2020

Smt. Sangita Arya & Ors v. Oriental Insurance Co. Ltd. & Ors.

Decided on: June 16, 2020

The appellant by this appeal challenged impugned judgment dated 22.07.2016 passed by the High Court by which the total compensation awarded to the Claimants/appellants was reduced from Rs. 12,55,000 to Rs. 5,81,440.

The Apex Court observed that the learned Single Judge of the High Court erroneously assumed that the deceased was a

Government servant, and running a parallel business by plying taxis. The High Court also disregarded the ITR of Year 2007 which was filed prior to the death of the deceased. The Apex Court held that the High Court had not awarded any amount towards future prospects, as mandated by the judgment of the Constitution Bench in National Insurance Company Limited v. Panay Sethi & Ors.

The Apex Court enhanced the compensation to ₹17,50,000 with interest @ 7.5% by exercising jurisdiction under Article 142 of the Constitution of India in order to do complete justice between the parties even the appellants/claimants did not file appeal against the award of MACT before High Court.

Civil Appeal No. 2558 of 2020

United India Insurance Co., Ltd., Campo Towers, Mangalore, Rep. by Its Deputy Manager v. M.H. Uma Maheshwari & Others

Decided on: June 12, 2020

The Supreme Court decided an appeal arising out of the judgment and award passed by the MACT, Mangalore. By the impugned award, the Tribunal had awarded compensation of Rs.65,60,347/- to the claimants which was later on reduced by the High Court. In this case the 50-year-old husband of Appellant no. 1 was travelling in a car when he met with an accident due to the rash and negligent driving by the driver. Thereafter he succumbed to his injuries.

It was held by the Supreme Court that the compensation awarded by the Tribunal is just and reasonable and the same was interfered with by the High Court without any valid grounds. The Supreme Court set aside the judgment passed by the High Court and restored the award by the Motor Accident Claims Tribunal.

It was observed and held that the deceased was a 50 year old man and his untimely death has resulted in loss of dependency to his family. Therefore, the bench

upheld compensation allowed by MACT under the heads of loss of dependency, loss of consortium, loss of love and affection, transportation of dead body and funeral expenses based on the age and income of the deceased. Further held that when the age of the deceased was considered in the group of 40 to 50 years, the High Court has committed error in granting only 15% towards future prospects instead of 30%. As per the earlier judgments of the Court primarily the age group is to be considered. It was held that considering the age group as 40 to 50 years, when the multiplier of 13 is maintained by the High Court, there is no reason or justification for reducing the compensation by granting 15% towards future prospects.

Civil Appeal No. 2551 of 2020

Sri Anthony alias Anthony Awamy v. The Managing Director, K.S.R.T.C.

Decided on: June 10, 2020

The Supreme Court in this case held that motor accident compensation for loss of future earnings should not be elusive but has to be proper and just to enable the claimant to live a life of dignity. The Apex Court disapproved a High Court judgment wherein the percentage of functional disability of a man who had to amputate lower limb due to an accident, was reduced without any reasoning. It was observed that the earning capacity of the appellant, who was a painter, stood completely negated and not just reduced. The Court referred to the precedents *Raj Kumar v. Ajay Kumar* and another, 2011 (1) SCC 343, and *Nagarajappa v. Divisional Manager, Oriental Insurance Company Limited*, 2011 (13) SCC 323, while reassessing the compensation.

Thus, the compensation was recalculated by the Court as Rs 11,97,350 as against the sum fixed by High Court as Rs.5,10,350.

Civil Appeal No. 2528-29 of 2020

Addisery Raghavan v. Cheruvalath Krishnadasan

Decided on: June 08, 2020.

In the instant case, the landlord filed eviction petition on three grounds namely, arrears of rent, bonafide requirement for additional accommodation for the landlord's business and material damage to the premises under Kerala Rent Control Act. Trial court decreed eviction under the second ground i.e. Section 11(8) of the Rent Control Act. The first appellate court reversed the order of the Rent Control Court and later in revision; the High Court reversed the order of the appellate authority and restored the decision of the Rent Control Court.

The Apex Court held that the High Court has interfered with the findings of fact by the First Appellate Authority without any perversity or misappreciation of evidence, which would clearly be outside the revisional jurisdiction of the High Court.

While considering the said contention, the bench approved the view of the court in *Rukmini Amma Saradamma v. Kallyani Sulochana* and also noted the observations in the judgment *Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh*:

“We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappraisal of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if

allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

Civil Appeal No. 2527 of 2020
Chandrakanta Tiwari v. New India Assurance Company Ltd. & Anr.
Decided on: June 08, 2020.

This appeal was filed by the appellant challenging the impugned order dated: 28-12-2016 whereby Hon'ble High Court of Uttarakhand set aside the award passed by MACT, Dehradun. The Hon'ble Apex Court allowed the appeal setting aside the impugned order and also partially modified the order of the Tribunal.

The Apex Court has held that – claimant need not plead or establish that the death in respect of which claim was made, was due to any negligence or default of the owner of the vehicle or any other person under section 163A MV Act.

Also held that - the multiplier to be applied for calculating the compensation should

be on the basis of victim's age and not on the basis that of the claimant.

Civil Appeal No. 2514 Of 2020.
Shakti Bhog food Industries Ltd. v. The Central Bank of India & Anr.
Decided on: June 05, 2020.

Order 7 Rule 11 (d) Code of Civil Procedure- The whole plaint has to be read to find out the cause of action and express bar of limitation in filing the suit. Written Statement cannot be considered. If on an entire and meaningful reading of plaint, it is found that suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue. Powers under Order 7 Rule 11 can be invoked.

Cause of action is bundle of facts and has to be seen from the averments made in the plaint. Limitation is a mixed question of Law and fact. In the present suit, rendition of accounts with recovery of excess amount charged by the bank was claimed. The trial Court, first appellate Court and the High Court in second appeal dismiss the suit on the ground that suit was time barred in view of Article 113 of Limitation Act, 1963.

The Apex Court set aside the judgments and restored the plaint for its disposal under law. The Apex Court in the judgment settled the point regarding distinction between right to sue “first” accrues and right to sue accrues. The distinction as made in Article 58 and Article 59 where right to sue first accrues and residue Article 113 where right to sue accrues have been elaborated. In the present case the trial Court and first appellate and High Court dismiss the suit on the ground that that right to sue accrued in favour of the plaintiff on 31st December, 2002 and suit filed on 23rd February, 2005 was time barred.

The Hon'ble Supreme Court perused the entire plaint including the cause of action and held that cause of action accrue to the plaintiff only when the defendant bank vide letter dated 19th September, 2002 inform the plaintiff that

everything has been done according to rules and further accrued when the plaintiff served the notice on the defendant.

Civil Appeal No. 2562 of 2006

Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd.

Decided on: June 02, 2020

Dispute arose between parties in a contract between parties respecting supply of copper concentrate to respondent. Clause 14 of Agreement was invoked by Centrotrade (appellant), which mandated 2 tier arbitration (first tier- in India and 2nd tier in London under International Chamber of Commerce). The Indian arbitration resulted in NIL award but in 2nd tier ICC appointed arbitrator delivered award in favour of appellant. The appellant sought enforcement before Calcutta HC in which the respondent put the following objections:

- a. The arbitration clause was invalid,
- b. The ICC award is not a foreign award, and
- c. The Respondent was not given proper opportunity to present its case before the second Arbitrator.

The single Judge dismissed petition of respondent filed under section 48 of 1999 Act and held award to be executable. However, his decision was set aside by DB of Calcutta HC which held that two arbitral awards in India and London were mutually destructive for each other and cannot be enforced.

Validity of arbitration clause was earlier upheld by Supreme Court in Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd. (2006) 11 SCC 245. Validity of a two-tiered arbitration clause as in the particular case, was held to be valid. 3 Judges Bench of Supreme Court in Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd.(2017) 2 SCC 228, also decided the issue relating to validity of the two-tiered arbitration clause and permissibility under Indian Laws, in affirmative. However, the matter

was listed with respect to issue of enforceability of foreign award under section 48 of the Act.

The Supreme Court considered the issues:

1. Whether the Respondent was given proper opportunity to present its case before the ICC arbitrator?

2. What is meant by “otherwise” under Section 48(1)(b) of the Act – is it restrictive or expansive in its meaning?

With respect to issue no. 1, the Apex Court referred to various judicial decisions-Vijay Karia v. Prsymian Cavi E Sistemi SRL 2020 (3) SCALE 494 (and the decisions referred to in this judgment), Sohan Lal Gupta v. Asha Devi Gupta (2003) 7 SCC 492.

In Vijay Karias case, the Apex Court had held that:

(i) The expression “otherwise unable to present its case” under Section 48 (1) (b) of the Act must be interpreted narrowly following the words preceding it.

(ii) Elaborating on it, the Court held that the test for determining whether a party was unable to present his case. For illustration-denial of opportunity for rebuttal would render the foreign award unenforceable.

(iii) The Section 48 (1) (b) of the Act shall apply during the hearing stage and not after the final award is passed by the Tribunal.

The Apex Court upheld the findings of Learned Single Judge of Calcutta HC and held that the respondent had knowledge of proceedings and the non-participation was deliberate. Moreover, the reply of respondent to arbitrator, being devoid of necessary documents, was still looked into by the arbitrator and decided on merits. The Court granted the award in favour of appellant.

As far as second issue is concerned, the Hon’ble Apex Court held that the term “otherwise” appearing in Section 48(1)(b) of the Act cannot be read ejusdem generis with the preceding words, as it would have an expansive effect:

“Given the context of the New York Convention, and the fact that the expression “otherwise” is susceptible to two meanings, it is clear that the narrower meaning has been preferred, which is in consonance with the pro-enforcement bias spoken about by a large number of judgments referred to in Vijay Karia (supra).”

It was also observed that the expression “was otherwise unable to present its case” cannot be given wide and expansive means and the same would have to be read in the context and colour of words preceding the said phrase.

[J&K High Court Judgments](#)

OW104 No. 48/2013

Arti Sharma v. Deepak Kumar and Another Decided on: June 25, 2020

The case deals with Order XXXII of the Code of Civil Procedure, 1908. Respondent No.1 filed a civil suit against the petitioner and respondent No. 2, her mother, seeking a declaration, that respondent No. 2 is not his wife and the petitioner is not his daughter and, therefore, they are not entitled to any maintenance from him or his father, thus, the order of maintenance passed by the Sub-Judge, in a petition under Section 488 Cr.P.C. is a nullity. As the petitioner was a minor, she was represented by her mother in this suit.

During the pendency of the suit, an application was filed by respondent No. 2 for conducting a DNA test to ascertain the paternity of the petitioner herein, but the same was dismissed. This order was challenged by way of a petition under section 104 of the Constitution of J&K and the same was too dismissed vide order dated 29.01.2013.

The petitioner filed another application seeking leave of the Court to personally prosecute the case and to produce all the witnesses, on the ground that since she was minor at the time of institution of the suit and now after attaining the age of majority, she can

take care of her interest, which was prejudiced due to the evidence led by defendant No. 1, her mother. The only ground pleaded before the trial Court for prosecuting the case was that the Court was under an obligation to appoint a guardian and since the same was not appointed, therefore, she has a right to produce her defence.

The Hon’ble High Court observed that the petitioner was represented by her mother throughout the proceedings. There was nothing on record to show how the interest of the petitioner was prejudiced by her mother who was defending the suit for last 10 years on her behalf. The petitioner has also failed to show that there was any failure to safeguard interest of the petitioner.

The Hon’ble High Court of J&K relied on two authorities; Mushtaq Ahmad Mashki v. Mohd. Shafi Bhat & ors. AIR 1983 JK 44 and Habib Teli & ors. v. Ali Teli & anr. AIR 1968 (J&K) 9.

It was held that the trial court had rightly rejected the application of the petitioner, as there was no substance in the same.

CMAM No. 52/2010

National Insurance Company Ltd. v. Umar Ghulam Zargar & Ors.

Decided on: June 25, 2020

In this petition, the appellant-insurance company being aggrieved by the quantum of compensation awarded by the Tribunal filed the appeal on the grounds that the compensation has been awarded without any basis and without any independent evidence on record and that penal rate of interest could not have been awarded, as the said practice has been deprecated by the Hon’ble Supreme Court. The short question that is involved in the instant appeal was how to assess the just compensation in a case of instant nature

The learned counsel for the appellant argued that the Tribunal has not been justified in awarding interest at a higher rate on the awarded sum in case of default in payment of awarded

sum within a particular period. According to the learned counsel, such direction amounts to awarding of penal interest, which is not statutorily envisaged and prescribed. The Tribunal had awarded interest at the rate of 6% per annum from the date of filing of the claim petition till the realization of the awarded amount with a further stipulation that in case the amount is not paid within a period of two months, the claimant shall be entitled to interest at the rate of 9% from the date of the default.

The Hon'ble High Court laid down that "it is the duty of the Tribunal to ensure that the compensation paid to the claimant is just and reasonable. The court also referred to the decision of the Hon'ble Supreme Court in National Insurance Company Ltd. v. Keshav Bahadur reported in AIR 2004 SC 1518. In the case the Hon'ble Supreme Court has, while dealing with this aspect, observed as under:-

“Though Section 110-CC of the Act (corresponding to Section 171 of the New Act) confers discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation.

No express or implied power in this regard can be culled out from Section 110-CC of the Act or Section 171 of the retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being

enforced, in the manner directed by the Tribunal”

Accordingly the Hon'ble High Court held that it is clear that the Tribunal has, while awarding enhanced rate of interest in case of default in payment of the awarded sum exceeded its jurisdiction and to this extent, the award deserves to be modified.

CMAM No. 51/2008

National Insurance Co. Ltd. v. Javaid Ahmad Dar and others.

Decided on: June 24, 2020

The question involved in this appeal was whether, on the basis of the evidence on record, the Commissioner was justified in recording the finding that injured was travelling as a labourer in the vehicle in question at the time of the incident. If, it is shown that he was travelling as a labourer, then the insurance company as per its own admission, is liable to pay the compensation to the injured.

Dismissing the appeal and upholding the award passed by the Commissioner, Workman's Compensation Act, Pulwama, it was held that assuming for a moment that the injured was travelling as second driver in the vehicle in question at the relevant time, even in that eventuality the appellant insurance company cannot escape its liability from paying the compensation to the injured because admittedly one driver is covered under the terms and conditions of the policy of insurance and no other person has, in the capacity of driver, made claim for compensation against the appellant company. It is not the case of the insurance company that a particular driver alone was covered under the terms of the policy of insurance. Therefore, in any case, the insurance company is obliged to indemnify the insured in respect of injuries or death that may have occurred to any one of the drivers of the vehicle in question. On this ground also the claim of the injured against the insurance company cannot be declined by it.

CM No.7658/2019

Union Territory of J&K & Ors. v. Mehmooda Shaheen Medical Trust Hospital

Date of Order: June 09, 2020

An appeal was preferred against the order dated 12.10.2019 passed by learned Additional District Judge, Srinagar wherein the right of the applicant to lead evidence was closed in an application for condonation of delay. An *ex parte* decree was passed against the applicant wherein the court allowed the damages to the tune of Rs.20/ lacs in favour of the plaintiff (respondent herein) and against the defendants (appellants herein) along with interest @ 6% per annum from the date of decree till realization.

An application under Order 9 Rule 13 of the Code of Civil Procedure was filed subsequently by the defendant along with an application seeking condonation of delay, on coming to know about expert decree. There was a delay of 110 days in preferring the application under Order 9 Rule 13 CPC. On 9th May, 2013, the Court below ordered filing of objections. The objections came to be filed and the court below listed the application for arguments on 6th of July, 2018. What is important to notice here is the fact that even when the application for condonation of delay along with application under Order 9 Rule 13 CPC was filed as early as in the year 2013, no effective orders were passed by the court from 2013 till 6th of July, 2018, when the objections were filed. It thus took the court five years to even pass orders for calling objections.

For the first time, vide order dated 11th of June, 2019, 40 days time was granted to the appellants to lead evidence which was the only effective opportunity granted from 2013 onwards. It was ordered on 11th of June, 2019, that in case evidence was not lead in support of the application for condonation of delay, the right to lead evidence would stand closed. On

4th of July, 2019, Government disengaged all government advocates and, therefore, no evidence could be led in the application for condonation of delay for which the counsel had pleaded for grant of an opportunity. The next date was fixed on 9th of August, 2019, the Presiding Officer is stated to have been on leave. On 17th of September, 2019, the applicant was present but the non-applicant was absent and finally on 12th of October, 2019, the order impugned came to be passed.

The Hon'ble High Court observed that the order impugned passed by the court below is unsustainable in law, inasmuch as it had ignored the fact that the right of the appellants could not be prejudiced only on account of the delay in disposal of the application for condonation of delay since 2013, when the record clearly reflects that the court below itself had taken as many as five years from 2013 to 2018 in calling the objections in the application filed by the appellants. Moreover, the court below ought to have appreciated the fact that in view of disengagement of the Government counsel and till such time the panel was constituted, some delay would be warranted in leading the evidence.

Thus the Hon'ble High Court held that the applicant/appellant herein was not provided an adequate opportunity to lead evidence in the application for condonation of delay for setting aside the *ex parte* decree and accordingly the appeal was allowed and the order was set aside.

MA No. 71/2008

Sagar Massieh & Ors. v. Collector (Assistant Commissioner) Revenue and others

Decided on: June 05, 2020

The land of the appellants measuring 02 Kanals 9½ Marlas falling under Khasra No. 775-min, Khata No. 516 situated at village Chakroi, Tehsil R. S. Pura was acquired by the State for construction of receiving station by JKPDD.

Notification under Section 4 of the J&K Land Acquisition Act was issued by the Collector on 08.06.2000 and award was issued on 27.07.2001. Market rate was fixed by the Collector at Rs.45,000/- per kanal.

The statement of one Sagar Massieh (appellant), was recorded on 02.11.2004 by the Reference Court. He said that he demanded Rs.7,000/- per marla although the market rate of the land is Rs.10,000/- per marla. Respondent's witness, Satish Kumar, Assistant Revenue Attorney was silent on the question of market value. The reference Court framed one issue pertaining to the question of adequacy of the compensation and dismissed the case on the ground that the amount was decided on basis of field assessment and expert opinion.

The Collector made a reference to the District Judge as the appellants were not satisfied with the compensation awarded but the same was dismissed vide his order dated 08.01.2008. The present appeal is filed under section 52 of the said Act.

The Hon'ble High Court observed that the Collector has admitted that the land has great commercial value and that Tehsildar has recommended its value is Rs. 2 lakh per kanal, still he fixed the value of the land at Rs.45,000/- per kanal without giving any reason. The Court cited its own judgment in Collector Land Acquisition v. Ali Mohd. Bhat & ors., AIR 1981 J&K 38, and held that the said assessment of Collector is bad as he has not stated reasons for the same.

However, the Court held that in light of Section 25 of The State Land Acquisition Act, the petitioner is not entitled to get 10,000 per marla as he had himself asked for 7,000 per marla. Finally, the Court ordered payment of compensation @ Rs.1,40,000/- per kanal with 6% interest from the date of acquisition of the land.

MA. No. 144/2018

HDFC Ergo General Insurance Company Ltd & Anr V. Mohan Singh & Ors
Decided on: June 03, 2020

In this appeal appellant challenged the Award dated 10-05-2018 passed by the tribunal primarily on the following grounds

1. That the vehicle was driven by the person who did not possess the valid driving licence. The learned counsel for the appellant also questioned the correctness of the judgment in Mukund Dewangan v. Oriental Insurance Company Ltd AIR 2017 S.C. 3668.
2. That the tribunal awarded loss of future income for which there was neither any evidence nor any ground because the accused has joined the post on which he was working at the time of accident.

Hon'ble High Court held that an award of Rs22,93,200 by the tribunal on account of future loss of earning capacity by applying the multiplier of 13 relying on the judgment of the Constitution Bench of supreme court in Pranay Sethi's case para 59(3) which applies in case where deceased is having permanent job and is below the age of 40 years. This para does not contemplate future income of a Govt. servant who continues in service on the same post and is getting increment as well as DA.

Hon'ble High Court also Held that so far as the judgment of the Hon'ble Supreme court in Case titled Mukund Dewangan v. Oriental Insurance Company Ltd reported as (2017)14 SCC 663, is concerned the same is law of the land and cannot be questioned in these proceedings. In Mukund Dewangan v. Oriental Insurance Company the Hon'ble Supreme Court held that if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect and there is no requirement to obtain separate to drive transport vehicle.



ACTIVITIES OF THE ACADEMY

Webinar on “Importance of Medical Evidence in Justice Delivery”

On 4th June, 2020 J&K Judicial Academy conducted a Webinar on “Importance of Medical Evidence in Justice Delivery” which was guided by eminent Resource Person Dr. Jagdeeh Narayana Reddy who is a renowned resource person.

In his presentation the resource person elaborated on that the knowledge of the medical expert is always essential in the criminal justice system. The expert evidence given by a medical person comes to the help of the Court in deciding various matters. Particularly, in case of death of a person, medical evidence is inevitable. In a criminal trial, in order to zero down on the relevant facts, the judge has to rely on the knowledge and opinion of certain experts as he may not be in a position to appreciate the technical details involved in a particular case. Evidence is given by the expert of the relevant field in the form of his opinion, which is based on the information that he has gathered from the facts of the case. This evidence supplements the assertions of the judge and, together, they complement each other and combine to form the basis of the judgment. However, the evidentiary value of the opinion given by the expert is not unshakeable because of the discretionary power available to the Court, which may choose to accept or reject it. This discretionary power in the hands of the Court arises from Section 45 of the Indian Evidence Act, 1872, which, theoretically, gives a lesser degree of importance to expert evidence by terming it as merely corroborative in nature. Particularly talking about the medical evidence collection in sexual offence cases, the resource person highlighted that it is very important to every stakeholder to be sensitive and cautious. What kind of evidence needs to be collected depends upon peculiar facts and circumstances of the case. They also have to ensure the privacy and personal freedom of the alleged survivor/victim of the offence.

Webinar on “Environmental Talk”

On 5th June, 2020 J&K Judicial Academy in collaboration with J&K State Legal Services Authority conducted a Webinar titled “Environmental Talk” which was guided by Resource Persons/experts from Central Forest Department Mr. Vasu Yadav, IFS, Mr. T. Rabi Kumar, IFS.

During the deliberations the Resource Persons elaborated that the system as a whole sustains mankind. It is God's gift to the living beings to enable them to live on this planet and lead a healthy life. The "ecological balance" is being upset by misuse, abuse and extraordinary use of resources of the environment. This has a bearing on the very existence of the human race. When we disturb nature thereby disturbing the ecological balance, the impact on human life is highly damaging. Conservation and preservation of the environment is the need of the day. Scientific and technological advancement has given mankind a free hand in exploiting natural resources without having regard to ecological consideration. Industrialization and urbanization have led to uncontrolled deforestation. They have given rise to problems of insanitation, waste disposal, and housing, availability of potable water, air pollution, and acid rain. This has also resulted in "green house" effect and ozone depletions. There is adverse cumulative effect of all this on nature; the worst sufferers are the silent majority of animals on the earth and beneath, under the sea. The nuclear leak at Chernobyl and the Bhopal gas disaster are examples of man-made disasters. Like or not we are traveling together on a common planet and we have no national alternative but to work together, to make an environment in which we and our children can live a full and peaceful life. The aim should be to better understand where we have had some success and where we are falling. There is no gainsaying the fact that the environmental justice can be prompted through a collective endeavour to peacefully secure

equity and justice for all people. The Judiciary through its purposive interpretation has come to ameliorate the worsening situation.

Webinar on “Law on Motor Accident Claims”

On 9th June, 2020 J&K Judicial Academy conducted a Webinar on “Law on Motor Accident Claims” which was guided by Justice J.R. Midha, Judge, Delhi Court and Justice K. Kanan, Judge (Retd.), Punjab & Harayana High Court.

In their presentation the resource persons elaborated that with the development of civilization, act of negligence have become actionable wrong. In the English Law any person or the legal representative of deceased person who expired on account of negligent act of other can besides instituting criminal proceeding, recover damages under the Law of Torts. Accountable negligence consist in the neglect of use of ordinary care or skill towards a person to whom the defendant owes due of observing ordinary care and skill by which neglect the plaintiff have suffered injury to his person or property. Thus, negligence accompanied with losses to the other party give rise to an action. To facilitate this, provisions have been inserted for compulsory third party insurance and to provide a machinery of adjudication of claim in Motor Vehicle Act by amending Act No.110 of 1956, by which Section 93 to 109 with reference to third party insurance and Section 110(A) to 110(F) with reference to creation of Motor Accident Claims Tribunal and procedure for adjudication of claim has been provided. Initially the liability was restricted to a particular sum but after 1982 the liability of the Insurance Company has been made unlimited and even the defences of the Insurance Companies have been restricted so as to ensure payment of compensation to third parties.

Webinar on “Juvenile Justice Law in India”

On 11th June, 2020 J&K Judicial Academy conducted a Webinar on “Juvenile

Justice Law in India” which was guided by a renowned resource person Ms. Bharti Ali, Co-Founder and Director, HAQ.

During the deliberations the resource person elaborated that the Juvenile Justice system contemplates the legal response with respect to two categories of children, namely those who are '*in conflict with law* (an individual under the age of 18 years who is accused of committing an offence); and those '*in need of care and protection*' (children from deprived and marginalized sections of society as well as those with different needs and vulnerabilities). The provisions of this Act apply to all the matters concerning ‘Children in need of Care and Protection’ and ‘Children in Conflict with Law’, including:

1. Procedures and decisions or orders relating to rehabilitation, adoption, reintegration, and restoration of children in need of care and protection;
2. Apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social integration of children in conflict with law; in a child friendly manner;
3. The Act aims at adjudicating and disposing cases dealing with juveniles/children keeping in mind “*the best interest of the children and their rehabilitation.*”

Webinar on “World Day against Child Labour”

On 12th June 2020, J&K Judicial Academy in collaboration with J&K State Legal Services Authority conducted a webinar on "World Day against Child Labour", in which Ramakant Sathpati, Child Protection Manager (West Hub), Save the Children, India Foundation and Mr. Mohammad Sharief Bhat, Child Rights Activist, Head J&K Chapter of Save the Children Foundation, India, were the resource persons.

The Resource Persons talked about International Conventions on child rights, the provisions of the Constitution of India and other

statutory framework including Juvenile Justice Legislation. They highlighted that the interest of the child is to be seen from the perspective of child rights recognized by International Conventions and the Constitutional Principles. A large number of children are employed in labour activities by the parents in view of the poverty, which spoils the life of the child. The child is deprived of his fundamental rights to live with dignity, to receive education and to achieve his full development. Many efforts made by the Governments and Local administrations have not yielded encouraging results, for the poverty drags the children into labour activities. Resource persons, from their personal experiences, narrated that whenever the poor families are empowered and poverty alleviation systems are put in place, the need for child labor vanishes. They also shared their experiences as regards industry specific child employment, like in match factories in Tamil Nadu, said that, it needs to take corrective measures by appropriately introducing the process automation to eradicate the need of child labor. In the end they talked about the social awareness and concerted efforts for poverty eradication.

Webinar on “Common Defects of Investigation Impacting Outcome of Criminal Trials”

On 12th June 2020, J&K Judicial Academy conducted a webinar on "Common Defects of Investigation Impacting Outcome of Criminal Trials" in which Mr. Bharat Chugh, Advocate was the resource person.

Mr. Bharat Chugh in his elaborate presentation flagged the commonly observed defects in the investigation which somehow impact the trial of criminal cases. His presentation was based on the case laws from the Supreme Court and various High Courts in which such defects of investigation were the bone of contention. The Resource persons also highlighted various prominent cases in the country and pointed out as to how the failure of investigating Officer in each of these cases to

collect the best evidence, had led to result which could have been different if all the aspects of the investigation were properly taken care of. Mr. Chugh told the participants that it is not that every defect of investigation by itself would adversely impact the trial and would lead to acquittal of the accused, but such defects conjointly can derail the purpose of trial. After all the Courts are meant to administer Justice according to law, keeping in view the principle of criminal jurisprudence that charge against the accused has to be proved beyond reasonable doubt. The defects of the investigation many a times create a doubt in the prosecution case, which if not explained to the satisfaction of the Court, would entail dismissal of the case and acquittal of the accused.

Mr. Chugh highlighted that their needs to have a consultative process between the investigator and the prosecutor, so that the investigation is carried out in accordance with letter and spirit of law, and all likely defects are covered. This would positively impact the outcome of the criminal trial.

Webinar on “Extradition Law in India”

On 13th June 2020, J&K Judicial Academy conducted a webinar on "Extradition Law in India" in which Mr. Dayan Krishnan, Advocate was the resource person. Mr. Krishnan is from the first batch of NLU Bangalore and has conducted very high profile cases such as Nirbhaya case. He has specialization in telecom, Extradition. He is also engaged in international assignments regarding Extradition. He was also engaged as special Public prosecutor in David Coleman Headley and Tahawwur Hussain Rana cases. The resource person emphasized that the extradition is the amalgam of politics, diplomacy and law. He discussed the fundamental principles of extradition and different approaches. The resource person also discussed the important provisions of Indian Extradition Act and important cases such as of Vijay Mallya, Abu Salem etc. The resource person also discussed the important judgments

on the subject.

The webinar was attended by Judicial Officer from the Union Territory of Jammu and Kashmir, Public prosecutors, Assistant Public Prosecutors and other officers of prosecution wing of UT of J&K and Ladakh. It was fruitful session and all the participants interacted freely during the session.

Webinar on “World Elder Abuse Awareness Day”

On 15th June 2020, J&K Judicial Academy in collaboration with J&K State Legal Services Authority conducted a webinar on "World Elder Abuse Awareness Day" in which Dr. Aabha Choudhary was the resource person.

Dr. Abha Choudhary addressed the problem of elder abuse and told the participants that this happens knowingly or unknowingly. In the busy schedule of the life the families often fail to take notice of the feelings of elders. This causes social isolation of elders, which leads to psychological impact on the elders. It is needed that the elders are taken care of by the family and are involved in every family activity so that they do not feel neglected. All efforts need to be taken by the family to address the physical and mental health of the elders. For the social fabric to be strengthened it requires that the elders are treated with dignity and honour.

The Resource Person also talked about the Indian concept of village ‘chopals’ where the elders would sit together and entertain themselves. Such mechanism needs to be replicated in towns and cities in the form of elders clubs. In this regard she appreciated the initiative of Hon’ble the Chief Justice Gita Mittal in establishing ‘Ahata- e-waqar’. Many such centers established by the active involvement of Legal Service Institutions in the Union Territories of Jammu and Kashmir and Ladakh, have started yielding positive results.

Webinar on “Cyber Law, Cyber Crimes and Electronic Evidence”

On 16th June 2020, J&K Judicial

Academy conducted a webinar on "Cyber Law, Cyber Crimes and Electronic Evidence" in which Dr. Karnika Seth, was the resource person.

The resource person during the discussion included introduction to computer hardware and other electronic devices and their terminologies, introduction to latest cyber-crimes and investigation methods, introduction to crimes related to social media like Facebook and Whatsapp, Crime associated with online banking and cashless transactions like credit and debit cards, e-banking app, e-wallet etc. She also dealt with different aspects of Cyber Law and electronic evidence from the perspective of their applicability to the judicial proceedings in the courts of law, investigating agencies and prosecuting wings. She also elaborated on the brighter and darker side of the internet. She highlighted the upcoming challenges and opportunities with which the courts of law, investigating agencies and the prosecution shall be confronted with in near future.

Webinar on “Fundamentals of Criminal Law in India”

On 19th and 26th June 2020, J&K Judicial Academy conducted webinars on "Fundamentals of Criminal Law in India" in which Justice R. Basant, Former Judge of Kerala High Court was the resource person. The sessions were attended by various judicial officers of the Jammu and Kashmir Union Territory and trainees from the Telangana Judicial Academy During the session Hon’ble Justice R. Basant talked about his experience in the system. First of all he emphasized upon the importance of the fundamental duty enshrined in “ Article 51 A clause (j)”. The resource person laid emphasis on the credentials of the expert witnesses present before the Court. He also laid emphasis on the point that the judges should maintain certain level of behavior, the judge should be an active participant in the trial before him and also emphasized on the fact that the Judge should

respect their witnesses because they are eyes and ears of the Court.

With respect to poor investigation mechanism, the resource person was of the view that these are mere infrastructure incapacities such should not bother Judges or Courts more in their way of extracting truth. Justice R. Basant also emphasized that a judge should have the qualities of case management and Court management. A judge should also do his homework on daily basis, he emphasized, that is to say that he must be well versed with the cases ,their facts etc. which he is going to take next day and a Judge should record statements of witnesses etc. himself. At the end the resource person said that a judge is the master of his own Court And he must possess the necessary qualities to run the court effectively and in a proper manner. At last the participants interacted freely during the session and cleared their doubts thereof.

Webinar on “Responding to Survivors of Sexual Violence: Adults & Children”

On 26th June 2020, J&K Judicial Academy conducted a webinar on "Responding to Survivors of Sexual Violence: Adults & Children” in which Dr. Padma Deosthali and Dr. Vidya Reddy, were the resource persons.

Dr. Vidya Reddy started her presentation with a short movie based on the real experiences of the survivors of sexual violence. This gave insight into the real problem of sexual abuse with adults and children, as also the difficulty which the survivors faced in coming to terms with such abuse. She highlighted various Psycho- socials aspects of the sexual abuse and the re-integration of survivor in the society. She also talked about the responses of society in handling the crisis in such cases.

Dr. Padma Deostahli in her presentation talked about the gaps in the Legal framework and the social responses in handling the survivors of sexual violence. She flagged the provisions of the law and Judicial Precedence

which reflect the patriarchal mindset of the society, that leads to the understanding of sexual abuse as taboo. This leads to social isolation of the victim. She told the participants that there has to be an attitudinal change of the society in responding to the survivors of sexual violence. Instead of stigmatizing the survivor the society needs to empathize with the survivor to ensure expeditious the social integration.

Dr. Padma also talked about the guidelines issued by the Ministry of Health and Family Welfare regarding handling of survivors of sexual violence, and highlighted that these guidelines must be adhered to by all stakeholders in the justice delivery system, from the stage of arrival of the survivor to the police station or hospital till completion of the trial of the case. All the support mechanisms provided in the guidelines must be provided to the survivor of sexual violence.

Webinar on “International Day against Drug Abuse and Illicit Trafficking”

On 26th June 2020, J&K Judicial Academy in collaboration with J&K State Legal Services Authority conducted a webinar on "International Day against Drug Abuse and Illicit Trafficking” in which Mr. Arul Verma and Dr. Rajesh Kumar, Patron, Society for Promotion of Youth and Masses (SPYM), were the resource persons.

Mr. Arul in his presentation highlighted various legal issues concerning the drug abuse, the responses of the law enforcing agencies and the social aspects connected with the drug abuse. He discussed the issues pertaining to involvement of children in the drug abuse by the Drug Mafia. This has the adverse impact on the child rights and also makes it difficult for the law enforcing agencies to reach to the persons involved in Drug Trade. He cited various positive actions undertaken by the police and narcotic control Bureau for eradication of Drug Trade and dragging of innocent poors in such illicit trade.

Dr. Rajesh Kumar addressed the social

aspects of the drug abuse and highlighted that without the addressing the social issues it is difficult to contain the drug trade. The problem of drug abuse is required to be seen both from the legal and social perspective. This problem is as much socially relevant as is from the legal point of view. He pointed out various social factors which lead to drug trade. In this he flagged the easy money as most important factor. People take risk for making quick money by resorting to drug trade. Unless such kind of incentive is not removed, it would be difficult to stop the drug trade. He also noticed that international drug Cartel is sponsored by many state and non-state actors, which makes it difficult to eradicate the drug abuse. Every nation should take concerted efforts to minimize the drug trafficking .Another aspect highlighted by the speaker was rehabilitation of the person involved in drug abuse. He pointed out that strong mechanisms are required to be placed for rehabilitation, including the provisioning of rehabilitation centers at all the measure towns and cities affected by drug abuse.

“4 Days Programme on Specific Relief Act”

In continuation of Induction Training Programme for Civil Judges (Jr. Division) 2020 batch, on 9th June to 12th June 2020, J&K Judicial Academy conducted 4 Days online Programme on “Understanding the Provisions of Specific Relief Act”. Resource Persons from Chandigarh Judicial Academy (Faculty Members), namely, Sh. Baljinder Singh Sra and Dr. Gopal Arora, guided the Trainee Judicial Officers on all the aspects of Specific Relief Act. Two Sessions on successive days were conducted by Sh. Sra and other two sessions were conducted by Dr. Arora. In their elaborate Power Point Presentations, the resource persons effectively discussed the provisions of law in the light of the judgments handed down by the Supreme Court and various High Courts on various issues.

“4 Days Programme on Land Laws in J&K”

On 17th June to 20th June 2020, J&K Judicial Academy conducted 4 Days online Programme on “Land Laws in Jammu & Kashmir” in which Dr. G.R. Ghani, IAS (Retd.) was the resource person.

In his presentations in four training sessions, the resource person gave an overview of Land Revenue Act & guided on interpretation of Revenue Record. He stated that it is an Act to regulate making of Land Records, its updation on a periodical basis, its maintenance, assessment of Land Revenue as a tax on land and regarding all the matters pertaining to the land. Classes of Revenue Officers and their powers to administer the land were also discussed. Power of hearing appeal, revision and reviews by Revenue Officers of the cases arising under the J&K Land Revenue Act, and procedure regarding summoning of parties were discussed. Issuance of Pass books of landholding to farmers, preparation of annual record, determination of disputes in the making of land records, attestation of mutations, right of Govt. in mines, minerals, trees, forest and waste lands and assessment of Land Revenue were highlighted. The resource person also guided the Trainee Judges on the principles of law in Agrarian Reforms Act, Land Alienation Act, Common Land (Regulation) Act, Land Grants Act and other connected land laws. The provisions of land laws pertaining to exclusion of the jurisdiction of civil courts in the matters dealt with by the Revenue officers and orders passed by them in exercise of powers under specific statutes were discussed supported by case law from the High Court of J&K. The Trainee Judges got sufficient insight into the land law regime in Jammu & Kashmir.



SAFE GUARDING CONSTITUTIONAL RIGHTS OF STREET CHILDREN

Children are important component of the social structure and the potential future carriers of the culture therefore they deserved to be cared and protected to improve posterity. They say that child is the base of healthy human society hence is a future of a nation and so for future of society proper nutrition, education, training guidance, protection, love and affection is required by them then only we can have peace and wealth on the Globe. Future of every child depends upon the opportunities and facilities they get at their childhood therefore if the children do not get the basic care facilities they cannot grow upto become healthy citizen of the country.

Though our constitution has guaranteed plenty of basic rights of the children yet it is found that only children belonging to privileged classes are availing these rights and facilities but a children belonging to marginalized section of the society or a Street children is still deprived of all those basic human rights which they deserve. As we know that various rights of the children i.e. (i) Right to good health, (ii) Right to Education, (iii) Right to be cared and standard of living, (iv) Right to be protected against abuse and exploitation, (v) Right to play and recreation are there incorporated in constitution books or in statute books but sadly so far as 'street' children are concerned they are still deprived of all those basic amenities of life because due to (i) Lack of resources, (ii) Due to lack of up-bringing and Environmental issues, (iii) Economic-disparity, (iv) Emotional exploitation, (v) Survival and livelihood so far as right to express his views and sharing of thoughts are concerned this is beyond imagination to street children those are neglected and exploited. 'Street Children' receive very rude and unpleasant introduction to

life. They not only lack the basic necessities of life but are forced to spend a major part of the day working in in-human and unhealthy condition of a misbehave pittance oftenly it is found that street children are selling newspapers, working in dhabas/eat points, involved in rag picking, shoe-polishing engaged as labourers, working in factories, acting as coolies for their survival at very tender age when they need to go to schools and also need safe and congenial-environment.

Nature has given childhood as a gift to human being and if child labour and labour are jointly used that certainly is a manmade disaster on the earth. All these are violating children's rights and all violations of children rights can legitimately are harmful practices. Rights of children are being violated in conflict situations with total impunity. There are many instances of child rights violations that is be-littling education; sex education; child marriage are mocking of the kids for having disability/being female/being fat. All these violations are herein above said are inter-linked which means a substantial defence of child rights will require comprehensive study.

In today's scenario children face ongoing violation of their rights worldwide including poverty, violence and discrimination. After raising voice by child rights activists and NGO's, crime against children is comparatively less than in the past for instance corporal punishment and attempted crimes that is sexual assault, personal robbery and even sometimes rape too. Sexual violence against children and situations in which a child is forced to perform a sexual Act by a care-giver or neighbour, pressed to have unwanted sexual intercourse, exposed to sexual comments, impelled to forced in sex in exchange of cash, gifts or favours coerced to expose her or his sexual body parts including imperson or online subject to viewing

sexual activities or sexual body parts without his or her consent or raped by a group of persons as a part of ritual, form of punishment.

Street Children unfortunately are vulnerable to Forced Sex, Sexual Abuse, Sexual touching, pressured sex, physically forced sex, unwanted attempted sex and some of the children, those are victims of crime are not even able or willing to report their situation however available estimate study of self-reported sexual victimization shows that this is an extraordinary common tragedy. Marriage and informal unions are very common in many parts of the world and children those are married or in an informal union with an older adult tend to be particularly vulnerable to violence especially sexual and domestic violence. POCSO Act (Protection of Children from Sexual offences Act, 2012) came into force the cases of juveniles are heard, tried and perpetrators of crime are being brought to bookkeeping in view the gravity of the offence. 'UNICEF' has done tremendous to reach the most disadvantages children and adolescence and to protect the aggrieved and victimised children those are being deprived of their education, basic amenities of life and are being abused each day. Many NGO's and child right activists have frequently raised concern to eliminate the suffering of these street children and to improve their standard of living but unfortunately still many cases of exploitation of children are being reported. Innovation at UNICEF is to train new things to solve problems and to improve the lives of children around the world and matching today's challenge with tomorrow's solution. It is observed that street children has never dreamt of education as well as playing as children from privileged class can have though children's right in general cover their developmental and age appropriate needs that change over time as child grows up. Indian Constitution has taken care of children's rights and guarantees for right to free

compulsory and elementary education for all children from 6 to 14 years age group (Article 21 A) and right to be protected from any hazardous employment till the age of 14 years (Article 24) and even Article 23 of constitution of India protects them from immoral trafficking. It has been said that children have all those right as equal citizens of India just as any other adult male and female infact constitution has secured rights to every child with no distinction on the race, colour, creed, language, religion, property.

Despite legislations, statutes, rules, regulations and laws in place with respect to child rights and looking into the problems faced by the street children and solution to it. It can be safely said that a better systems can be placed after looking at the schemes and policies implemented by the government and many important changes can be brought in the current legal framework to protect the rights of the children and proper implementation of the law. Insensitivity towards child issues shall be discouraged in toto and shall be dealt strictly according to law laid down for protection of children. Even many amendments in criminal procedure code and POCSO Act has been incorporated to curve the menace of child abuse Hon'ble High Courts as well as top court of the country has tried to save the childhood of these children on street from being exploited emotionally and physically and tried to restore the dignity of the individual in the spirit of 'PREAMBLE OF CONSITUTION OF INDIA' through their judgment, commands and directions. In light of social transformation even Article 39-A of Constitution of India has tried to ensure free 'Legal Aid' and equal justice on the basis of equal opportunity and Article 59 sub-clause F has also far reaching effects while granting opportunities and facilities to develop in a healthy manner and in conditions these of freedom and dignity so that childhood is protected against exploitation and further moral

and material abandonment. Similarly Article 41 has also asked the states to be within their limits of their economic capacity, make special provisions for securing right to work and education to rescue and rehabilitation of children in need of care and protection and to provide access to legal AID NALSA & SALSAS are doing tremendous to deal with issues of children and to make available quality of legal AID for children on streets too but still more children are falling prey to inadequacies and need legal AID.

POCSO Act too in order to meet new challenges of the society regarding growing violence has been amended and to deal with such type of crime against exploited children. Child pornography, child prostitution & child sexual harassment are too such inhuman crimes that POCSO Act to deal with them has come heavily on perpetrators. Do we ponder that social media too has played its innings to aggravate such type of crimes those are infamously termed as Cyber Crimes as reports of even virtual-rapes are also being coming and to deal with them such stringent law have come into force. But the moot question is whether laws alone can stop exploitation of children on streets until there is an attitudinal change and complete transformation of mind-set towards those angels of God as it is believed that childhood is an evidence of the faith of God in human being. They say that Nature has given childhood a gift to human being hence I in my all humility can say that 'street children' are vulnerable as over all social atmosphere, poverty, illiteracy and helplessness and survival to push them to the wall which is alarming to civilized society.

Contributed by-
Ms Bala Jyoti
J&K Special Tribunal, Jammu
(District & Sessions Judge)

BASIC PRINCIPLES TO BE FOLLOWED BY COURT WHILE DECIDING AMENDMENT APPLICATION

Hon'ble Supreme Court has laid down the principles to be followed by the court while deciding application for amendment of pleading where the question of ouster of jurisdiction pursuant to amendment is concerned. In this regard reference may be made to the judgment of Hon'ble Supreme Court reported as *Mount Mary Enterprises v. M/S Jivratna Medi Treat Pvt Ltd.*, 2015 ALL SCR 677. The context of the judgment and principle of law can be understood from the following observations of the Court:

“In our opinion, as per the provisions of Order 6 Rule 17 of the Civil Procedure Code, the amendment application should be normally granted unless by virtue of the amendment nature of the suit is changed or some prejudice is caused to the defendant. In the instant case, the nature of the suit was not to be changed by virtue of granting the amendment application because the suit was for specific performance and initially the property had been valued at Rs.13,50,000/- but as the market value of the property was actually Rs.1,20,00,000/-, the appellant-plaintiff had submitted an application for amendment so as to give the correct value of the suit property in the plaint.”

“It is also pertinent to note that the defendant had made an averment in para 30 of the written statement filed in Suit No.1955 of 2010 that the plaintiff had undervalued the subject matter of the suit. It had been further submitted in the written statement that the market value of the suit property was much higher than Rs. 14 lacs. The defendant had paid Rs.13.5 lacs for the said premises in the year 2002 when the said premises had been occupied by a tenant bank. Even according to the defendant value of the suit property had been

undervalued by the plaintiff in the plaint. If in pursuance of the averment made in the written statement the plaintiff wanted to amend the plaint so as to incorporate correct market value of the suit property, the defendant could not have objected to the amendment application whereby the plaintiff wanted to incorporate correct value of the suit property in the plaint by way of an amendment. The other contention that the valuation had already been settled cannot also be appreciated since the High Court has held that the said issue was yet to be decided by the trial Court.”

“The main reason assigned by the trial court for rejection of the amendment application was that upon enhancement of the valuation of the suit property, the suit was to be transferred to the High Court on its original side. In our view, that is not a reason for which the amendment application should have been rejected. With regard to amendment of plaint, the following observation has been made by this Court in the case of North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (D) by LR.s. (2008) 8 SCC 511 :

"16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C. (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 C.P.C. postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and others (1957) 1 SCR 595 which still holds the filed, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an

injury which could not be compensated in costs."

Therefore, principle of law is clear that where amendment sought would oust the pecuniary jurisdiction of the court, the court cannot refuse to grant amendment on the premise that granting amendment would entail return of plaint for presentation to the proper court. That may be the consequence of allowing amendment but it is no reason to refuse amendment, when otherwise it can be allowed by the court.

**Contributed by-
Mr Mohammad Ashraf Bhat,
Sub-judge
(Bijbehara)**



Worthy members of J&K Judiciary are requested to contribute articles, write-ups or case comments for the benefit of our esteemed readers. Such written materials may be sent at the following email addresses of the Judicial Academy or of the editor, at least one week prior to the date of publication i.e. first of every month:

jk.ja@nic.in

rajiv.gupta@aij.gov.in

Worthy members may also note that video recordings of all the webinars conducted by the Academy have been uploaded and link has been hosted on the Academy's Website. These recordings can be accessed on the following link:

<http://jkja.nic.in/Webinars.php>

J&K Judicial Academy Website:

jkja.nic.in