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From the Editor's Desk

We the People of India had solemnly resolved to secure to all citizen of India Justice, Liberty, Equality and Fraternity, as is enshrined in the Preamble to the Constitution of India. Resolve of Justice pertains to all spheres of life viz. Social, Economic and Political. Therefore, every citizen of the country is entitled to all the essential requisites of dignified life. COVID-19 pandemic has exposed the governance, both at national and states-level, in addressing the grievances of common masses. The labour class in the country has major contribution in strengthening the physical infrastructures of the country at private and public level. It seems that the labour class was forgotten amidst the great difficulty faced by the country in the times of pandemic. The governance system of the country seems to have lost touch with the difficulties of the labour class, in that apparently there was no plan for taking them out from the difficult times. The labour class was entirely left to the mercy of God and to fend for itself. As was seen in print and electronic media, these children of lesser God were seen travelling hundreds and thousands of miles in order to reach their home and community so that they could find some respite for themselves. Many of such persons were seen carrying young children and old parents, in the scorching heat, without having anything to eat. Many of such persons died before reaching their homes. Although the pandemic could not take away their lives but hunger did. This situation stares at the very face of the citizenry as an antithesis to the fraternity. Many of citizens of the country, personally or as self help groups have in fact contributed a lot to ameliorate the difficulties of the migrating labour but these efforts were not sufficient in view of very large section of the migrating labour class. Thanks to the judicial interventions of the Hon'ble Supreme Court of India and various High Courts in the country, some efforts were made to mitigate the miseries of the lower strata of the population. People in need of resources, either of economic, food or shelter, were tried to be helped by the judicial institutions by requisite interventions of the courts. Legal Services Institutions in all the states have worked day and night to help the needy sections of the society, be it the poor and suffering labour class, women, children and elderly persons, faced with compounded difficulties because of the pandemic. These institutions have justified their very existence and have proved that they are living up to the constitutional mandate and the objectives set out in the Legal Services Authorities Act. It is hoped that all the institutions of governance remember **Gandhi's talisman** "*Recall the face of the poorest and the weakest man [woman] whom you may have seen, and ask yourself if the step you contemplate is going to be of any use to him [her]. Will he [she] gain anything by it? Will it restore him [her] to a control over his [her] own life and destiny? In other words, will it lead to swaraj [freedom] for the hungry and spiritually starving millions? Then you will find your doubts and your self melt away.*"

LEGAL JOTTINGS

"Undisputedly, no religion prescribes that prayers should be performed by disturbing the peace of others nor does it preach that they should be through voice amplifiers or beating of drums. In a civilized society in the name of religion activities which disturb old or infirm persons, students or children having their sleep in the early hours or during day time or other persons carrying on other activities cannot be permitted."

M.B. Shah, J. in *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Assn.*, (2000) 7 SCC 282, para 2

CRIMINAL

Criminal Appeal No. 982 of 2011
Ombir Singh v. State of Uttar Pradesh
Decided on: May 26, 2020

In the instant criminal appeal, the contention of the accused was that the FIR was belatedly sent and received by the ilaka magistrate (Chief Judicial Magistrate in this case) after 11 days. The accused Ombir Singh had challenged the conviction under section 302 read with Section 34 of the Indian Penal Code, and section 27 of the Arms Act, for the murder of one Abhaiveer Singh Bhadoria.

While considering the said contention, the bench noted the judgment Jafel Biswas v. State of West Bengal wherein the effect of delay in compliance of Section 157 of the Code and its legal impact on the trial was examined. In the said decision, it was held that mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground. It was further observed thus in the said decision: "The obligation is on the I.O. to communicate the report to the Magistrate. The obligation cast on the I.O. is an obligation of a public duty. But it has been held by this Court that in the event the report is submitted with the delay or due to any lapse, the trial shall not be affected. The delay in submitting the report is always taken as a ground to challenge the veracity of the F.I.R and the day and time of the lodging of the F.I.R."

Therefore, delay in compliance of Section 157 of the Code cannot, in itself, be a good ground to acquit the appellant. After taking note of the evidence on record and facts of the case, the bench proceeded to dismiss the criminal appeal.

Criminal Appeal No. 1894 of 2010
State of Rajasthan v. Mehram & Ors.
Decided on: May 6, 2020

This appeal takes exception to the judgment and order dated 5.11.2007 passed by the High Court of Judicature for Rajasthan at Jodhpur, whereby the conviction of the respondent No. 1 under Section 302 of the Indian Penal Code has been converted into one under Section 326 IPC and the substantive sentence awarded therefor is reduced only to the period already undergone (about five months) by the accused No. 5.

Hon'ble Supreme Court has held that the High Court proceeded on the erroneous assumption that the accused party had been provoked due to the unauthorised entry of the complainant party on their fields and to defend their possession, they had to resort to right of private defence. The fallacy in the reasoning of the High Court is palpable from the evidence of prosecution witnesses, which has been elaborately analysed and rightly accepted as truthful by the trial Court, substantiating the allegations against

the accused party of being the aggressors. Once it is a case of accused party being the aggressors and they commenced assault on the complainant party and further, the accused No. 5 having been found to have assaulted deceased with intention to kill him, the question of invoking the right of private defence does not arise. In fact, no defence evidence was produced to substantiate the plea of exercise of private defence. The two theories (of being aggressors as opposed to exercise of right of private defence) are antithesis to each other.

The fact that some of the accused had received grievous injuries, does not belie the prosecution case that the accused were the aggressors. There was no reason for the accused to remain in hiding position equipped with lethal weapon(s), waiting for the arrival of the complainant party and on their arrival, to immediately commence attack and cause fatal injuries to the complainant party. Such being the factual matrix, it is unfathomable as to how the plea of right of private defence could be invoked by the accused.

The Hon'ble Supreme Court, therefore held that, the accused No. 5 deserves to be convicted for the offence punishable under Section 304 Part I of the IPC.

Criminal Appeal Nos. 417-418 of 2020
Neelam Gupta v. Mahipal Sharan Gupta & Anr.
Decided on: April 29, 2020

The present criminal appeal is under Domestic Violence Act and the main contention under the present case is with respect to the interpretation of "shared household" under the Domestic Violence Act.
The Hon'ble Supreme Court held that under the Protection of Women from Domestic Violence Act, 2005 the appellant would certainly be entitled to a shared residence being her matrimonial home or in lieu thereof her husband to provide her with a suitable reasonable accommodation in accordance with law. The complainant is entitled to same standard of living as she had during her marriage at the time when she was living at her matrimonial home. The Court observed that for the 'shared household' for providing interim protection to the appellant under the Act, in view of the history of the case in hand, it is observed that admittedly the premises in question in which the interim protection of right of residence has been granted belong to and was in absolute ownership of the first wife of respondent No.1 and as partition suit and is decreed and executed, the husband holds only ⅓rd share of property and in no stretch of imagination, such premises could be assumed to be a 'shared household' within the definition, as prescribed within the Act.
The right of protection for residence available to the appellant is only against the respondent No.1, her husband who has to provide her with a suitable, reasonable accommodation in accordance with law. Also, if the alternative accommodation offered by the respondent No.1, her husband, is not acceptable then the appellant may move an appropriate leave/application before the Ld. Court thereby rejecting such offers in order to seek reasonable modification.

CRM(M) No. 52-A of 2020
Mohammad Shafi Dar v. Union Territory of J&K & Ors.
Decided on: May 27, 2020

Through this writ petition the petitioner prayed for the quashmennt of FIR lodged by Anti-Corruption Bureau against the petitioner and also sought direction to respondents to restrain them from interfering with the management of J&K Cooperative Bank.

The Hon'ble High Court held that the inherent power cannot be naturally invoked in respect of any matter covered by a specific provision of the Code. It is only when the High Court is satisfied that either an order passed under the Code would be rendered ineffective or that the process of any court would be abused or that the ends of justice would not be secured, then the High Court must exercise its inherent powers under Section 482 Cr. P.C.

The Court also observed that the power under section 482 is not intended to scuttle justice but to secure justice. The Hon'ble High Court relied on the decisions of Hon'ble Apex Court in State of Haryana v. Bhajan Lal and State of Karnataka v. Pastor P. Raju in which it was held that when the case is still under investigation and concerned agency is in the process of collecting evidence. The investigation is necessary and the same cannot be stopped, at this stage, in the proceedings under Section 482 Cr.P.C.

In the present case, the court held that the matter pending trial before the court below is at the infancy stage and therefore, need not be interfered with and accordingly the petition was dismissed.

CRMC No. 234 of 2015
Mohammad Altaf Shah v. Ghulam Qadir Langoo
Decided on: May 20, 2020

In this case the petitioner has filed a petition for quashing of proceedings initiated against him under section 138/142 of the Negotiable Instrument Act alleging dishonor of cheque for Rs. 4,20,000/-

There was a question regarding whether the debt amount was legally payable? To that the Hon'ble High Court observed that it was wrong on the part of the trial court to have raised presumption without asking the complainant to show whether the debt amount was legally payable in terms of the proviso to section 138 of the Act. It was in this background it was observed that bouncing of cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions.

There was a doubt regarding the date of occurrence. To which the Hon'ble High Court observed that "It is the date of cheque having bounced which is relevant and not the date on which the respondent acted in terms of clause 13 of the license deed because the application under section 138 has been ruled out by the parties creating civil right in favour of licensor how he viewed this is a different matter."

The Hon'ble High Court held that the dishonor of cheque is only a civil wrong and does not constitute a criminal offence because parties are free to contract contrary to the mandate of section 138/142 of the Negotiable Instrument Act. In view of the aforesaid reasons stated, the revision petition was allowed and proceedings before the Chief Judicial Magistrate under section 138/142 of Negotiable Instrument Act were quashed.

IA No. 02 of 2018 (in CRA No. 49 of 2016)
Jarnail Singh v. State of J&K
Decided on: May 14, 2020

The appellant convicted for offence under Section 376 RPC and sentenced to undergo rigorous imprisonment for a period of seven years and fine to the tune of Rs. 25,000/-, sought bail on the ground that he has already undergone more than half of the awarded sentence and is otherwise entitled to bail in terms of Section 436-A Cr.P.C. The nominal roll filed by Deputy Superintendent, District Jail, Jammu, revealed that the appellant has undergone total sentence of four years and twenty six days.

Court held that said provision is not in absolute terms and exception has been carved out in the said provision. The victim

was minor aged about 13/14 years at the time of occurrence. The relationship between the victim and the appellant was sacrosanct and the same was shattered by the appellant and this aspect cannot be ignored. The circumstances of the case do not per se make out a case for grant of bail to the appellant though the appellant has undergone one-half of the sentence awarded by the trial court. Also held that - the delay in disposal of the appeal can be one of the factors for granting bail to the convict but that cannot be the sole criteria for granting the same if the circumstances do not call for the same. Hence, the application was not allowed and was rejected.

CRAA No. 9900007 of 2013
State of J&K v. Waqar Ahmad & Anr.
Decided on: May 13, 2020

The instant appeal was filed by the State under Section 372 of the Cr.P.C. assailing the judgment dated 12th December 2012 passed by the Principal District & Sessions Judge, Ramban for commission of offences under Sections 8/20 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Hon'ble High Court has held that it cannot be disputed that seizure of contraband is an event on which the entire case of the prosecution hinges in a case under the NDPS Act. It cannot be disputed that the prosecution was required to establish the safety of the seized material and that it was essential to examine the Incharge Malkhana, the Executive Magistrate as well as person who took the samples to the Forensic Science Laboratory as witness. The prosecution has led no evidence at all with regard to safe deposit of the contraband in the malkhana; failed to produce or prove the malkhana register; failed to examine the magistrate or the person who took the samples to the Forensic Science Laboratory. These persons were not even cited as witnesses, let alone examined during the trial. In this background, the finding of the Trial Judge that the prosecution has miserably failed to comport to the requirements of the law in establishing the charge against the respondents cannot be faulted.

In the present case, the Trial Judge has observed contradictions in material particulars in the evidence of the official witnesses. The Supreme Court had occasion to consider the consequences of such contradictions in the judgment reported at AIR 2017 SC 3751, Krishan Chand v. State of Himachal Pradesh where the court observed as follows:

"In view of the material contradictions which have come on record, we find that the High Court wrongly convicted the appellant as the evidence adduced by the prosecution was not carefully scrutinized by the High Court. We are of the considered opinion that the High Court committed error in convicting and sentencing the appellant."

Hon'ble High Court therefore viewed that, the learned Trial Judge has rightly held that the offences punishable under the NDPS Act attracts stringent punishments on convictions and therefore evidence and proof is also required to be of a higher standard. In the light of the above evidence which is replete with contradictions in material particulars, the conclusion of the learned Trial Judge that the attesting witnesses have denied knowledge and that the seizure itself had become doubtful, has to be accepted. In view thereof appeal is dismissed.

Crl LP NO: 73 of 2019
State of J&K v. Fazal Hussain
Decided on: May 11, 2020

Upholding the acquittal of the accused/ respondent recorded by the Court of Sessions, the Honble High Court concurred with reasoning on the correct appreciation of evidence done by the Court of sessions, i.e.

1. Despite the allegation of house breaking followed by rape upon the complainant for almost half an hour by the accused in the same room where her children where present, prosecution never called the children as witnesses.
2. The medical exanimation did not reveal any sexual assault. Though it is not mandatory in cases of rape, there was no corroborative evidence to prove the same as well. Since she had also alleged that the accused had hit her head with an axe from behind, no such injury was also found.
3. One of the neighbours called as Prosecution Witness turned hostile and retracted from the statements recorded by police.
4. The respondent denied all the allegations and projected his false implication to wreak vengeance upon him by the complainant as they were involved in a property dispute.
5. The complainant's husband had encroached upon the respondent's land against whom the accused had got a restraining order. The feud was still going on between them and the matter is pending before a court at Surankote.
6. Even the prosecution witness deposed that he was aware of the dispute going on between the parties. Another prosecution witness denied any knowledge about the instant case but was aware of the property dispute between them.
7. The complainant had made improvements in the case and no day or date of incident was mentioned by her in her initial complaint.
8. The complaint was filed very next day when the house of the complainant upon encroached land was demolished by the order of the Tehsildar, thus establishing clear enmity.
9. Further, she had stated that there was only one entrance to the house that was bolted from inside, and she did not state as to how the accused had managed to break into the house.

CRM(M) No.14 of 2020
Rubiya Sayed v. Fida Hussain Fidvi
Decided on: April 23, 2020

In this petition the Petitioner sought quashment of complaint filed by the respondent under section 499, 500 RPC alleging that the complaint was baseless and fictitious. The Hon'ble High Court observed that "It is well settled that inherent powers under Section 482 Cr. P.C. because of their plenitude, are to be exercised rarely, sparingly and with due circumspection. The Court, in view of exercise of powers under Section 482 Cr. P.C., is not expected to hijack the trial proceedings pending before the court below and assume its role to sift evidence and find out whether trial should proceed. It is only to prevent abuse of process of court and prevent miscarriage of justice that inherent powers are to be exercised".

In this case the Hon'ble High Court relied on the Judgment of Hon'ble Apex Court in State of Haryana vs Ch. Bhajan Lal, AIR 1992 SC 604. The relevant paragraph is produced as under (109):
"We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

In this case the Hon'ble High Court held that the petition does not satisfy the requirement of Section 482 Cr.P.C., and accordingly it is dismissed.

"The realism of our processual justice bends our jurisprudence to mould, negate or regulate reliefs in the light of exceptional developments having a material and equitable import, occurring during the pendency of the litigation so that the Court may not stultify itself by granting what has become meaningless or does not, by a myopic view, miss decisive alterations in fact-situations or legal positions and drive parties to fresh litigation whereas relief can be given right here."

V.R. Krishna Iyer, J. in *Rameshwar* v. *Jot Ram*, (1976) 1 SCC 194, para 7

CIVIL

Civil Appeal No. 6659-6660 of 2010
Guru Nanak Industries Faridabad & Ors. v. Amar Singh (Dead) Through LRs.
Decided on: May 26, 2020

Hon'ble Supreme Court held that "there is a clear distinction between 'retirement of a partner' and "dissolution of a partnership firm". It was held that on retirement of the partner, the reconstituted firm continues and the retiring partner is to be paid his dues in terms of Section 37 of the Partnership Act. In case of dissolution, accounts have to be settled and distributed as per the mode prescribed in Section 48 of the Partnership Act. It was also held that when the partners agree to dissolve a partnership, it is a case of dissolution and not retirement.

The Court observed that in the present case, there being only two partners, the partnership firm could not have continued to carry on business as the firm. A partnership firm must have at least two partners. When there are only two partners and one has agreed to retire, then the retirement amounts to dissolution of the firm. In the present case, the primary claim and submission of the appellants before the Court was that Amar Singh had resigned as a partner and, therefore, in terms of clause (10) of the partnership deed (Exhibit P-3) dated 6th May 1981, he would be entitled to only the capital standing in his credit in the books of accounts. However, the argument was rejected by the Supreme Court and held, that in the present case there were only two partners and there is overwhelming evidence on record that Amar Singh had not resigned as a partner. It was held that on the other hand, there was mutual understanding and agreement that the partnership firm would be dissolved. It was also held that the receipt Exhibit P-9 dated 17th October 1988 refers to part payment of Rs.1,00,000/- towards settlement between the two partners. It also refers to the date of dissolution as 24th August 1988, which clearly indicates that payments were still to be made whereupon the two sides would have completely severed their relationship although there was a mutual agreement that the date of dissolution was 24th August 1988.

Special Leave Petition (C) Nos. 3584-85 of 2020
Patel Engineering Ltd. v. North Eastern Electric Power Corporation Ltd. (NEEPCO)
Decided on: May 22, 2020

The Supreme Court has observed that an arbitral award can be set aside under Section 34 of the Arbitration and Conciliation Act if it is patently illegal or perverse. The Court observed that ground of patent illegality is a ground available under the statute for setting aside a domestic award made after the 2015 amendment to the Arbitration and Conciliation Act. In this case, the applications filed by North Eastern Electric Power Corporation Ltd. (NEEPCO) under Section 34 of the Arbitration and Conciliation Act, 1996 before the Additional Deputy Commissioner (Judicial), Shillong challenging the three arbitral awards against

it were dismissed. The appeal against these orders were allowed by the High Court, which set aside the award. While confirming the High Court view, the Apex Court dealt with the history of 'Patent illegality' ground. It observed that such a ground for setting aside a domestic award was first expounded in the judgment of Saw Pipes Ltd. Later the ground of "patent illegality" for setting aside a domestic award has been given statutory force in Section 34(2A) of the 1996 Act. The Apex Court further observed:

"The present case arises out of a domestic award between two Indian entities. The ground of patent illegality is a ground available under the statute for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or, so irrational that no reasonable person would have arrived at the same; or, the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. In the present case, the High Court has referred to the judgment in Associated Builders (supra) at length in paragraph (42) of its judgment dated 26.02.2019 and arrived at the correct conclusion that an arbitral award can be set aside under Section 34 if it is patently illegal or perverse. This finding of the High Court is in conformity with paragraph (40) of the judgment of this Court in Ssangyong Engineering and Construction Company".

Civil Appeal No. 4645 of 2019
Canara Bank v. M/S Leatheroid Plastics Pvt.Ltd.
Decided On: May 20, 2020

The appellant in this appeal assailed the order of the National Consumer Redressal Commission in which it was held that the appellant was negligent and deficient in services due to which the respondent suffered the loss. The Hon'ble Court observed that once the Bank had exercised the option of effecting the policy, by debiting the respondent's account, it would be the responsibility of Bank to insure the entire set of hypothecated assets, if the borrower had not been intimated regarding the insurance.

In this case the appellant extended the credit facility to the respondent on the hypothecation of stock, plant and machinery and mortgage of land. Under the respective deeds/agreements, it was borrower's obligation to keep the hypothecated assets insured but the Bank retained the liberty to obtain insurance coverage of such assets. The Bank had exercised the option of effecting the policy, by debiting the respondent's account. The entire set of hypothecated assets, was not covered by the policy. There was a fire in the premises of the respondent which caused damage to their stocks and machineries. As no coverage was taken for plant, machinery and accessories, the insurance claim of respondent was rejected for the plant and machinery.

The respondent approached the Commission for claiming the compensation for the loss which it suffered by fire. The commission held that there was deficiency in the service of the Bank as once Bank in exercise of their liberty effected the insurance, then it became their obligation to cover the entire set of hypothecated assets.

The Apex Court dismissed the appeal and upheld the order of the Commission that Bank was deficient in service and liable for payment of compensation as decided by the Commission.

Civil Appeal No. 3688 of 2017
Kavita Kanwar v. Mrs. Pamela Mehta & Ors.
Decided on: May 19, 2020

The appellant by this writ petition challenged the judgment of the High Court by

which the petition seeking probate had been declined by the Trial Court and the High Court. The petitioner was the executor of the will and major beneficiary. The Hon'ble Supreme Court, held that the probate proceeding is ultimately a matter of conscience of the Court. The propounder, in every matter for grant of probate, irrespective of opposition or even admission by any party, is required to satisfy the conscience of the Court, with removal of suspicious circumstances, if any.

The Hon'ble Supreme Court also observed that: "When the Will is surrounded by suspicious circumstances, the Court would expect that the legitimate suspicion should be removed before the document in question is accepted as the last Will of the testator".

Civil Appeal No. 1889 of 2020
Jagmail Singh & Anr. v. Karamjit Singh & Ors.
Decided on: May 13, 2020

The Supreme Court in this case has held that a court can permit a party to produce secondary evidence if it establishes a factual foundation for producing the same. The Court observed that merely the admission in evidence and making exhibit of a document does not prove it automatically unless the same has been proved in accordance with law.

In this case, the plaintiffs in a suit for declaration filed an application before the Trial Court under Section 65 and 66 of the Indian Evidence Act, seeking permission to prove the copy of the Will executed by one Babu Singh in their favour by way of secondary evidence, as the original Will which was handed over to the village patwari for mutation could not be retrieved. This application came to be dismissed by the High Court (in revision proceedings) which held that as the prerequisite condition of existence of Will is not proved, the Will cannot be permitted to be proved by allowing the secondary evidence.

In appeal, the Supreme Court observed that the factual foundation to establish the right to give secondary evidence was laid down by the applicants. It said that they would be entitled to lead secondary evidence in respect of the Will in question, but such admission of secondary evidence automatically does not attest to its authenticity, truthfulness or genuineness which will have to be established during the course of trial in accordance with law.

Civil Appeal No. 673 of 2012
South East Asia Marine Engineering and Constructions Ltd. (Seamec Ltd.) v. Oil India Limited
Decided on: May 11, 2020

The Hon'ble Supreme Court has dealt with some aspects of Arbitration and Contract law. The question before the Hon'ble Supreme Court was that whether the interpretation provided to the contract in award of the Arbitral tribunal was reasonable and fair?

The Hon'ble Supreme Court observed that "usually the Court is not required to examine the merits of the interpretation provided in the award by the arbitrator, if it comes to a conclusion that such an interpretation was reasonably possible. The interpretation of clause 23 of the Contract by the Arbitral Tribunal, cannot not be accepted, as per the thumb rule of interpretation a written contract should be read as a whole and so far as possible as mutually explanatory. In the case at hand, the basic rule was ignored by the tribunal while interpreting the clause. The Court observed that "If the purpose of the tender was to limit the risks of price variations, then the interpretation placed by the Arbitral Tribunal cannot be said to be possible one, as it would completely defeat the explicit wordings and

purpose of the contract. There is no gainsaying that there will be price fluctuations which a prudent contractor would have taken into margin, while bidding in the tender. Such price fluctuations cannot be brought under Clause 23 unless specific language points to the inclusion."

The Supreme Court concluded that the interpretation of the Arbitral Tribunal to expand the meaning of Clause 23 to include change in rate of High speed Diesel (HSD) is not a possible interpretation of this contract, taking note of the other contractual terms which also suggest that such interpretation of the clause is perverse. The Court dismissed the appeal, and upheld the order of High Court of Gauhati which set asides the award of the arbitral tribunal.

Civil Appeal (arising out of SLP (C) No: 11603/2017)
Punjab National Bank and its. Vs. Atmanand Singh and ors.
Decided on: May 6, 2020

Hon'ble Supreme Court has held that High Court has committed manifest error in disregarding the core jurisdictional issue that the matter on hand involved complex factual aspects which could not be adjudicated in exercise of writ jurisdiction.

In Than Singh Nathmal the Court dealt with the scope of jurisdiction of the High Court under Article 226 of the constitution in the following words: -

"Resort that jurisdictions not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the court will not entertain a petition for a writ under Article 226,where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the high court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed.

When the petition raises questions of fact of complex nature, such as in the present case, which may for their determination require oral or documentary evidence to be produced and proved by the concerned party and also because the relief sought is merely for ordering a refund of money, the High Court should be loath in entertaining such writ petition and instead must relegate the parties remedy to a civil suit. Had it been a case where material referred to in the writ petition are admitted facts or indisputable facts, the High Court may be justified in examining the claim of the writ petitioner on its own merits in accordance with the law.

In Smt. Gunwant Kaur the Court observed thus: -

"When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons."

Accordingly, Supreme Court allowed the appeal.

Civil Appeals No: 3961 of 2010.
Triloki Nath Singh v. Anirudh Singh (Dead through Lrs) & Ors.
Decided on: May 06, 2020

Question for consideration before the Supreme Court in this appeal was - Whether

a decree passed on a compromise can be challenged by the stranger to the proceedings in a separate suit?

After thorough examination of the factual matrix of this case and discussing the law in depth, the Hon'ble Supreme Court held that -

In view of the express bar provide by the clear legislative intent under Order 23 rule 3 and 3A, no suit could be filed either by the parties or even by a stranger to the suit challenging the said compromise decree, because the legislative intent of this very section is to put an end to litigation, and not to prolong it which will be defeated if the same is allowed even at the hands of a stranger. In this regard the Court, in paras 14 and 15 discussed the law laid down in Pushpa Devi Bhagat (dead) through LR Sadhna Rai v. Rajinder Singh and Ors, 2005(5) SCC 566 and R. Rajana v. S.R. Venkataswamy and Ors, 2014 (15) SCC 471.

In the present case the compromise decree though arrived at in 1994 in a second appeal was a continuance of the suit filed way back in 1978 itself which came to be culminated in 1994. Therefore the appellant who was a stranger to the said suit though having allegedly purchased the suit property in 1984, but his right was dependent upon the title of the seller, which he lost in the final compromise decree passed by the High Court in Second Appeal in 1994. And the trial court was not competent to decide the validity of the compromise deed, even if he was a stranger to it, in view of the express bar under Order 23 Rule 3A.

Civil Appeal No. 6380 of 2012
Kapilaben Ambalal Patel & Ors. v. State of Gujarat & Anr.
Decided on: May 06, 2020

In this case Hon'ble Supreme Court while dismissing the appeal being devoid of merits upheld the decision of the Division Bench of the High Court. The Hon'ble Court opinion that the Division Bench was right in concluding that the writ petition filed by the appellants after a lapse of 14 years was hopelessly barred by delay and laches.

The Hon'ble Court further opinion that, in this appeal by special leave, a vague ground has been raised to challenge the said conclusion of the Division Bench. Further, no substantial question of law has been formulated in the appeal by special leave in that regard. Furthermore, in the grounds all that is asserted is that the High court erred in holding that there was delay of 14 years in filling of writ petition and in not appreciating that the notice under Section 10(5) of the Urban Land (Ceiling and Regulation) 1976 Act, dated 23.1.1986 was not served upon Ambalal Parsottambhai Patel as he had already expired on 31.12.1985 and the notice sent to him was returned back on 2.2.1986 unnerved was remark "said owner has expired". Further, the legal heirs of Ambalal Parsottambhai Patel ought to have been served with the said notice. From the factual matrix already stated hitherto, these grounds, in our opinion, are of no avail to the appellants. It is manifest from the acknowledgement produced by the respondent – State that the first notice under Section 10(5) issued to Ambalal Parsottambhai Patel was duly served on 26.121985. By the time second notice under section 10(5) was issued on 23.1.1986, Ambalal Parsottambhai Patelhad died (on 31.12.1985). The second notice was also issued to others, namely, Bhikhbhai Maganbhai Patel, Natvarbhai Bhailalbhai Patel and Jayantibhai Patel and Jayantibhai Babarbhai Patel.

Civil Appeal No. 5674 of 2009
Pandurang Ganpati Chaugule & Ors v. Vishwasrao Patil Murgud Sahakari Bank Limited

Decided on: May 05, 2020

The Supreme Court held that the cooperative Banks registered under the State legislation and multi-State level cooperative societies registered under the Multi State Cooperative Societies Act, 2002 with respect to 'Banking' are governed by the legislation relatable to Entry 45 of List I of the Seventh Schedule of the Constitution of India, as such the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act 2002 is applicable to cooperative Banks.

The cooperative Banks run by the cooperative societies registered under the State legislation with respect to the aspects of 'incorporation, regulation and winding up', in particular, with respect to the matters which are outside the purview of Entry 45 of List I of the Seventh Schedule of the Constitution of India, are governed by the said legislation relatable to Entry 32 of List II of the Seventh Schedule of the Constitution of India.

The cooperative Banks involved in the activities related to Banking are covered within the meaning of 'Banking Company' defined under Section 5(c) read with Section 56(a) of the Banking Regulation Act, 1949, which is a legislation relatable to Entry 45 of List I. It governs the aspect of 'Banking' of cooperative Banks run by the cooperative societies. The cooperative Banks cannot carry on any activity without compliance of the provisions of the Banking Regulation Act, 1949 and any other legislation applicable to such Banks relatable to 'Banking' in Entry 45 of List I and the RBI Act relatable to Entry 38 of List I of the Seventh Schedule of the Constitution of India.

The recovery is an essential part of Banking; as such, the recovery procedure prescribed under section 13 of the SARFAESI Act, legislation relatable to Entry 45 List I of the Seventh Schedule to the Constitution of India, is applicable.

Writ Petition (C) No. 936 of 2018

Dinesh Kumar Gupta & Ors. v. High Court of Rajasthan & Ors.

Decided on: 29 April 2020

The issues involved in all these matters were related to appointments and allocation of seniority of District Judges in Rajasthan, so the petitions were heard together. The Court was dealing with the following issues among others;

"whether the judicial officer promoted on ad-hoc basis as additional district judge and sessions judges to man the fast track court in the state and who were substantively appointed to the cadre of the district judge, are entitled to seniority from the date of their initial ad-hoc promotion?"

The issue was raised by Rajasthan Judicial Officers association in a writ petition filed against the seniority list prepared by the high court on March 15, 2019. They sought for reckoning their services as additional district and sessions judges in fast track court for determining the seniority as district judge. The SC noted the precedents, Debabrata Dash & Anr. v. Jayindra Prasad Das & Ors., (2013) 3 SCC 658, V. Venkata Prasad & Ors v. High Court of A.P & Ors., (2016) 11 SCC 656, Kum C. Yamini v. The State of Andhra Pradesh, (2019) 10 SCALE 834, and observed as under: In Debabrata Dash , It was held:

"Once incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation".

The corollary of the above rue is that "where the initial appointment is only ad hoc and not according to rules and made as a stop -gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."

It was further held that;

"No right will be conferred on judicial officers in service for claiming any regular promotion on the basis of his/her

appointment on ad hoc basis under the scheme. The service rendered in the fast track courts will be deemed as a service in the parent cadre."

Thus, while dealing with the challenge against the seniority list if district judges drawn by the Rajasthan High Court, the Hon'ble Supreme Court held that, "The period of service as an ad-hoc judge will not count for the seniority of District Judges."

Also, while dealing with another issue in the case, the Court held that, "In the seniority list of District Judges, the inter se seniority between candidates who passed the Limited Competitive Examination must be determined on the basis of their merit in the examination and not on the basis of their seniority in the erstwhile cadre."

Civil Appeal No. 2379 of 2020
BCH Electric Limited v. Pradeep Mehra
Decided On: April 29, 2020

The Hon'ble Apex Court held that for the Payment of gratuity to an employee when two choices are available, one under the provisions of the payment of Gratuity Act and one under the arrangement with the employer, the employee can't take the benefits in combination of some of the terms under the scheme provided by the employer while retaining the other terms offered by the Act. The employee has to avail the benefits only on either of them.

In this case the appellant challenged the Judgment of the Hon'ble High Court which held that the employee cannot be denied the right to receive those higher benefits if available by arrangements with the employer. In this matter the Hon'ble Supreme Court allowed the appeal and observed that the appellant was right in going by the provisions of the Payment of Gratuity Act as it was mentioned in the terms and conditions of appointment. The Hon'ble Court also held that by making extra payments to some employees would not create a right in favour of others.

CR.No. 04 of 2020
Gh. Mustafa Bhat v. State of J&K & Ors.
Decided on: May 20, 2020

The instant revision petition is filed against the order passed by District Judge by which the application for transfer of a civil suit filed by the petitioner was rejected. The main ground alleged for the transfer of a civil suit is the Judicial bias.

Hon'ble High Court observed that the trial court ignored the report of local commissioner appointed by it and also not reconciled the averments made in the plaint before passing the order. Moreover, in order the concerned SHO was directed to ensure that the order was not violated but why the concerned SHO was not put on notice regarding violation as alleged in application. The Court observed that bias reflected in the order of the trial court. Hence allowed the petition, set aside the order and transferred the case to another court for its disposal according to law.

MA No. 146 of 2016
Oriental Insurance Co. Ltd v. Vijay Kumar Gupta & Ors.
Decided on: May 19, 2020

High Court of J&K elaborating on philosophy of victimology in justice dispensation, held that the compensatory jurisprudence and its evolution with time has reinforced human rights philosophy and has kept up with the principles of basic tenets of jurisprudence of nature – which is protection of life and liberty of every individual. The Court considered all the factors before taking a call on awarding of compensation and held claimants entitled to compensation to the tune of Rs. 28,51,800, although modifying the earlier award of compensation by the Tribunal which was 32,43,550 Rs.

The Court was hearing an appeal against the award dated 09.06.2016 passed by the Motor Accident Claims Tribunal, Jammu, by virtue of which Tribunal had awarded a sum of Rs. 32,43, 550 alongwith 7.5% interest on account of the death of the victim. The Tribunal considering the income of the deceased as Rs 20, 350 and applying the multiplier of 17 awarded a sum of Rs. 32,43,550 alongwith interest @7.5%.

The Court observed:

"The Tribunal rightly decided Issue No. (i) in favour of the claimants after accepting the evidence of Avtar Singh and relying on FIR No. 104/2015 filed in Police Station Gandhi Nagar, Jammu, that the accident occurred due to rash and negligent driving of the driver of Tipper No.JK02AS-6055, which resulted into [the] death of Vikram Mahajan. The Tribunal also decided Issue No. (iii) in favour of the claimants as the Insurance Company, as well as owner had admitted in their objections that the vehicle was insured and accident occurred during the period of policy, that is, w.e.f. 24.05.2014 to 23.05.2015. Copies of the Insurance Policy, Fitness Certificate & RC of the vehicle were also enclosed with the claim petition. Thus, this issue was also decided in favour of the claimants as no evidence was produced to show any violation of the terms and conditions of the Insurance policy."

However, Court did not accept the salary certificate produced as true evidence of the actual salary received by the deceased victim and said that the actual salary received by the deceased was Rs. 18,500 and salary certificate produced was not reliable to that effect and calculated monthly income as 18, 500 Rs. as against the stated one of Rs. 20,350.

Considering the application of multiplier by the Tribunal, Court said that since the age of the deceased as per the certificate attached with the claim petition i.e., the date of birth of the deceased is 14.10.1988, therefore, his age at the time of the accident would be 26 years & 07 months and thus the Tribunal rightly adopted the multiplier of 17 in view of the law laid down in Sarla Verma & ors. Vs. Delhi Transport Corporation & anr. (2009) 6 SCC 121.

Rejecting the contention of the appellants that the multiplier should have been adopted by taking into consideration the age of the parents of the deceased, court said categorically that same cannot be done. It placed reliance on law laid down by top court of the Country in Royal Sundaram Alliance Vs. Mandala Yadagari Goud decided on 09.04.2019, in which the Apex Court, while considering the issue whether the multiplier has to be adopted keeping in view the age of the deceased or the age of his parents has held that this question is no more res integra that it is only the age of the deceased which is to be considered while adopting the multiplier for granting compensation.

While considering the contention of addition of 50% towards future prospects by the Tribunal as contended by appellant, Court said that the future prospects to which claimant would be entitled would be 40% of the actual income of the deceased instead of 50% and found claimant entitled to Rs. 15,000 as funeral expenses and Rs 15, 000 as loss of estates. Court relied on judgment of Supreme Court in National Insurance Company Vs. Pranay Sethi, 2017 (16) SCC 680, wherein it was held that in case a person is on fixed salary or below 40 years of age, addition of 40% of established income should be granted towards future prospects.

Placing reliance on the decision of Supreme Court in Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram & ors. 2018 (18) SCC 130, Court also found parents of the deceased victim entitled to "filial consortium" and said that the

parents of the deceased are entitled to Rs.40,000/- each for loss of filial consortium.

MA No. 223 of 2013
Oriental Insurance Co. Ltd. v. Isher Lal & Ors.
Decided on: May 19, 2020

This Appeal was filed by the insurance company under section 173 of the Motor Vehicle Act against the award of the Motor Accident Claims Tribunal, Kishtwar. The Hon'ble High Court Observed that the Tribunal assessed the income as Rs.3,000/- per month and keeping in view the dependency, 1/3rd was deducted towards personal and living expenses. Thus, Rs. 2,000/- was taken as monthly loss of income and in view of the age of the deceased as per Sarla Verma & ors. v. Delhi Transport Corporation & anr., 2009 (3) Supreme 487, a multiplier of 18 was applied. Therefore, the annual loss of dependency and loss of income assessed as 2000 x 12 x 18 = 4,32,000/-. Funeral expenses of Rs. 5000/- was granted. The Hon'ble High Court held that the tribunal has rightly awarded the amount with interest and dismissed the appeal.

RFA No. 12 of 2020
Ajaz Ahmad Bhat v. Reyaz Ahmad Kukloo & Ors.
Decided on: May 13, 2020

In this Civil Appeal Hon'ble High Court held that the right of prior purchase of the suit property would come only if the appellant /plaintiff is proved to be either a co -sharer of the suit property; is owning a property alongside the suit property that is dominant or the suit property is not a commercial property. In order to see that the suit property is a commercial one or otherwise, primarily what is to be seen is, as to where the suit property is situated and what it is being used for. It cannot be left to the guess work of trial court to determine the issue. Such an issue needs to be proved during trial and parties must be given a chance to prove their respective stands.

The Court also held that to dismiss the suit either in terms of Clause (a) or (d) of the Rule 11 C.P.C as the other two Clauses do not get attracted at all. In both the cases i.e. in either situation of taking recourse to Clause (a) or (d) of Rule 11, the dismissal must have been based only on the plaint failing to make out a cause of action or appearing to be barred by any law. None of the two provide for taking into consideration the opposite version in the form of written statement, therefore, there is no occasion to look beyond what is contained in the plaint and since it did not do so the written statement cannot be taken into consideration while dismissing suit under Order VII Rule 11 (a) or (d).

FAO No. 7 of 2019
Gulzar Ahmad Hagroo & anr. Vs. Abdul Rashid Bawan & Ors.
Date of decision: April 27, 2020

In this case appeal under Order 43 Rule 1(r) of the CPC was filed before the Hon'ble High Court against the order passed by the Additional District Judge, Srinagar, whereby the application for grant of interim injunction filed by the appellants has been dismissed and the interim order dated passed by the court below, has been vacated. Hon'ble Court while dismissing the appeal observed that, the scope of appeal against an order granting or refusing injunction is limited. The appellate court cannot substitute its own opinion over the view expressed by the court below unless the same is found to be perverse in law. The court below while considering the issue in detail has considered the effect of the Commissioner's report which revealed that the pathway leading to the house of the defendant No.1 and 2 had been macadamized and the electric poles and electric transformer installed on the pathway

as also the gates erected appeared to be old. The court below has also considered the fact that the defendants 1 and 2 are using the said gates for purpose of ingress and egress over the pathway which right could not be scuttled at this stage as the same would amount to granting a decree in favour of the plaintiffs even before asking the parties to lead evidence. The court below has correctly appreciated the controversy and the order impugned, in those circumstances, cannot be said to be an order which warrants interference in any manner.

CR No. 40 of 2020
Amit Chawla v. Nirmal Chawla and ors.
Decided on: April 22, 2020

Hon'ble High Court held that the amendment carried to Order VIII Rule 1 by the Amendment Act of 2018, is prospective in nature and would not apply to the pending applications moved under the unamended Order VIII Rule 1. Right to file the written statement within the period stipulated in the Order VIII Rule 1 and to seek extension of filing the written statement even beyond the said period accrued to the petitioner when the period prescribed expired and the respondents made an application for taking written statement on record even after the expiry of stipulated period. Admittedly, at the relevant point of time, the un-amended provision extracted hereinabove, was occupying the field.

Right to file written statement is a paramount right in civil suit and any amendment affecting such right is substantive and not merely procedural. That being the position, the amendment in question, in the absence of contrary provision, is prospective and shall not apply to pending proceedings.

In the face of law declared by the Hon'ble Supreme Court of India in the case of M/s SCG Contracts India Pvt. Ltd. (supra), it was held by the Hon'ble HC there is no warrant for the proposition that the time to file the written statement begins from the date of dismissal of an application under Order 7 Rule 11 CPC. The position is otherwise and the moment summons in suit are served upon the defendants, time to file the written statement starts ticking, the defendant is obliged to file the statement within thirty days and in case he fails he can apply to the Court for permission to file the written statement and such permission shall be granted by the Court for the reasons to be recorded in writing and on payment of such costs as the Court deems fit. This obligation to file the written statement is independent of the liberty of the defendant to file an application under Order VII Rule 11 CPC. Filing of application under Order VII Rule 11 CPC seeking rejection of the plaint, as held by the Hon"ble Supreme Court of India in the case of R.K. Roja cannot be made as a ruse for retrieving the last opportunity to file the written statement.

CM (M) No. 31 of 2020
Mohammad Ashraf Tantray & Ors. v. Farooq Ahmad Dand & Ors.
Decided on: April 23, 2020

The question before the Court was that whether the petition filed under Article 227 of constitution would be maintainable. The High Court observed that they have not averred in the petition that the trial court has passed the order without jurisdiction or in excess of jurisdiction. The CPC Amendment Act, 2009 has restricted the powers of the Revisional court. Virtually, the petition is in the nature of revision petition and if such practice is adopted and allowed that will render the aim and object of the amendment infructuous and meaningless. Therefore, the petition is not maintainable and the petition is dismissed.

ACTIVITIES OF THE ACADEMY

With resolution of difficulties created by COVID-19 pandemic not appearing to be in sight, some of the judicial academies have resumed their academic activities on Web and App based communication platforms. Continuing Judicial Activity related training programmes have started picking up pace. J&K Judicial Academy has also resumed its activities by organizing online training programmes for the Judicial Officers and Induction Trainees. These training programmes are being conducted as live Webinars attended by the Judicial Officers of all ranks and the Induction Trainees. Since physical gathering, in the wake of need for social distancing, is impossible, live Webinars is the only available option.

Ms. Justice Gita Mittal, Hon'ble the Chief Justice High Court of Jammu & Kashmir and the High Court Committee for Judicial Academy, headed by Hon'ble Justice Rajesh Bindal are taking keen interest in seeing that time available with the judicial officers is utilized gainfully in academic pursuits and that there is a continuity of activities of intellectual development. They personally joined the live sessions of the webinars and made very useful interventions and provided effective inputs for skill development of the judicial officers. Some short term and medium term plans have been put in place in this regard, and Judicial Academy has been geared up to utilize available resources to achieve the desired results.

Since the regular court processes are on restricted mode, judicial officers find some time available to be utilized for academic pursuits which they would find difficult in normal times with lot of case workload.

Webinars on "Stress Management"

On 13th of May 2020, J&K Judicial Academy conducted a Webinar on "Stress Management" which was guided by eminent Resource Person Dr Harish Shetty. Dr Harish Shetty is a renowned clinical psychiatrist from Mumbai, who is a regular resource person of National Judicial Academy and various State Judicial Academies. He is working in the conflict areas and is on advisory panels of many Government Institutions. He talked about the science of stress and the psychological impacts the stress has on the human body and mind. He also identified the peculiar circumstances created by COVID-19 pandemic in which people are compelled to follow the norms of social distancing that is antithesis to the normal human behaviour. He addressed the issue by guiding the judicial officers to adopt to the new normal by bringing about some small adjustments in the personal preferences and social behaviour. Dr. Shetty exhorted that the pandemic has given an opportunity to everyone to think, introspect and tinker with the lifestyle to achieve life long peace of mind and social harmony. He also addressed the specific job related stress issues of the judicial officers. Judicial officers cleared their doubts and queries were ably responded by the resource person.

Webinar on "Role of Referral Judges in the Mediation Process"

On 14th of May 2020, J&K Judicial Academy conducted a Webinar on "Role of Referral Judges in the Mediation Process" guided by Ms. Veena Ralli a renowned Advocate Mediator and organizing Secretary of 'Samadhan', Delhi High Court Mediation Center. Ms. Veena Ralli is known to be one of the top ranking Mediator and Trainer based in Delhi. She has made remarkable contribution in the field of mediation. She told the participants that mediation is the most important mechanism to achieve greater peace in the society by conflict resolution. In her presentation on the Role of Referral Judges in Mediation Process she highlighted the importance of understanding

the effective resolution of disputes through ADR modes, especially the Mediation. She talked about the important role a judge seized of the matter, in initiating and culminating the process of mediation. She stressed that process of mediation starts with the effective intervention of and ends with final authority to be exercised by the judge. The scope of mediation is to be explored by the judge and his effective intervention can bring the parties to the institution of mediation, and then it depends on the effectiveness and the quality of intervention of the mediator that can bring peace to the warring parties. She referred to various judicial pronouncements of the Supreme Court and High Courts, that have led to understanding the field of mediation and have given fillip to mediation becoming an effective tool in resolution of disputes. Referring to M/S Afcons's judgment handed down by the Supreme Court, the resource person highlighted that it is required by the judicial officers to understand as to what kind of cases are fit for reference to mediation or for that matter any other ADR mode, for effective resolution, and it is also to be understood that every matter coming to the court is not fit to be disposed of under regular litigative processes. Use of ADR modes effectively is otherwise also helpful to the judicial system to take off unnecessary steam out of its pressure cooker situation.

Webinar on "Law of Bail"

on 15th of May 2020, J & K Judicial Academy organised webinar on "Law of Bail". Mr. Bharat Chugh, Advocate practising in Supreme Court of India and Delhi High Court was the resource person. For a brief period of time Mr. Chugh has served as a judicial officer in Delhi Judiciary, thereafter he resigned and resumed his practice of law.

In his presentation the resource person elaborated on the genesis of law of bail, tracing its history in the British legal system as well as in other jurisdictions. He highlighted the object and purpose of bail and cited various judgements of the Supreme Court dealing with these aspects. He gave an overview of various provisions of the Criminal Procedure Code as well as other special legislations, and pointed out the interplay between the provisions of the Criminal Procedure Code and the special legislations. Dealing with the principles of law governing grant or refusal of bail, the resource person pointed out that the constitutional mandate of article 21 needs to be remembered always, the right to life and personal liberty being the hallmark of every citizen. He also emphasised that grant of bail is a general rule and its denial only an exception, as was settled in the judgement of Supreme Court in the year 1978, penned by Justice V. R. Krishna Iyer, doyne of liberty jurisprudence. Quoting from various authoritative pronouncements of Hon'ble Supreme Court and various High Courts in India the resource person culled out the principles of law in the matter of grant or refusal of bail. Mr. Chugh also talked about the remand jurisdiction of the magistrates and the special courts and also discussed the provisions regarding the default bail.

The participants interacted freely during the discussions and cleared their doubts as regards various facets of bail and remand jurisdiction.

Webinar on "Judicial Ethics and Bias"

on 30th of May 2020, J & K judicial Academy organised webinar on "Judicial Ethics and Bias", in which Prof. Dr. Ved Kumari from Delhi University was the resource person. Prof. Ved Kumari is a renowned scholar, prolific writer, erudite speaker and an activist in the field of judicial ethics, juvenile justice, gender justice and judicial education. She has been the Chairperson of the Delhi Judicial Academy for a few years.

In her interactive discourse she highlighted the importance of Bangalore Principles of Judicial Ethics and Conduct. She

discussed a vast number Of issues to which the judicial officers and the judges are confronted during dispensation of justice. She also discussed various ethical dilemma as faced by the judges in their personal, social and professional life, that impacts their judicial dispensation. She made the participants to understand that it is very important to uphold the ethical values of judicial life for upholding the faith, trust and confidence of common masses in the judicial institution. It is important to live with the proposition that justice is not only to be done but it should seem to have been done. The principles of fairness is the hallmark of justice.

Speaking on Judicial Bias, the resource person highlighted the importance of understanding the implicit and explicit bias in every human being. When the judges start realising that they are not free from bias, then only they can deal with the bias so as to minimise any chance of the bias affecting their judicial dispensation. She discussed various facets of bias which can impact one's ability to do justice. Therefore, realisation of implicit bias is a step towards achieving the goal of removing bias while treading the path of justice dispensation.

Webinars conducted by Mahrashtra Judicial Academy (MJA) in collaboration with EBC Learning Center.

J & K Judicial Academy joined the collaborative efforts of MJA and EBC Learning Center. Judicial officers from J & K High Court jurisdiction also attended 4 webinars. In 3 webinars Justice Pradeep Nandarajog, former Chief Justice, Bombay High Court and in 4th webinar Dr Mohan Gopal, former Director, National Judicial Academy were the resource persons.

Justice Pradeep Nandarajog addressed the judicial officers from various high court jurisdictions on "Appreciation of Evidence", "Cross Examination" and "Art of Writing Judgement". In his scholarly discourses on the topics, the resource person touched upon all the vital aspects of trial proceedings before the civil and criminal courts. He talked about the role of courts in the voyage of truth, in which the judge is not a mere referee or umpire but the judge plays very important role in ensuring that all the evidence which has crucial bearing on the outcome of the trial is brought on record. It may happen that because of inefficiency on part of either of the parties involved in the case, proper evidence is not produced. In those circumstances the procedural law and the provisions of the Evidence Act empower the court to get on record all the evidence of some significance. While appreciating the evidence available on record, it is required that the judge is able to put every piece of evidence in its perspective. In that, the judge is required to see the admissibility and relevancy of evidence, as also reliability and truthfulness of the witnesses. After satisfying itself of these parameters, the judge would be able to accord proper appreciation.

Dr Mohan Gopal talked about "the Constitutional Vision of Justice". In his thought-provoking address to the judicial officers, the resource person said that Constitution of India is a dynamic and living document, which has adopted itself to the changing needs of the time. It is the outcome of the freedom struggle and the untiring efforts of the members of the Constituent Assembly. Not only that the framers of the Constitution learnt from the experiences of other contemporary constitutions but they analysed the values of the freedom struggle. Talking about the fundamental rights, the resource person said that the fundamental rights are not a charity or bounty given by the State. They are inherent rights. Every citizen of the country is a valued participant in the building of nation. Democratic institutions need to be strengthened so as to give life to the resolve of Constitution stated in the preamble.

Constitution of Central Administrative Tribunal Bench for UTs of Jammu & Kashmir, and Ladakh

NOTIFICATION

New Delhi, the 28th May, 2020

G.S.R. 318(E).—In exercise of the powers conferred by sub-section (1) of section 18 of the Administrative Tribunals Act, 1985 (13 of 1985), the Central Government hereby makes the following further amendments in the notification of the Government of India in the erstwhile Ministry of Personnel and Training, Administrative Reforms and Public Grievances and Pensions vide number G.S.R. 610(E), dated the 26th July, 1985, namely :—

In the Table to the said notification, -

(a) for serial number 7 and entries relating thereto, the following serial number and entries shall be substituted, namely:-

S. No.	Bench	Jurisdiction of the Bench
(1)	(2)	(3)
"7.	Chandigarh Bench	(i) State of Haryana (ii) State of Himachal Pradesh (iii) State of Punjab (iv) Union territory of Chandigarh";

(b) after serial number 17 and entries relating thereto, the following serial number and entries shall be inserted, namely:-

S. No.	Bench	Jurisdiction of the Bench
(1)	(2)	(3)
"18.	Jammu Bench	(i) Union territory of Jammu and Kashmir (ii) Union territory of Ladakh".

[F No. P-13024/1/2019-AT(part)]

RASHMI CHOWDHARY, Addl. Secy.

Jammu & Kashmir Reorganisation (Adaptation of State Laws) Second Order, 2020

S.O. 1245(E) of 2020, dated 03.04.2020, Ministry of Home Affairs (Department of Jammu, Kashmir and Ladakh Affairs)

In exercise of the powers conferred by section 96 of the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), and of all other powers enabling it in that behalf, the Central Government hereby makes the following Order in respect of the Union territory of Jammu and Kashmir, namely:-

1. (1) This Order may be called the Jammu and Kashmir Reorganisation (Adaptation of State Laws) Second Order, 2020.

(2) It shall come into force with immediate effect.

2. The General Clauses Act, 1897 applies for the interpretation of this Order as it applies for the interpretation of laws in force in the territory of India.

3. With immediate effect, the Act mentioned in the Schedule to this Order shall, until repealed or amended by a competent Legislature or other competent authority, have effect, subject to the adaptations and modifications directed by the Schedule to this Order.

1. THE JAMMU AND KASHMIR CIVIL SERVICES (DECENTRALIZATION AND RECRUITMENT) ACT

(Act No. XVI of 2010)

Section 3A.- (i) In sub-section (1):-

(a) omit "deemed to be" and "carrying a pay scale of not more than Level-4 (25500)"; and (ii) in sub-section (2):-

(a) omit "deemed to be"; and

(b) in clause (a), for "have served" substitute "shall have served"

Section 5A.- for "a post carrying a pay

scale of not more than Level-4 (25500)" substitute "any post"

Section 8.- before clause (ii), add:-

"(i) is a domicile of Union territory of Jammu and Kashmir"

[F.NO. 11014/05/2014-KI]

The Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules, 2020.

Government of Jammu & Kashmir
General Administration Department
Civil Secretariat Jammu/Srinagar

Notification
Jammu, the 18th of May, 2020

S.0.166.- In exercise of the powers conferred by Article 309 of the Constitution of India read with section 15 of the Jammu and Kashmir Civil Services (Decentralization and Recruitment) Act, 2010, the Government hereby makes the following rules:-

1. Short title, extent and commencement: - (1) These rules may be called the Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules, 2020.
(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. Definitions:- In these rules, unless the context otherwise requires:

"Act" means the Jammu and Kashmir Civil Services (Decentralization and Recruitment) Act, 2010;

"Competent Authority" means Tehsildar within his territorial jurisdiction or any other officer as may be notified by the Government from time to time for the purpose of issuance of Domicile Certificate;

"Domicile" means domicile as defined in Section 3A of the Jammu and Kashmir Civil Services (Decentralization and Recruitment) Act, 2010;

"Domicile Certificate" means a certificate issued under rule 6 of these rules.
The words and expressions used herein and not defined but defined in the Act shall have the same meanings respectively assigned to them in the Act.

3. Persons eligible for grant of Domicile Certificate.- Any person who fulfils the following conditions shall be eligible for grant of Domicile Certificate by the Competent Authority;-

who has resided for a period of fifteen years in the Union territory of Jammu and Kashmir or has studied for a period of seven years and appeared in class 10th/12th examination in an educational institution located in the Union territory of Jammu and Kashmir ; or

who is registered as a migrant by the Relief and Rehabilitation Commissioner (Migrants) in the Union territory of Jammu and Kashmir as per procedure prescribed by Government for migrants and displaced persons ; or

c) who is a child of Central Government Official, All India Service Officers, Officials of Public Sector Undertaking and Autonomous body of Central Government, Public Sector banks, officials of Statutory bodies, Officials of Central Universities and recognized research Institutes of the Central Government who have served in the Union territory of Jammu and Kashmir for a total period of ten years; or

d) who is a child of parents who fulfil conditions as prescribed in clause (a) or (b); or

e) who is a child of such resident of Union territory of Jammu and Kashmir as reside outside the Union territory in connection with their employment of business or other professional or vocational reasons but whose parents fulfill any of the conditions in clauses (a) or (b).

4. Application for grant of Domicile

Certificate:- (1) Any person who is eligible for grant of Domicile Certificate may apply to the Competent Authority for grant of Domicile Certificate in Form Ä", either physically or electronically online (as may be made available by the government).

(2) In case of minors and persons suffering from any disability, application for grant of certificate may be made and appearances and other acts done by their appointed guardians.

(3) Every application made under sub-rule (1 and (2) shall be accompanied by such documents as are prescribed under these rules.

5. Class of persons, Documents required, Authority Competent and Appellate Authority for issuance of Domicile Certificate:- (1) Persons eligible for Domicile certificate under rule 3, categories whereof are specified in Column-II shall apply to relevant Competent Authority as specified in Column IV along with documents specified in Column V against each Category for issuance of Domicile certificate as indicated in table below:-

(Please see the following pages—**Editor**)

(2) Any person aggrieved by an order of Competent Authority shall file an appeal before the Appellate authority as specified in column VI:

Provided that the Appellate Authority shall decide the appeal after providing an opportunity of being heard to the parties.

6. Grant of Domicile Certificate :-(i) After holding such enquiry as the Competent authority may deem expedient and on the basis of documents furnished by the applicant under Rule 5, the Competent Authority shall either issue Domicile Certificate in Form "B" to the applicant bearing its seal and signatures or reject the application within a period of 15 working days:

Provided that if the domicile certificate is neither issued nor rejected within the specified time period, the applicant may prefer an appeal before Appellate Authority who shall, after affording opportunity to the Competent Authority, decide such appeal within a period of 15 days either accepting or rejecting such appeal:

Provided further that in case the applicant succeeds in his appeal, the appellate authority shall direct the Competent Authority to issue Domicile Certificate within a period of 07 working days and in case, the certificate is not issued within 07 days, the Appellate authority shall recover an amount of Rs, 50000/- from salary of the Competent authority.

(ii)The Competent Authority can also issue Domicile Certificate electronically, as may be made available by the Government.

7. Revision:- The Appellate Authority may, suo moto or on an application made to it, call for records of the proceedings taken, or orders made, by any Competent Authority for purposes of satisfying itself as to the legality and propriety of such proceedings or orders and may pass such orders in reference thereto as it deems fit;

Provided that no order shall be made against any person without affording him a reasonable opportunity of being heard.

8. Interpretation:- If any question of interpretation of any of the provisions of the rules arises, the decision of the Government in the General Administration Department thereon shall be final.

Secretary to the Government
Dated: 18.05.2020

I	II	III	IV	V	VI
S.No./ Clause	**Category of Domicile**	**Relevant Section of the Jammu and Kashmir Civil Services (Decentralization and Recruitment), Act, 2010**	**Competent Authority for issuance of Domicile Certificate**	**Documents to be annexed with application**	**Appellate Authority**
1.	(a) Permanent Resident Certificate Holder	Section 3A (1) (a) of the Jammu and Kashmir Civil Services (decentralization and Recruitment) Act, 2010	Tehsildar	(a) Permanent Resident Certificate	Deputy Commissioner
	(b) Children of persons possessing Permanent Resident Certificate	Section 3 A (2) (b) read with 3A (1) (a) of the Jammu and Kashmir Civil Services (Decentralization and Recruitment) Act, 2010	Tehsildar	Permanent Resident Certificate of the parent; and Birth certificate issued by Competent authority	
2.	(a) A person who has resided for a period of fifteen years in the union territory of Jammu and Kashmir	Section 3 A (1) (a) of the Jammu and Kashmir Civil Services (Decentralization and Recruitment) Act, 2010	Tehsildar of the place last resided	Any document such as Ration Card: Immovable property records: Educational records: voter list: electricity utility bills:labour card; or, employer certificate verified by the Deputy Labour Commissioner or the Director Industries & Commerce of the Concerned Division; or, any other document of proof of residence	Deputy Commissioner

	(b)children of a person who has resided for a period of fifteen years in the union Territory of Jammu and Kashmir	3 a (2) (b) read with 3A (1) (a) of the Jammu and Kashmir Civil services (Decentralization and Recruitment) Act, 2010	Tehsildar of the place last resided	(i) Any document of the parent such as Ration card: immovable property records: educational records: voter list: electricity utility bills: labour card; or, employer certificate verified by the Deputy labour commissioner or the Director Industries & Commerce of the Concerned Division; or, any other document of proof of residence and, (ii) Birth Certificate issued by the Competent Authority.	Deputy Commissioner
3.	A person who has studied for a period of seven years and appeared in class $10^{th}/12^{th}$ examination in an educational institution located in the Union territory of Jammu and Kashmir	3A (1) of the Jammu and Kashmir Civil services (Decentralization and Recruitment) Act, 2010	Tehsildar of the place last resided	Certificate of education issued by the Head of the Institute and verified by chief Education Officer of the School education Department of the Concerned District.	Deputy Commissioner
4.	(a) Migrants Children of Migrants	3A (1) (b) of the Jammu and Kashmir Civil Services (Decentralization and Recruitment) Act, 2010 3A(2) (b) read with 3A (1)(b) of the Jammu and Kashmir Civil services (Decentralization and Recruitment) Act, 2010	Relief and Rehabilitation an Commissioner (Migrants) Relief and Rehabilitation an Commissioner (Migrants)	Certificate of registration of migrant; Or Permanent Resident Certificate, if available. (a) Certificate of registration of the parent; Or (b) Permanent Resident certificate of the parent, if available; and (ii) Birth Certificate	Financial Commissioner, Revenue

5.	Children of Central Government Officials, All India Service Officers, Officials of public Sector Undertakings, Autonomous Body of Central Government, Public Sector Banks, Officials of Statutory bodies, Officials of central Universities and recognized research Institutes of Central Government who shall have served in Jammu and Kashmir for a total period of ten years.	3A(2) (a) of the Jammu and Kashmir Civil Services (Decentralization and Recruitment) Act, 2010.	(a) For children of All India service Officers- Additional Secretary or above in the general Administration Department dealing with All India Services, to be nominated by the Secretary, General Administration Department; and (b) for other categories – Additional Commissioner in the office of Divisional Commissioner to be nominated by Divisional Commissioner	(a)Certificate of service issued by General administration Department; and (b)Birth Certificate issued by the Competent authority (a)Certificate of Service issued by Cadre controlling Authority; and (b)Birth Certificate issued by the Competent Authority	Secretary to Government, general Administration Department Financial Commissioner Revenue
6.	Children of such residents of union territory of Jammu and Kashmir as resided outside Union territory in connection with their employment or business or other professional or vocational reasons	3A(2) (c) of the Jammu and Kashmir Civil Services (Decentralization and Recruitment) act, 2010	Tehsildar where applicant last resided	(a) Permanent Resident certificate of the parent, if available; Or (b) Any other documents such as Ration Card: immovable property records: educational records: voter list: electricity utility bills; or, labour card of parent; or, any other document of proof of residence	Deputy Commissioner

LAW AND SOCIAL TRANSFORMATION

Law is the most authentic and formal instrument for social transformation. Law in common parlance says is a knowledge of science. Law is very deeply connected with the society. Infact it reflects nature of life lived by the society and society cannot remain static. Therefore law in order to meet the changing requirements should keep on evolving itself. Gandhism has taught us social integration and solidarity established through consensus of diverse sections of society to check the menace in society and therefore certain rules, regulations are framed culminating into law.

Gandhism does neither denigrate nor glorify the role of law. It tries to strengthen law by infusing the elements of justice, Humanism and universalism hence society needs comfortable and secure environment with their needs addressed.

Cases of dowry, theft, robbery, rape, molestation, murder, N.D.P.S, women harassment, forgery, cheating, eve teasing etc are oftenly being heard and to curb them strict penal codes are there to keep society in order by bringing culprits to punishments keeping in view gravity of offences. These days evils like dowry, domestic violence, crime against children, distortion of spouses are oftenly reported and to reform society they are dealt according to law laid down by our courts from bottom to top. These days more people are becoming aware and conscious to not take law in their own hands.

As seniors are not part of productive workforce, they are constantly ignored though they are entitled to comfortable and secure environment with their needs addressed hence society should be encouraged to make efforts to help senior especially when the question is of basic amenities.

In the current time of covid-19 outbreak, the court took an unprecedented move to address urgent matters through 'video conferencing' as for smooth functioning of the legal hierarchy. It is crucial during this time of crisis for the courts to remain functional. However there are many challenges to safeguard rights of citizen in the present scenario. Verdicts from our Hon'ble High Courts and Apex Courts are also in spirit of constitution and social transformation for instance our Delhi High Court. In "Rajiv Behl v/s State" & Gujarat High Court in "Shanti Lal Prajapati vs. State of Gujarat" held that children can be evicted from any type of property on grounds of non -maintenance and ill-treatment of the parents. Hon'ble High Courts has taken care of senior citizens while enumerating rights over immovable property and Eviction of Abusive children from the house of their parents. Thus amidst the strategies for social transformation, law is doing tremendous and playing a vital role.

BE IT OLD AGE HOMES:- Orphanages, Child-Care Centres, Safe working environment for women, all are creations of law those are gradually culminating into social transformation.

During the pandemic period - "Right to Default Bail during Lockdown and taking Labour Laws seriously is another milestone of law". Even maintenance laws have been elaborated. Section 4 of 'Senior Citizens Act' has classified the persons from whom maintenance can be claimed by the senior citizens and include adult children, adult

grand children issue of domestic violence are also being addressed in this pandemic era. Even top court of country on 23.03.2020 extended limitation period for filing petition/ application/ suit/ appeals/ all other proceedings by litigants. Every person is entitled to enjoy the rights envisaged under the constitution of India. However in case of detention, these rights get restricted with a reasonable apprehension to secure the assistance of detention in preceding the investigation. Thus the process of social transformation in changing times is continuous thereby restricting of all aspects of life.

Social transformations through social inclusion and social innovations are at the cross road of all of UNESCO'S activities, with a particular focus on those fundamental change in society. The modalities change and causes & consequences of social change have been contemplation by philosophers and sages from time immemorial.

The notion of progress - the continuous unfolding of improvement in society vis-a-vis law is a complete insight of the thought process flowing for social transformation. Rule of law spirit is about how people see the ultimate goal of the law in the society and reason for people to voluntary comply with the law.

There must be culpability for violating the spirit of the law and no society can subsist without a form of embedded law.

Law being product of tradition and culture is an instrument of social change and social justice through Legal AID, Lok Adalat & by means of Mediation process is an ancient transformation of society.

It can be safely said that law as a regulator of both social life and individual behaviour through its distinct institution and practices as a body of doctrines that have immense social dimension. Social transformation occurs due to several factors such as changes in technologies, demography, ideology and so are changes in political life, economic policy and in legal principles or institution but judicial activism and need of human rights has almost changed the perception and order of society by its remarkable rulings and guidelines ratio-decidendi today almost tradition of polygamy, child marriage, adultery under common law in India. Tortious liability of the king and state, husband and wife is different person in India. Though wars, revolution, agitation and mass movements also bring social changes but law is most dependable instrument to plan and bring orderly change even midst of critical situation due to its ability to restrict the relation and its influential institutional framework. Thus law has played tremendous role in social transformation for good of people by raising (i) Standard of living (ii) By elimination of poverty (iii) By expansion in the education (iv) By promoting social justice (v) By providing equitable institution of opportunities (vi) By safe guarding human rights and (vii) By wide spread popular participation in 'decision making'.

Conclusion:- Law is not a brooding omnipotence in the sky, but a flexible instrument of social order, depending upon the political and other values of the society which it purported to regulate.

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Direction for grant of bail to person apprehending arrest (Anticipatory Bail): An Overview

i) Section 438 of Cr.P.C., enables the Court/s , i.e. the High Court or the Court of Sessions, to grant the anticipatory bail which means that if a person is arrested, bail shall be granted to him. It is bail in anticipation of arrest and is, therefore, effective at the moment of arrest. Arrest consists of actual seizure or touching of a person's body with view to his detention.

ii) Section 438 can be invoked if the person is accused of non-bailable offence. Two conditions are to be satisfied to entitle a person to approach the Court for anticipatory bail, which are:

a) he fears that he would be arrested ; and

b) the anticipated arrest is for a non-bailable offence.

Only if the said two conditions are satisfied, one can maintain an application under this Section. The application is not maintainable if the offences are bailable;

iii) However, the Section does not give one a right of grant of bail as a matter of course. The Court always has the discretion to consider each case on its own facts, and either grant bail or refuse it. Besides the considerations which normally weigh with the Courts while granting bail in case of non-bailable offences under section 437 of Cr.P.C., a Court while considering an application for anticipatory bail has to take into account the nature and seriousness of the proposed charges, the context of the events likely to lead to making of charges, the antecedents of the applicant including the fact as to whether he has previously under gone imprisonment or conviction by a Court in respect of any cognizable offence; the possibility of the applicant to flee from justice and securing his presence during investigation or trial; whether the accusation has been made with the object of injuring or humiliating the applicant by having him arrested; and the larger interest of public or State are to be kept in mind by the Court;

iv) The provision of grant of anticipatory bail can be invoked in cases involving offences as heinous as 'murder' in the peculiar facts and circumstances of the case and it can not be said that anticipatory bail can not granted in murder cases, as a rule. (See Gurbakash Singh Sibbia v. State of Punjab', AIR 1980 SC 1632);

v) However, after the amendment made vide Section 22 of Act no. 22 of 2018 (w.e.f. 21-04-2018), the provisions of Section 438 of the Code are no longer applicable to any case involving the arrest of any person on accusation of having committed an offence under Sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376- DB of the Indian Penal Code;

vi) When an application for grant of anticipatory is made before a Court, it can either reject the application after taking into account the relevant considerations noticed here above, or pass any interim order under Sub-section (1) of Section 438 including the directive that in case of his arrest the applicant shall be released on bail;

viii) If the application is rejected or the Court does not pass any interim order, then it is open to an Officer in-charge of Police Station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application;

viii) However, if the Court passes interim order, it shall forthwith cause a notice, being not less then 7 days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court;

ix) Further, in case the court passes a direction under Sub section (1), it may impose , in the light of the facts of the particular case or as is deemed fit by it, inter alia, the following conditions , that:

a) the accused shall make himself available for interrogation by a police officer as and when required;

b) he shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

c) he shall not leave India without the previous permission of this Court; and

d) such other conditions as may be imposed under Sub-section (3) of Section437, as if the bail were granted under that section.

x) As per Sub-section (1-B) of Section 438 of Cr.P.C., the presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the public prosecutor, the Court considers such presence necessary in the interest of justice;

xi) As regards the duration up to which the applicant-accused should be admitted to (anticipatory) bail is concerned , it is apt to notice here that for a considerable period of time the Courts, including the different Benches of the Hon'ble Supreme Court of India, expressed divergent views regarding whether an anticipatory bail should be for a limited period of time so as to enable the person to surrender before the trial court and seek regular bail or it should remain in force right till the culmination of the proceedings of the case against him. Taking into account the conflicting views of the different Benches of varying strength, an Hon'ble Full Bench, comprising of three Hon'ble Judges, of the Supreme Court of India, in “Susheela Aggarwal and ors v. State (NCT of Delhi) and anr”, as reported in (2018) 7 SCC 731, came to the conclusion that the legal position required authoritative settlement in clear and unambiguous terms and accordingly referred the following questions for consideration by a larger bench. The questions framed for reference were, as under:

Question no.1: Whether the protection granted to a person under section 438 of Cr.P.C should be limited to a fixed period so as to enable the person to surrender before the trial court and seek regular bail?

Question no.2: Whether the life of anticipatory bail should end at the time and stage when the accused is summoned by the court?

xii) The matter was accordingly considered by an Hon'ble Constitution Bench of the Supreme Court of India, in: “Susheela Aggarwal and ors v. State (NCT of Delhi) and anr” (Special leave petition no. 7281-7282/2017, decided on 29th of Jan.,2020) and whilst answering the aforesaid said questions, held, consistent with the judgment in: “Shri Gurbaksh Singh Sibbia

and ors v. State of Punjab" (AIR 1980 SC 1632), with respect to the question no.1, that protection contained under section 438 of Cr.P.C should not invariably be for a limited period; it should inure in favour of the accused without any restriction on time. Normal conditions under section 437 (3) read with section 438(2) should be imposed; if there are specific facts or features in regard to any offence, it is open for it to impose any appropriate condition (including fixed nature of relief, or its being tied to an event or time bound etc.). As regards the second question, it was answered by holding that the life of an anticipatory bail does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of trial. However, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so;

xiii) However, the courts have been directed to keep certain points in mind as guiding principles while dealing with application/s for anticipatory bail. Without being exhaustive, the Court/s are required to be generally guided by the consideration/s such as: the nature and the gravity of offence, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it . Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on the facts of the case and subject to discretion of the court. Anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge-sheet till end of the trial;

xiv) The Hon'ble Constitution Bench accordingly over-ruled the observations made in: 'Siddharam Satlingappa Mehtre v. State of Maharashtra and ors' ((2011)(1) SCC 694 and other similar judgments) which had ruled that no restrictive conditions at all can be imposed while granting anticipatory bail. Likewise the decision in: 'Salauddin Abdulsamad Shiekh v. State of Maharashtra' ((1996)(1) SCC 667) and the subsequent decision/s including: 'K.L Verma v. State and ors' ((1998)(9) SCC 348); 'Sunita Devi Vs State of Bihar and anr' ((2005)(1) SCC 608); 'Adri Dharan Dass v. State of West Bengal' (2005)(4)SCC 303; 'Nirmaljeet Kour v. State of Madhya Pradesh' (2004)(7) SCC 558; 'HDFC Bank v. J.J Mannan' (2010) (1) SCC 679; 'Satpal Singh v. State of Punjab' 2018 SCC on line 450, and 'Naresh Kumar Yadev v. Ravinder Kumar' (2008) (1) SCC 632 which laid down such restrictive conditions or terms limiting the grant of anticipatory bail to a period of time, were also over-ruled.

Contributed by–
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Additional Distt. & Sessions Judge
Kathua

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:

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