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Contents

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From the Editor's Desk

Covid-19 ushered the world in a state of flux with a destabilized economy and an unforeseen challenge posed to each and every activity of the nation. It necessitated a reevaluation of access to justice and how it can be ensured in the backdrop of an unprecedented health crisis. The pandemic pushed the domestic courts under a lockdown which severely affected litigation. However, the judiciary responded exceptionally by leveraging technology to ensure that access to the courts was not impeded. Virtual e-courts were accepted and swiftly incorporated in the system, providing justice its contemporary courtroom. This rapid response in the adoption of technology and a powerful push to e-courts and e-filing has ensured that disruption caused remains transitory. Various judgments by the Hon'ble Apex Court has helped in reducing the burden of commercial liabilities on citizens and ensured that delivery of justice remained effectual. The Hon'ble High courts have also taken a collective step in holding the state and union governments accountable. This expeditious reformation of the justice system affirms that dispensing justice will always come first. However, it is also important to address the chronic comorbidities of judicial infrastructure and performance. Issues such as judicial pendency, vacancies, unequal representation have long been a matter of concern. The current predicament of adjournments and the shift to virtual courts coupled with constraints in practice of gathering evidence and examining witnesses has further added on to the staggering backlogs. The judge-population ratio being abysmal is another factor to the docket flow in Indian Courts. The roadmap of Indian Judiciary, in hope of increasing efficiency, needs to resolve these associated issue of vacancies and backlogs. The only real solution for vacancies is substantially increasing the strength of the judicial services by appointing more judges at the subordinate levels. Adjournments and delays should be avoided based on the extent of dispensing justice. The Judicial system, with a revitalized need for technology, now recognizes the benefits of e-filing and digital functioning. The subordinate courts thus need a new outlook with management and technical support along with prospects of training and development so as to further strengthen this resource. Revamping procedural means and eschewing archaic laws is the need of the hour for the way ahead.

LEGAL JOTTINGS

"Liberty and security have always been at loggerheads. The question before us, simply put, is what do we need more, liberty or security? Although the choice is seemingly challenging, we need to clear ourselves from the platitude of rhetoric and provide a meaningful answer so that every citizen has adequate security and sufficient liberty. The pendulum of preference should not swing in either extreme direction so that one preference compromises the other. It is not our forte to answer whether it is better to be free than secure or be secure rather than free. However, we are here only to ensure that citizens are provided all the rights and liberty to the highest extent in a given situation while ensuring security at the same time."

Justice N.V. Ramana, In Anuradha Bhasin v. UOI and Ors., (2020)

CRIMINAL

Supreme Court Judgments

CRA 522 of 2021
Nathu Singh v. State of Uttar Pradesh
Decided on: May 28, 2021

The Hon'ble Supreme Court observed that courts are granting protection from arrest to accused for a long period like 90 days though no case for anticipatory bail is made out .The Apex Court further held that a High Court, while dismissing anticipatory bail applications, can issue protective orders only when there are exceptional circumstances.

A Bench headed by Chief Justice NV Ramana also observed that such orders should explain the reasons for issuing such protection. In this case, after rejecting the application seeking anticipatory bail, the High Court directed the accused to surrender before the Trial Court to file a regular bail application within 90 days, by protecting them from any coercive action during that period. The complainants assailed this order before the Apex Court contending that Section 438, Cr.P.C. does not contemplate the grant of any such protection on the dismissal of the application filed by an accused and rather, the proviso to Section 438(1), Cr.P.C. specifically provides for the arrest of the accused on a rejection of the relief sought in their application. Hon'ble Supreme Court ruled that though Section 438 of Code of Criminal Procedure on grant of anticipatory bail by High Court or Sessions Court should be read liberally, courts should not normally grant protection from arrest limited to a particular time period in cases where no ground for anticipatory bail is made out. It was observed as under:

"The Court must take into account the statutory scheme under Section 438, Cr.P.C, particularly, the proviso to Section 438(1), Cr.P.C, and balance the concerns of the investigating agency, complainant and the society at large with the concerns/interest of the applicant. Therefore, such an order must necessarily be narrowly tailored to protect the interests of the applicant while taking into consideration the concerns of the investigating authority. Such an order must be a reasoned one,"

It was also observed that any interpretation of the provisions of Section 438 Cr.P.C. has to take into consideration the fact that the grant or rejection of an application under Section 438, Cr.P.C. has a direct bearing on the fundamental right to life and liberty of an individual.

CRA 1735--1736 of 2010
Satbir Singh v. State of Haryana
Decided on: May 28, 2021

Hon'ble Apex Court while deciding the appeals arising out of the judgment

dated 06.11.2008 passed by the High Court of Punjab and Haryana at Chandigarh whereby the High Court dismissed the appeals preferred by the appellants and upheld the order of conviction and sentence passed by the Trial Court on 11.12.1997 whereby the appellants were sentenced to undergo rigorous imprisonment for seven years for the offence punishable under Section 304-B, IPC and rigorous imprisonment for five years for the offence punishable under Section 306, IPC. The bench comprising of Chief Justice of India NV Ramana and Justice Aniruddha Bose made an observation that examination of accused under Section 313 is not a mere procedural formality, rather works on the principle of fairness and court should take due care and caution while examining accused and recording statements. The bench expressed its concern towards casual behaviour of trial courts while examining accused and observed that Section 313 embodies valuable principle of *audialterampartem* and thus the accused should be given an opportunity to explain the incriminating circumstances appearing during trial. The trial court is under an obligation to carry on its duty effectively and examine the accused fairly, while incorporating Section 313 of Cr.P.C

"It is a matter of grave concern that, often, Trial Courts record the statement of an accused under Section 313, CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused under Section 313, Cr.P.C cannot be treated as a mere procedural formality, as it is based on the fundamental principle of fairness. This provision incorporates the valuable principle of natural justice- "audialterampartem", as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the part of the Court to question the accused fairly, with care and caution. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense, since the inception of the trial, with due caution, keeping in consideration the peculiarities of Section 304-B, IPC read with Section 113-B, Evidence Act."

The bench also discussed Section 232 of CrPC and observed that if upon recording the evidence placed by prosecution, examining the accused, and hearing the prosecution as well as defence side, the judge considers that evidence is not sufficient to hold the guilt of accused, the judge shall be duty bound to pass an order of acquittal.

Specifically with regard to section 304 -B IPC, the Hon'ble Bench made an observation that it is safe to deduce that when the legislature used the words, "soon before" they did not mean "immediately before". Relying upon case law Kans Raj v. State of Punjab, (2000) 5 SCC 207 and Rajinder Singh v. State of Punjab, (2015) 6 SCC 477, the Bench made the following observation.

"Considering the significance of such legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, "soon before" they did not mean "immediately before". Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exacts the phrase "soon before" entails."

The Hon'ble Bench also observed that

Section 304-B, IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental and the prosecution must establish existence of "proximate and live link" between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

"Therefore, Courts should use their discretion to determine if the period between the cruelty or harassment and the death of the victim would come within the term "soon before". What is pivotal to the above determination is the establishment of a "proximate and live link" between the cruelty and the consequential death of the victim."

Once all the essential ingredients are established by the prosecution, the presumption under Section 113-B, Evidence Act mandatorily operates against the accused and thereafter, the accused has to rebut this statutory presumption.

A three judge bench in Gurmeet Singh vs. State of Punjab, Criminal Appeal No. 1731 of 2010, in another judgment delivered on the same day, reiterated the guidelines of the Judgment.

Criminal Appeal No. 510 of 2021
Gautam Navlakha v. National Investigation Agency
Decided on: May 12, 2021

Hon'ble Supreme Court Bench comprising Justices UU Lalit and KM Joseph while affirming the Bombay High Court judgment dismissed a petition filed by jailed activist Gautam Navlakha seeking default bail in the Bhima Koregaon case. The Hon'ble Court took up various issues for analysis viz: nature of order of transit remand and whether the same is to be passed u/s 167 Cr.P.C, effect of the judgment of the High Court of Delhi dated 1.10.2018, whether House arrest is custody within the embrace of Section 167 of Cr.P.C, whether broken periods of custody otherwise traceable to Section 167 Cr.P.C. suffice to piece together the total maximum period of custody permitted beyond which the right to default bail arises or whether the law giver has envisaged only custody which is continuous and finally the impact of mandate of Article 21 and Article 22 of the Constitution. The primary issue, in the context of the matter was whether the 34 days period of Navlakha's house arrest between August 29 to October 1, 2018, could be included in his period of detention for the purpose of granting default bail under Section 167(2) of CrPC. The case relates to alleged inflammatory speeches and provocative statements made by activists at the Elgar Parishad meet in Pune on December 31, 2017. The prosecution claimed that these speeches led to violence at Koregaon Bhima in the district the next day.

The Hon'ble Court formed the view that the concept of House Arrest involves custody which falls under Section 167 CrPC .The Apex Court further observed that among the advantages which have been perceived in promoting the house arrest, have been avoidance of overcrowding of the prisons and also cost saving. It was observed,

"We may indicate criteria like age, health condition and the antecedents of the accused, the nature of the crime, the need for other forms of custody and the ability to enforce the terms of the house arrest. We observe that under Section 167 (of CrpC) in appropriate cases it will be open to courts to order house arrest".

Analysing the issue whether the period of custody spent during house arrest constitutes custody for the purposes of default bail, it was held in the circumstances of the case that it is an indispensable requirement to claim the benefit of default bail that the detention of the accused has to be authorised by the

Magistrate. The authorisation by the magistrate having been declared illegal, the detention itself was illegal. The house arrest custody cannot be treated as authorised custody under section 167(2) of the CrPC, The bench held that the period of 90 days will commence only from the date of remand and not from any anterior date, in spite of the fact that the accused may have been taken into custody earlier. The Bench while holding that house arrest is also custody and forced detention, also found merit in the NIA's contention that an accused who is remanded to custody under Section 167 of the Cr.P.C cannot come out of custody unless he is bailed out or acquitted.

It was observed, *"while the right to default bail is a fundamental right, it is subject to the conditions, obtaining in section 167 of the CrPC being satisfied. The right to statutory bail arises dehors the merits of the case. The fundamental right arises when the conditions are fulfilled. The nature of detention, being one under section 167, is indispensable to count the period,"*

With these observations, the house arrest of the appellant was held to be not under section 167 and accordingly, the appeal was dismissed.

J&K High Court Judgments

CRM (M) 214/2019
Altaf Hussain Mufti v. Javed Choudhary
Decided on: May 20, 2021

In a Petition seeking quashment of complaint pending in the court of Judicial Magistrate (Special Mobile Magistrate), Srinagar, filed by respondent for the offences contemplated under sections 499, 211 RPC, as also the order of cognizance dated 15.10.2018 passed by the trial court, Single Bench of the High Court of J&K explained the provisions of the offence of defamation. The Bench referred to the provisions of section 499 Cr.P.C to observe that the same brings under the criminal law the person who publishes as well as the person who makes defamatory imputations.

"It emphasizes the word "makes" or "publishes". The gist of the offence of defamation lies in the dissemination of the harmful imputation. Therefore, in brief, the essentials of defamation are firstly the words must be defamatory, secondly they must refer to aggrieved party, thirdly they must be maliciously published. The explanations appended to the section amplify the scope of the section whereas the exceptions take certain things out of the application of the section. Thus in order to constitute an offence of defamation the essential ingredient is to make an imputation concerning any person with intention to harm or with a knowledge or reason that such imputation will harm the reputation of the said person. An imputation without an intention to harm or without knowledge or having reason to believe that it will harm the reputation of such person will not constitute an offence of defamation."

Reference was made to the judgment of the Apex court titled as S. Khushboo Vs. Kanniammal reported in 2010 (5) SCC 600 wherein the Apex Court while dealing with the case of defamation under section 499 – 500 IPC reiterated that it is only when the complainants produce materials that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same.

It was held that, " *What emerges from the aforesaid analysis it is deducible that both the elements i.e. mens rea and act us rea, sine qua non for constituting an offence of defamation are found missing in the article in question in its entirety. There has been neither any intent on the part of the petitioner to cause harm to the reputation of the complainant respondent herein nor is it discernible that any actual harm has been*

done to the reputation of complainant respondent herein, more particularly in view of the fact that the complainant respondent herein has been found eligible for promotion as Principal GMC Srinagar by the government. The case of the petitioner indisputably can be said to fall within the above exceptions appended to section 499 IPC."

With these observations, the Hon'ble Court accepted the petition and quashed the impugned complaint, order of cognizance and consequent proceedings.

CRR No. 27/2010
State of J&K and Anr v. Tanveer Ahmad Salah and Ors
Decided on: May 19, 2021

A Single Bench of the Hon'ble High Court of J&K while deciding a revision petition preferred against the order passed by the Court of Learned 1st Additional Sessions Judge, Baramulla by virtue of which the respondents have been discharged for commission of offences under sections 302, 307 RPC and section 3 of the Public Properties (Prevention of Damages) Act and have been ordered to be charged for commission of offences under sections 304-A, 323, 336, 341, 427, 148 and 149 RPC ,observed that at the stage of considering the issue of framing of charge/discharge of the accused, the trial court should not conduct a mini trial and rather should form an opinion on the basis of material placed on record by the Investigating Officer as to whether there is sufficient ground for presuming that the accused has committed an offence or not. The order impugned was assailed primarily on the ground that the learned trial court had exceeded its jurisdiction and had virtually appreciated the statements of the witnesses recorded under sections 161 and 164-A Cr.P.C in a manner as if the trial court was passing final judgment of conviction or acquittal. The following observation was made:

" 10. As per the mandate of section 267 and 268 of the Code of Criminal Procedure (now sections 227 and 228 of the Cr.P.C.), while considering the issue of framing of charge/discharge of the accused, the learned trial court has to form an opinion on the basis of material placed on record by the Investigating Officer as to whether there is sufficient ground for presuming that the accused has committed an offence or not and the material on record would constitute the statement of witnesses, injury report/ post-mortem report along with other material relied upon by the prosecution. At this stage, learned trial court cannot indulge in critical evolution of the evidence, that can be done at the time of final appreciation of evidence after the conclusion of the trial. 11. The charge can be framed against the accused even when there is a strong suspicion about the commission of offence by the accused and at the same time, the learned trial court is not expected to merely act as a post office and frame the charge just because challan for commission of a particular offence has been filed against the accused. The learned trial court can sift the evidence brought on record by the prosecution so as to find out whether the un -rebutted evidence placed on record fulfils the ingredients of the offences or not. But at the same time, the learned trial court cannot conduct a mini trial to find out as to whether the accused/respondents can be convicted for a particular offence or not. If the ingredients are lacking then, the court has no option but to discharge."

Hon'ble Court reiterated the principles of law as culled out by the Supreme Court in "Sajjan Kumar v. CBI "reported in (2010) 9 SCC 368 and the law laid down in the case " State of Karnataka v. M. R. Hiremath"(2019) 7 SCC 515 where it was held that It is a settled principle of law that at the stage of considering an application for discharge the

court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. The Hon'ble Court also examined the order impugned on touchstone of Sections 299 and 300 RPC and held that

"Thus, the persons can be charged for offence of murder if the act by which death is caused falls within the essentials as prescribed under section 300 RPC and in other cases of culpable homicide not amounting to murder, the accused can be prosecuted for offences under section 304-part I or 304-part II RPC. A person can be charged for commission of offence under section 304-part II RPC if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death. Thus, it is clear when an accused has a knowledge that a particular act is likely to cause death though he never intended to cause death, still he can be prosecuted for commission of offence under section 304-part II RPC."

Holding that the Trial Court had conducted a mini trial in the matter by pointing out the contradictions between the statements of the witnesses simultaneously observing that the accused at this stage can be presumed to have a knowledge of the consequences of the act committed by them, the petition was partly allowed with direction to the trial Court to frame the charges against the respondents for commission of offence under sections 304- Part II, 323, 336, 341, 427, 148 and 149 RPC.

CRM(M) No. 146/2021
Zulfikar Hussain Dar v. Aijaz Ahmad Dar
Decided on: May 17, 2021

Single Bench of Hon'ble High Court of Jammu & Kashmir in a quashment petition filed by the petitioner under Section 482 Cr.P.C seeking the setting aside and quashment of order dated 30.03.2021 passed by the Judicial Magistrate First Class, Budgam whereby and where under the trial court had, while taking cognizance of the complaint filed by the respondent. Under Section 138 of the Negotiable Instruments Act had issued the process for appearance of the accused, observed that *"...issuance of process and putting a person to trial is a serious matter and the Magistrate, while exercising such power cannot afford to be mechanical or lackadaisical."*Factually, the respondent in his complaint had alleged to have lent more than two crores and seventy five thousand to the petitioner through different modes, viz. cheques, transfer and cash etc. After initial reluctance, the petitioner discharged part of his liability by making the payment of Rs. 40 Lacs in cash and issued four cheques for an amount of Rs. 32 lacs. The balance amount of Rs.10 lacs was promised to be paid by the petitioner within some short time. The respondent presented three cheques for amount of Rs. 22 lacs for encashment in his account maintained in the name of M/S New Lark with J&K Bank Branch, Ompora, Budgam. All the three cheques were dishonoured for the reason of insufficient balance in the account of the petitioner .Notice dated 05.10.2020 was served upon the petitioner through registered post but the petitioner failed to liquidate the amount represented by three cheques and the respondent filed the complaint before the trial Court .The order of the trial Court whereby cognizance was taken, was called in question by the petitioner by way of revision petition filed before the Court of learned Sessions Judge, Budgam which was accepted with a direction to the trial Court to hear the matter afresh .The trial Court, after hearing

the respondent as well as the petitioner vide impugned order held the complaint maintainable and, accordingly, issued process to the petitioner to appear as accused and contest the complaint which was challenged before the High Court.

The Bench while reiterating the ingredients of Section 138 of the N.I. Act observed that neither at the time of taking cognizance of the complaint nor at the time of issuance of process the accused in required to be heard in the matter. The accused comes into picture only after the process for his appearance in the criminal complaint is issued and he appears before the Magistrate. Further, while holding that the stage of taking cognizance of an offence upon receiving a complaint precedes the examination of complainant and his witness under Section 200 Cr.P.C, the Court also delved into the true meaning of the word 'cognizance' and at what stage of proceedings the Magistrate is obliged to take it before proceeding further in the matter. It was observed,

"cognizance' in general meaning is said to be 'knowledge' or 'notice' and taking cognizance of offences means, 'taking notice' or 'become aware of the alleged commission of offence'. The dictionary meaning of the word, 'cognizance' is 'judicial hearing of a matter'. The term 'cognizance of offence' is nowhere defined in the Code of Criminal Procedure. Sections 190 to 199 of the Cr.P.C deal with method and the limitations, subject to which various criminal Court sought to take cognizance of offences. "

The Bench held that the preliminary statement of the complainant and his witness in attendance is recorded only with a view to decide taking further steps in the complaint, like issuance of process for securing the presence of the accused. The cognizance is taken under Section 190 Cr.P.C and it is only after the Magistrates takes cognizance under Section 190 Cr.P.C, he proceeds to record the preliminary statement of the complainant and his witness, if any present, so as to find out whether the allegation in the complaint, which constitutes an offence, are substantiated.

Observed further that in the matter of complaint under Section 138 NI Act, in which the ingredients of offence are clearly pleaded and made out with the support of documentary evidence, the omission to discuss the preliminary statement of the complainant and his witness may be an irregularity, but that would not vitiate the proceedings unless in the opinion of the court a failure of justice has in fact been occasioned thereby. Section 465 of Cr. P.C would come into play in such fact situation. Another observation laid down in view of the facts of the present matter was that, in a case involving the dispute purely of a civil nature, the criminal law cannot be set in motion but, it is equally well settled that certain offences like the offences of cheating, criminal breach of trust, criminal misappropriation and offence under section 138 of the NI Act do arise out of the civil transactions and if the ingredients of offence/offences are made out, criminal law too can be set in motion alongside the civil remedy for resolution of the dispute.

The Hon'ble High Court analysed the circumstances of the case in hand and held that the complaint filed by the respondent and the impugned summoning order issued by the trial court are fully in consonance with law and accordingly the petition was dismissed.

"Using rakhi tying as a condition for bail, transforms a molester into a brother, by a judicial mandate. This is wholly unacceptable, and has the effect of diluting and eroding the offence of sexual harassment. The act perpetrated on the survivor constitutes an offence in law, and is not a minor transgression that can be remedied by way of an apology, rendering community service, tying a rakhi or presenting a gift to the survivor, or even promising to marry her, as the case may be. The law criminalizes outraging the modesty of a woman. Granting bail, subject to such conditions, renders the court susceptible to the charge of re-negotiating and mediating justice between confronting parties in a criminal offence and perpetuating gender stereotypes.

Justice Ravindra Bhat, Aparna Bhat v. The State of Madhya Pradesh, March 2021

CIVIL

Supreme Court Judgments

Civil Appeal No. 10827 of 2010
Mangala Waman Karandikar (D) through LRS v. Prakash Damodar Ranade
Decided on: May 07, 2021

In an appeal filed against the judgment of the Bombay High Court, in Second Appeal No. 537 of 1991, wherein the second appeal was allowed in favour of the respondent and the decree in favour of the appellant was set aside, Hon'ble Apex Court while setting aside the judgment of High Court and restoring the decree of Trial Court, held that proviso 6 to Section 92 of the Evidence Act would not apply if a document is straightforward and without any ambiguity in its meaning. Factually, the appellant's husband ran a business of stationery. He died untimely in 1962. After his death the appellant carried out the business for a while and thereafter she decided to allow the Respondent to run the business for sometime. This all was entered into an agreement dated February 7th, 1963. The contract was extended again and in the 1980's the appellant decided that she could run her husband's business again where after, she issued the Respondent notice dated 20th December 1980, requesting the premises to be vacated by January 31, 1981. The Respondent replied that the sale of the business was incidental rather the contract was a rent agreement *strictosensu.* The Respondent's reply aggrieved the Appellant to file a civil suit in 1981 in the court of Joint Civil Judge in Junior Division of Pune.

The Bench observed that the heavy burden was lying on the defendant to prove that there was licence agreement. In this context, the document became much relevant, and it had got material importance. The Bench underscored that contractual interpretation depends on the intentions expressed by the parties and dredging out the true meaning is an 'iterative process' for the Courts. In any case, the first tool for interpreting, whether it is a law or contract is to read the same. Stating that Section 95 of Evidence Act only builds on the proviso 6 of Section 92 of the Act, the Hon'ble Court opined thus

"*If the contrary view is adopted as correct it would render Section 92 of the Evidence Act, otiose and also enlarge the ambit of proviso 6 beyond the main Section itself. Such interpretation, provided by the High Court, violates basic tenets of legal interpretation. Section 92 specifically prohibits evidence of any oral agreement or statement which would contradict, vary, add to or subtract from its terms.* "

The Bench also made the observation,

"If, as stated by the learned Judge, oral evidence could be received to show that the terms of the document were really different from those expressed therein, it would amount to according permission to give evidence to contradict or vary those terms and as such it comes within the inhibitions of Section 92. It could not be postulated that the legislature intended to nullify the object of Section 92 by enacting exceptions to that section."

Also held that," Further," *Once the parties have accepted the recitals and the contract, the respondent could not have adduced contrary extrinsic parole ev idence, unless he portrayed ambiguity in the language. It may not be out of context to note that the extension of the contract was on same conditions*."

Civil Appeal No. 9274 of 2019
Bangalore Electricity Supply Company Limited (BESCOM) v. E.S. Solar Power Pvt. Ltd. & Ors
Decided on: May 03, 2021

In a Judgment, the Supreme Court bench constituted of Justice L. Nageswara Rao and Justice Vineet Saran while dismissing an appeal against a judgment of the Appellate Tribunal for Electricity at Delhi by which the order passed by the Karnataka Electricity Regulatory Commission (KERC) was reversed and KERC had dismissed the petitions filed against the reduction of the tariff payable by Bangalore Electricity Supply Company Limited (BESCOM) from Rs. 6.10/kWh to Rs. 4.36/kWh and imposition of damages of Rs. 20,00,000/- for delay in commissioning the plan, shed light on how Courts should proceed while interpreting contracts. The Bench reiterated the principles for interpretation of a contract.

"In seeking to construe a clause in a Contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean."

While dismissing the appeal, the bench noted as follows:

"16. The duty of the Court is not to delve deep into the intricies of human mind to explore the undisclosed intention, but only to take the meaning of words used i.e. to say expressed intentions (Smt. Kamala Devi vs. Seth Takhatmal & Anr. In seeking to construe a clause in a Contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean. It can happen that in doing so one is driven to the conclusion that clause is ambiguous, and that it has two possible meanings. In those circumstances, the Court has to prefer one above the other in accordance with the settled principles. If one meaning is more in accord with what the Court considers to the underlined purpose and intent of the contract, or part of it, than the other, then the court will choose former or rather than the later. Ashville Investment v. Elmer Contractors. The intention of the parties must be understood from the language they have used, considered in the light of the surrounding circumstances and object of the contract. Bank of India and Anr. v. K. Mohan Das and Ors. Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause. Bihar State Electricity Board, Patna and Ors. v. M/s. Green Rubber Industries and Ors "

The Court also advised to take stock of the well settled canons of construction of contracts and the summarization of the principles of interpretation of contract by Lord Hoffmann in Investors Compensation Scheme Limited vs. West Bromwich Building Society.

J&K High Court Judgments

CFA No. 25/2013
Abdul Aziz Khan & Anr v. Ghulam Mohammad Langoo
Decided on: May 28, 2021

In a significant ruling, Hon'ble High Court of J&K while dismissing the appeal of the tenant and setting aside the trial court judgment by directing to vacate the tenancy premises and hand it over to landlord, recorded that the courts must effectively intervene and nip the evil of perjury and false statements in bud. The Bench set aside the trial court judgment whereby. the suit for eviction of premises with arrears of rent has been partially decreed in favour of respondent herein and defendants – appellants have been directed to hand over premises to plaintiff within a period of two months from the date of pronouncement of judgement and in default, defendants will be liable to pay to plaintiff-respondent the damages at the rate of Rs.500/- per day till the premises is handed over to plaintiff-respondent. The Court noted that the tenant in his written statement before the Trial Court had in clear cut terms admitted that he had executed rent deed with the landlord and by this he had admitted the relationship of landlord and tenant. The Court held that a person cannot be allowed to approbate and reprobate and no party can take stand as per convenience and a party cannot be allowed to withdraw from the admissions made by it in the pleadings in respect of the case.

"*19.The principles, underlying aforesaid decisions, would clearly indicate that a party cannot be permitted to change the stand which would frustrate the case of other-side. This is the elementary rule of logic. It is well settled that a person is not to be heard who alleges things contradictory to each other. As the maxim goes* ***allegans contraria non est audiendus****. Even the Supreme Court in a decision reported in Heeralal v. Kalyal Mal, AIR 1998 SC 618, observed that once written statement contains admission in favour of the plaintiff, by amendment such admission of defendants cannot be allowed to be withdrawn, if such withdrawal would amount to totally displacing the case of the plaintiff and which would cause him irretrievable prejudice. The principle enunciated by the Supreme Court squarely applies to the fact situation of the present case."*

The principle, the Bench observed, is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage. The Court reiterated the principle of Estoppel described succinctly in *Bansraj Laltaprasad Mishra v. Stanley Parker Jones, AIR 2006 SC 3569*, wherein it was observed that principle of estoppel arising from the contract of tenancy was based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord.

It was also observed that courts cannot be converted into a wrestling field, for trial of tricks where the Court has to act as an empire when a party take different stand in a court to defeat the efforts of the other party and said stand must be curbed down effectively by the courts. It was also reiterated that the courts have ruled in many judgements that the tenants cannot dictate upon landlord's personal need of the tenanted premises while making meticulous comparison and assessment of the comparative advantages and disadvantages of landlord and tenant.

Resultantly, judgement and decree passed by the trial Court was set-aside qua partial eviction, and suit of the plaintiff-respondent was decreed and allowed.

Webinar on "Court Management with Stress on Enhancing Capacity for Delivering Justice"

On May 08, 2021, J&K Judicial Academy conducted a webinar on "Court Management with stress on Enhancing Capacity for Delivering Justice" guided by Justice Deepak Gupta, Former Judge, Supreme Court of India.

In his mind engaging session, the resource person guided the participants through various aspects of Court Management, Leadership Qualities and Administrative Skills which are imperative for the smooth functioning of the Judicial System and for administration of Justice. He underscored that capacity building and focus on human resource development with optimum use of resources at disposal through structured strategies, would yield fine end product. While stressing that self management is more important than managing others, he reminded the participants that Judges are discharging constitutional functions and for delivery of effective and efficacious Justice, we should set targets for ourselves and plan strategies and modalities for dealing with issues.

The resource person also stressed upon capacity building measures such as regular trainings, monitoring, periodical scrutiny and performance management with constant appraisals as another approach for attaining quality. In this regard, the Court Staff, litigants, bar members were described as equal stake holders in the management of Court Process and ensuring that each person performs the allocated task and provision for incentives were construed as quality enhancement tools.

Case Management was another productive and efficacious tool to achieve the institutional goal of dispute resolution. The resource person enjoined the participants to regularly monitor the case load, docket maintenance, prioritising the old cases and cases pertaining to Women, Children , under trials and senior-Citizens. Use of Information & Communication Technology (ICT) was also highlighted as a measure to upgrade Court Management. In this regard, he underlined the effectiveness of National Judicial Data Grid (NJDG) as a helpful tool for Court Management and stated that integration of Data with regard to Case Load shall lead to identifying the bottle necks in disposal and finding long term solutions.

One of the highlights of the session was laying emphasis on developing leadership qualities amongst Judges . The Senior Judges were specifically called upon to constantly act as guides for junior officers and to render advice and solicitation whenever required by them. Balanced distribution of work, regular meetings of officers, providing encouragement to freshly inducted officers was underlined. The Officers of all levels and ranks were advised to keep communication channels open and indulge frequently in peer to peer interaction for the purpose of sharing experiences and best practices and to inter-se facilitate problem mitigation.

Judicial Officers had an interactive session with the vastly experienced resource person who ably responded to the doubts and queries raised by the participating officers.

GRANT OF INJUNCTION- DISCRETION OF THE COURT

Power to grant injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as a matter of right or course. Grant of injunction being equitable remedy, it is in the discretion of the court and such discretion must be exercised in the favour of plaintiff only if the court is satisfied that, unless the defendant is restrained by an order of injunction, irreparable loss or damage will be caused to the plaintiff. The court grants such relief *ex debito justitiae* i.e., to meet the ends of justice. *(Shiv Kumar v. MCD 1993 3 SCC161)*

In ***Dalpat Kumar v. Prahlad Singh (****7558 1 SCC 719),* the Supreme Court stated, "The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to. The parties if the injunction is refused, and compare it with that which likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that, pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. *Thus, the court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.*" (Dalpat Kumar v. Prahlad Singh, 1992 1 SCC 719)

PRINCIPLE IN RELATION TO GRANT OF AD -INTERIM INJUNCTION

The grant of injunction is in the nature of equitable relief, and the court has undoubtedly power to impose such conditions as it thinks fit. In the case of ***Gujarat Bottling Co., Ltd., Vrs Coca Cola Company*** (1995 (5) SCC 545) , the Apex Court held that 'the object of the interlocutory injunction is to protect the petitioner against injury by violation of his right for which he could not be adequately compensated in damages.

In ***Morgan Stanley Mutual Fund v. Karthik Das***, (1994) SCC 225, the Apex Court laid down the following principles for consideration before granting an ad interim injunction:

(a) Whether irreparable or serious mischief will ensure to the plaintiff;
(b) Whether the refusal of *ex parte* injunction would involve greater injustice than the grant of it would involve;
(c) The Court will also consider the time at which the plaintiff first had notice of the act complained so that making an improper order against a party in his absence is prevented;
(d) The Court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant *ex parte* injunction;
(e) The Court would expect a party applying for *ex parte* injunction to show utmost good faith in making the application;
(f) Even if granted, the *ex parte* injunction should be for a limited period of time;
(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the Court.

The cardinal principles for granting an injunction are:

1. PRIMA FACIE CASE

- The first rule is that the applicant must make out a prima facie case in 'support of the right claimed by him'. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is an arguable case for trial which needs investigation and a decision on merits and

on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of temporary injunction. The burden is on the plaintiff to satisfy the Court by leading evidence or otherwise that be bas a prima facie case in his favour. *(Dalpat Kumar v. Prahlad Singh (1992) 1 SCC 719)*

- Prima facie case is sina qua non for entertaining an application of injunction. In the case of ***Kashi Math Samsthan and another Vs Srimadh Sudhindra Thirtha Swamy and another (***AIR 2010 SC 296), the Apex Court held that, *'it is well settled that in order to obtain injunction, the party who seeks for grant of injunction has to prove that he made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury, if injunction is not granted. But, it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all.'*
- As per the established principle of law reported in ***Shivakumar Chada vs. Municipal Corporation of Delhi*** *(1993 (3) S.C. C. 161 at page 176 para 34)*the court must be satisfied that a strong prime facie case has been made out.

2. BALANCE OF CONVENIENCE

- To see balance of convenience, it is necessary to compare case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be greater than which is likely to arrive from granting it. when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff, then the injunction may be granted. *(Seema Arshad Zaheer v Municipal Corporation of Greater Mumbai (2006) 5 SCC 282)*
- In the case of ***A.Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana. Paripalanai Sangam*** (A.I.R 2012 (S.C) 2010), the Hon'ble Apex Court referred to the case of ***Maria Margarida Sequeria Fernandes*** (2012 AIR SCW 2162) and it had examined the aspects that the Court has to consider the grant or refusal of an injunction
- Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence and attention must be bestowed by the judicial officers and Judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the defendant. In order to grant or refuse injunction, the judicial officer or the Judge must carefully examine the entire pleadings and documents with utmost care and seriousness.
- Para No. 87:- The safe and better course is to give short notice on injunction application and pass an appropriate order after hearing both the sides. In case of grave urgency, if it becomes imperative to grant an *ex parte* ad interim injunction, it should be granted for a specified period, such as, for two weeks. In those cases, the plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an exparte ad interim injunction. The Court, in order to avoid abuse of the process of law may also

record in the injunction order that if the suit is eventually dismissed, the plaintiff undertakes to pay restitution, actual or realistic costs. While passing the order, the Court must take into consideration the pragmatic realities and pass proper order for mesne profits. The Court must make serious endeavour to ensure that even-handed justice is given to both the parties.

3. IRREPARABLE INJURY

- There are many injuries incapable of being repaired but a court of equity does not regard them as 'irreparable'. For example cause which outrage the feeling or loss of things of sentimental value. On the other hand there are injuries which in their nature may be repaired but still treated as irreparable. For example a person who is inflicting or threatening them is insolvent or unable to pay damages.
- Ordinarily injury is irreparable when without fair and reasonable address of Court, it would be denial of justice. Very often an injury is irreparable where it is continuous and repeated or where it is remediable at law only by a multiplicity of suits. Sometime the term irreparable damage refers to the difficulty of measuring the amount of damages inflicted. However, a mere difficulty in proving injury does not establish irreparable injury.
- The existence of a prima facie case alone is not sufficient to grant injunction and the settled principle of law is that even where prima facie case is in favour of the plaintiff, the Court will refuse temporary injunction if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable. *(Seema Arshad Zaheer v Municipal Corporation of Greater Mumbai (2006) 5 SCC 282)*
- A temporary injunction can be granted only if the person seeking injunction has a concluded right, capable of being enforced by way of injunction. *(Agricultural Produce Market Committee Vs. Girdharbhai Ramjibhai Chhaniyara – AIR 1997 SC 2674)*
- So to say, before granting any sort of interim relief or passing supplemental order, the Court has to strike a balance between the rights of the rival parties of the lies. The Court should exercise the power with judicious application of mind and with great care and caution. No Court is expected to pass an order just because it is lawful to do so. Similarly, the Court should not resist in granting an interim relief, where such order is required for advancement of justice. To say, even in the absence of specific provision, if the situation warrants, the Court should order for interim relief in exercise of its inherent powers.

4. CONDUCT OF THE PARTIES

- In addition to the above, in ***Mandali Ranganna and Ors. v. T. Ramachandra*** ***(****Mandali Ranganna and Ors. v. T. Ramachandra (2008) 11 SCC 1)* an additional principle was sought to be enunciated relating to grant of injunction by way of an equitable relief.
- The Apex Court held that in addition to the three basic principles, a Court while granting injunction must also take into consideration the conduct of the parties. It was observed that a person who had kept quiet for a long time and allowed others to deal with the property exclusively would not be entitled to an order of injunction. The Court should not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequences depending upon the nature thereof and in dealing with such matters the Court must make all endeavours to protect the interest of the parties.

- Furthermore it was held in Seema Zaheer (supra), that temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands." *(Seema Arshad Zaheer v Municipal Corporation of Greater Mumbai (2006) 5 SCC 282)*

CONSEQUENCES FOLLOWING DELAY IN DISPOSAL OF AD INTERIM INJUNCTION

- When court grant ad-interim injunction it should be finally decided within thirty days. However, if that application is not decided within thirty days then also order of ad-interim injunction remain in force. However court should passed order in writing as to cause of delay failing which it becomes appealable.
- Delay in Disposal Despite Insertion of Order 39 RULE 3-A Order 39 Rule 3-A. Provides as under Court to dispose of application for injunction within thirty days.-Where an injunction has been granted without giving notice to the opposite party, the court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reason for such inability." The main object reason behind the amendment by inserting the said section was with that "Ex-parte temporary injunction are one of the causes of delay in litigation, because the party which obtains injunction does not show any inclination to expedite the disposal of the suit. The new Rule was inserted to ensure that while the power to issue ex-parte injunction is not curtained, because the exercise of such powers, in urgent cases, is needed, there is a time-limit with regard to duration of such ex-partee injunction.
- There are guidelines of Supreme Court on this aspect also as provided in. ***A. Venkatasubbiah Naidu vs S. Chellappan And Ors*** (AIR 6444 SC 7476) while dealing with the consequence, if any, on account of the Court failing to pass the final orders within thirty days as enjoined by Rule3-A has held that "the party who does not get justice due to the inaction of the court in following the mandate of law must have a remedy.
- "*So we are of the view that in a case where the mandate of Order 39 Rule 3A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3A."*
- In appropriate cases the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs."

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