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Contents

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From the Editor's Desk

Almost whole of the world is woefully grappling with the worst pandemic of the century. It is now more than five months on since the formal recognition by the world body, WHO, of the alarming situation created by Coronavirus. It is now, in the entire world, Europe and America being the worst sufferers, more than 2.3 Lakh people have lost lives and more than 33.40 Lakh affected. Immense pressure is staring at the economic resources, medical institutions, medical professionals, administrative and police organizations. Judicial institutions are also facing great difficulty in providing access to justice. Hon'ble Supreme Court and High Courts are putting in place various innovative methods to ensure continued functioning of the Judicial institutions at all levels. At District and Taluk level also mechanism are being devised to address the urgent judicial needs of the citizens. It is becoming practically difficult to resume the regular court processes in the wake of threat of community spread of COVID-19, and then subsequent waves of pandemic.

Government institutions are coming up with newer modes of dispensation of public services. Frontline workers are putting all resources and energy as Corona-warriors to minimize the community spread of the virus. Information Technology is emerging as a viable and effective tool to keep the instructions of public service functioning. Information Technology is also a handy tool for the judicial institutions to provide urgent relief to the needy consumers of justice. There are certain difficulties being faced owing to the reason that there is no universal solution to provide access to Justice. All sorts of ICT platforms are being employed to keep going, however common solution is far from near sight. Urgent and grave concern is projected by the stakeholders as regards non availability of common platform. It is, therefore, required that a universal platform is recognized, tested and put in place to facilitate all the stakeholders and consumers of Justice. Traditionally, as precedent and for regular trial procedures presence of a litigant is requisite, especially an accused, at various stages of the case hearings. Methods are required to be developed where such presence can be secured through virtual mode.

LEGAL JOTTINGS

"Criminals have no religion. No religion teaches violence and cruelty-based religion is no religion at all, but are mere cloak to usurp power by fanning ill feeling and playing on feelings aroused thereby. The golden thread passing through every religion is love and compassion. The fanatics who spread violence in the name of religion are worse than terrorists and more dangerous than an alien enemy."

Dr Arijit Pasayat, J. in Zahira Habibullah H. Sheikh v. State of Gujarat, (2004) 4 SCC 158, para 19

CRIMINAL

Criminal Appeal No. 1120 of 2010
Raja @ Ayyapan v. State of Tamil Nadu
Decided on: April 1, 2020

In this Criminal Appeal the Supreme Court has considered two vital questions :

The first question for consideration is whether the appellant has made the confession voluntarily and truthfully. Held that - The law of confession is embodied in Sections 24 to 30 of the Indian Evidence Act, 1872. The confession is a form of admission consisting of direct acknowledgment of guilt in a criminal charge. In this connection, it is relevant to notice the observations of Privy Council in Pakala Narayana Swami v. Emperor (1939 PC 47) which is as under:

"…..a confession must either admit in terms of an offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not by itself a confession…."

Supreme Court observed that, Section 15(1) of the TADA Act is a self contained scheme for recording the confession of an accused charged with an offence under the said Act. This provision of law is a departure from the provisions of Sections 25 to 30 of the Evidence Act. Section 15 of the TADA Act operates independently of the Evidence Act and the Criminal Procedure Code. In *Kartar Singh* {1994 (3) SCC 569}, the Supreme Court while upholding the validity of the said provision has issued certain guidelines to be followed while recording confession. These guidelines have been issued to ensure that the confession obtained in the pre indictment interrogation by a police officer not lower in rank than a Superintendent of Police is not tainted with any vice but is in strict conformity with the well recognised and accepted aesthetic principles and fundamental fairness. These guidelines are:

"(1) The confession should be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him;

(2) The person from whom a confession has been recorded under Section 15(1) of the Act, should be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under Rule 15(5) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay;

(3) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate should scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person should be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon;

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank of an Assistant Commissioner of Police in the Metropolitan cities and elsewhere of a Deputy Superintendent of Police or a police officer of equivalent rank, should investigate any offence punishable under this Act of 1987. This is necessary in view of the drastic provisions of this Act. More so when the Prevention of Corruption Act, 1988 under Section 17 and the Immoral Traffic Prevention Act, 1956 under Section 13, authorise only a police officer of a specified rank to investigate the offences under those specified Acts.

(5) The police officer if he is seeking the custody of any person for pre indictment or pre trial interrogation from the judicial custody, must file an affidavit sworn by him explaining the reason not only for such custody but also for the delay, if any, in seeking the police custody;

(6) In case, the person, taken for interrogation, on receipt of the statutory warning that he is not bound to make a confession and that if he does so, the said statement may be used against him as evidence, asserts his right to silence, the police officer must respect his right of assertion without making any compulsion to give a statement of disclosure."

It is also necessary to state here that the confession recorded by the police officer is undoubtedly equated to a confession recorded by a Judicial Magistrate under Section 164 Cr.P.C. Thus, the said confession is a substantive piece of evidence. Therefore, all the safeguards which are to be followed by a Magistrate should have been followed by the police officer also. It is well settled that the satisfaction arrived at by the Magistrate under Section 164 Cr.P.C. is, if doubtful, then, the entire confession should be rejected.

The second question for consideration is whether the statement of two other co-accused is admissible in evidence. Held that - The confession statement of the co accused was recorded by the Superintendent of Police (PW20) in Crime No.160/1990. The appellant was absconding, hence the proclamation order was issued by the trial court and thereafter the case was split against the appellant. A separate trial was conducted against the appellant and the impugned judgment convicting the appellant accused has been passed by the Designated Court. Having excluded the application of Sections 24 to 30 of the Evidence Act to a confession recorded under Section 15(1) of the TADA Act, a self contained scheme is incorporated therein for recording the confession of an accused and its admissibility in his trial with co-accused, abettor or conspirator for offences under the TADA Act or the Rules made there under or any other offence under any other law which can jointly be tried with the offence with which he is charged at the same trial. There is thus no room to import the requirements of Section 30 of the Evidence Act in Section 15 of the TADA Act. Under Section 15(1) of the TADA Act the position, in my view, is much stronger, for it says, "a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or soundtracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co accused, abettor or conspirator for an offence under this Act or Rules made there under, provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused."

In the instant case, no doubt, the appellant was absconding. That is why, joint

trial of the appellant with the other two accused persons could not be held. As noticed above, Section 15 of the TADA Act specifically provides that the confession recorded shall be admissible in trial of a co-accused for offence committed and tried in the same case together with the accused who makes the confession. We are of the view, that if for any reason, a joint trial is not held, the confession of a co-accused cannot be held to be admissible in evidence against another accused who would face trial at a later point of time in the same case. We are of the further opinion that if we are to accept the argument of the learned counsel for the respondent, it is as good as rewriting the scope of Section 15 of the TADA Act as amended in the year 1993.

Criminal Appeal No. 722 of 2017
Hira Singh v Union of India
Decided on: April 22, 2020

In a reference made to 3 Judge Bench in 2017 the prime question for consideration was: "Whether while determining the small or commercial quantity in relation to narcotic drugs or psychotropic substances in a mixture with one or more neutral substance (s), the quantity of neutral substance(s) is not to be taken into consideration or it is only the actual content by weight of the offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity?".

Over ruling its earlier decision of 2008 in E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau, reported in (2008) 5 SCC 161 which had held that only the actual weight of the drug in a mixture will matter under the NDPS Act, and that the weight of the neutral substances is to be excluded, the Court held that the quantity of neutral substances in a mixture containing narcotic drugs or psychotropic substances must be taken into account along with the actual weight of the offending drug while determining 'small or commercial quantity' under the Narcotic Drugs and Psychotropic Substances Act, 1985.

Considering the statement of objects and reasons of the NDPS Act and the Notification of 2001, the Court observed that "it was never the intention of the legislature to exclude the quantity of neutral substance and to consider only the actual content by weight of offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity". "Therefore, if it is accepted that it is only the actual content by weight of offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, in that case, the object and purpose of enactment of NDPS Act would be frustrated."

Civil Appeal No. 7231 of 2012
Aishwarya Atul Pusalkar v. Maharashtra Housing & Area Development Authority & Ors.
Decided on: April 27, 2020

In the present appeal, the Hon'ble Supreme Court recognized that the appellant has the reside in her matrimonial home. Such right has a legitimate basis. Though Hon'ble Supreme Court asserted that the enforcement mechanism adopted by appellant to enforce her right is not legally acceptable, yet the Court observed that a married woman is entitled to live, subsequent to her marriage, with rest of her family members on the husband's side, in case it is a joint-property. However, if she resides in an accommodation as an independent family unit with her husband and children, the matrimonial home would be that residential unit. This right is embedded in her right as a wife. It is implicit under the provisions of Section 18 of the Hindu Adoption and Maintenance Act, 1956 in situations that statute is applicable. The Protection of Women from Domestic Violence

Act, 2005 has recognised the concept of "shared household" in terms of Section 2(s) of this statute. Alienating an immovable asset to defeat the right of a victim lady under the said Act can constitute domestic violence, coming, inter-alia, within the ambit of the expression "economic abuse" under Section 3(iv) of 2005 Act. A Magistrate having jurisdiction under Section 19 of the said Act is empowered to pass a residence order to protect a victim of domestic violence from being removed from her shared household. But for a husband to compel his wife to live in a separate household, which is not her matrimonial home, an order from appropriate legal forum would be necessary. There cannot be forcible dishousing of a wife from her matrimonial home.

The Hon'ble Court observed that the appellant is the legally wedded wife of the respondent no.8. However, she has been out of her matrimonial home since the year 2000 and such right to claim residence at matrimonial home cannot be enforced invoking the writ jurisdiction. The Hon'ble Supreme Court while keeping into account the long pending dispute and to provide justice, the Court invoked its jurisdiction under Article 142 of Constitution in order to conclude the dispute and to reach out justice provided the accommodation to the appellant according to the merits of the case. Moreover, the Hon'ble Court also provided that in case the appellant wants to establish her right to reside in her matrimonial home with her husband, she shall be at liberty to approach the Family Court or any other forum of competent jurisdiction.

Criminal Appeal No.989 of 2018
State of Gujarat v. Mansukhbhai Kanjibhai Shah
Decided on: April 27, 2020

Supreme Court considered the scope of 'Deemed University' to be covered under the ambit of Prevention of Corruption Act, 1988. Deciding in affirmative, the Court observed as under:

"44. As discussed earlier, the object of the PC Act was not only to prevent the social evil of bribery and corruption, but also to make the same applicable to individuals who might conventionally not be considered public servants. The purpose under the PC Act was to shift focus from those who are traditionally called public officials, to those individuals who perform public duties. Keeping the same in mind, as rightly submitted by the learned senior counsel for the appellant- State, it cannot be stated that a "Deemed University" and the officials therein, perform any less or any different a public duty, than those performed by a University simpliciter, and the officials therein.

45. Therefore, for all the above reasons, we are of the opinion that the High Court was incorrect in holding that a "Deemed University" is excluded from the ambit of the term "University" under Section 2(c)(xi) of the PC Act.

46. Having come to the above conclusion, in the present case, the pivotal question is whether the appellant-trustee in the Board of 'Deemed to be University' is a 'public servant' covered under Section 2 (c) of the PC Act. Recently, this Court in the case of CBI v. Ramesh Gelli, (2016) 3 SCC 788, dealt with the question as to whether Chairman, Directors and officers of a private bank before its amalgamation with a public sector bank, can be classified as public servants for prosecution under the PC Act.....

49. In order to appreciate the amplitude of the word "public servant", the relevance of the term "public duty" cannot be disregarded. "Public duty" is defined under Section 2(b) of the PC Act, which is reproduced below:

2(b) 'public duty' means a duty in the discharge of which the State, the public or the community at large has an interest.

50. Evidently, the language of Section 2 (b) of the PC Act indicates that any duty discharged wherein State, the public or community at large has any interest is called a public duty. The first explanation to Section 2 further clarifies that any person who falls in any of the categories stated under Section 2 is a public servant whether or not appointed by the government. The second explanation further expands the ambit to include every person who de facto discharges the functions of a public servant, and that he should not be prevented from being brought under the ambit of public servant due to any legal infirmities or technicalities."

Criminal Appeal No. 414 of 2020
Kanwal Tanuj v. State of Bihar & Ors.
Decided on: April 24, 2020

The Hon'ble Supreme Court pronounced that the Central Bureau of Investigation is competent to investigate any offence committed within a Union Territory, by an accused residing in or employed in connection with the affairs of another State. This can be done by the CBI even without the consent of that State. The Court was considering the issue whether the CBI was authorized to register cases against the public servants employed in connection with the affairs of the Government of Bihar. It was observed by the Court that—

"That may be so, even if one of the accused involved in the given case may be residing or employed in some other State (outside the Union Territory) including in connection with the affairs of the State/local body/ corporation, company or bank of the State or controlled by the State/institution receiving or having received financial aid from State Government, as the case may be..... Such interpretation would result in an absurd situation especially when the 1946 Act extends to the whole of India and special force has been constituted within the Union Territory, in terms of Notification issued under Section 3 of the 1946 Act

Criminal appeal No 102 0f 2011
M. Subramanium & Anr. v. S. Janaki & Anr.
Decided on: March 20, 2020

Hon'ble Supreme Court reiterated that if a person has a grievance that his FIR has not been registered by the police or having been registered proper investigation is not being done, then remedy of the aggrieved person is not to go to the high court under Art 226 of the constitution but to approach the magistrate concerned u/s 156(3)CrPC.

Hon'ble Supreme Court reproduced the fallowing from the judgment in the case of Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and others:

"This court has held in Sakiri Vasu v. State of U.P., that if a person has a grievance that his FIR has not been registered by the police or having been registered proper investigation is not being done then remedy of the aggrieved person is not to go to the High Court under Art 226 of the constitution but to approach the concerned magistrate under section 156(3)CrPC. If such an application is made and the magistrate is prime facie satisfied, he can direct FIR to be registered or if it has already been registered he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Saikri Vasu case because what we have found in this country is that High Courts are flooded with writ petitions praying for registration of the first information report or praying for a proper investigation."

"The rights of the parties must be determined in accordance with the provisions of law. What justice of the case entails, and what is just, due and the law says, is to be given to each one whether being a landlord or a tenant. 'The judge is not to innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of beauty or of goodness'."

Sabyasachi Mukharji, J. in *Idul Hasan* v. *Rajindra Kumar Jain*, (1989) 4 SCC 550, para 8

CIVIL

Civil Appeals No: 6875 of 2008.
Bhagwat Sharan (Dead through Lrs.) v. Purshottam & Ors.
Decided on: April 3, 2020.

After thorough examination of the factual matrix of this case and discussing the law in depth, the Hon'ble Supreme dismissed the appeal, primarily on the following reasons:-

It's a settled position of law that the burden is on the person who alleges that the property is a joint property of a HUF, to prove the same. General presumption is that a Hindu family is presumed to be joint unless contrary is proved, but once a coparcener separates, there is no presumption that HUF is discontinued or continued. {Reliance placed on: Bhagwan Dayal v. Reoti Devi, AIR 1962 SC 287}

The mere fact that separated coparcener choose to live together for trading together would not give them the status of coparceners under Mitakshara law. {Reliance placed on: Bhagwati Prasad Sah v. Dulhin Rameshwari Kuer, (1951) 2 SCR 603}

In the instant case it was admitted that Madhav Prasad had left the village and gone to Asok Nagar 70 years prior to 1988 when the suit was filed, and there was nothing to show that plaintiffs grandfather Umrao Lal started a joint business with him. Held that - Merely alleged living together of the two brothers did not constitute a HUF, once they had already separated unless there is an intention of re-union. Which was not in this case.

The legal principle is that there is no presumption of a property being a joint property only on account of existence of a HUF, but then one alleging it has to prove it, that same was acquired from the nucleus of the joint of property. {Reliance placed on: D.S. Lakshmiah & Ors v. L. Balasubramanyam & Ors, (2003) 10 SCC 310 and Appasaheb Peerapa Chamdgade v. Devendra Peerapa Chamdgade, (2007) 1 SCC 521}

In the instant case the appellant plaintiff was no where able to show that the family was a HUF, nor that there was any nucleus of any joint property from which the property in dispute was acquired . (paras 11, 12) Plaintiff also had relied upon a written statement filed by Hari Ram in the above mentioned earlier suit, wherein he had allegedly admitted that there was a trading joint family, but the Court held that a trading joint family cannot be construed to be a HUF. (para 19)

The Court further held that admission is only a piece of evidence and not a conclusive proof of what is stated therein, and here the admission was with regarding to trading joint family that can work together but that will not mean it's a HUF. (para 19). {Reliance placed on: Himani Alloys Ltd v. Tata Steel Ltd. (2011) 15 SCC 273.}

Finally the court held that it was not disputed that the plaintiff and some defendants had filed a suit for eviction of an occupant on the ground that the said property had been bequeathed to them by Hari Singh as per the Will mentioned above. Therefore as per the Doctrine of election and its principle applicable to Will, they cannot accept a portion of it and deny the rest. Once they accept the Will, they also are deemed to have accepted the status of Hari Ram as the

exclusive owner of all the property which is mentioned in the Will, i.e being the disputed property. Plaintiff cannot be allowed to approbate and reprobate or blow hot and cold in the same breath. (paras 24, 25) {Reliance placed on: Rajasthan State Industrial Development & Invesment Corporation v. Diamond and Gem Development Corporation, AIR 2013 SC 1241 and Karam Kapahi & Ors. v. Lal Chand Public Charitable Trust, (2010) 4 SCC 753}.

Civil Appeal No. 2236 of 2020
Rajasthan State Road Transport Corporation Ltd. & Ors v. Smt. Mohani Devi & Anr.
Decided on: April 15, 2020

Hon'ble Supreme Court held that, the "Gratuity shall be payable if the termination of employment is after 5 years of continuous service and such termination would include resignation as well" as provided under sec. 4 (1)b of payment of gratuity act,1972.

Single Judge of the High Court had held that if voluntary retirement application was not decided within period prescribed, as per clause 19-D(2) of pension scheme, reliance was placed on clause 18-D(2) of RSRTC standing order as per which an employee of corporation who had rendered pensionable service was entitled to seek voluntary retirement in view of law laid down in Sheel Kumar Jain v. New India Corporation Ltd. The appellants were directed to treat respondent's husband as having voluntarily retired and release benefits to which he was entitled and pay the retiral benefits. The Division Bench had reiterated the said position. The respondent's husband had yielded to position of non acceptance of application for voluntary retirement and has therefore submitted his resignation. The acceptance of resignation was acted upon by receiving terminal benefits. If that be the position when writ petition was filed belatedly that too after the death of employee who had not raised any grievance during his lifetime. Consideration of prayer made by respondent was not justified.

Hon'ble Supreme Court held, even if it is a case of resignation, the deceased husband of respondent was entitled to payment of gratuity as he had put in qualifying service.

Civil Appeal No. 2366-67 of 2020
Bajaj Allianz General Insurance Co. Ltd. & Anr. v. The State of Madhya Pradesh
Decided on: April 24,2020

Hon'ble Supreme Court held that the line of approach adopted by the NCDRC (National Consumer Disputes Redressal Forum) Is evidently incorrect. While construing a contract of insurance it is not permissible for court to substitute the terms of contract. The court should always interpret the words used in contract that will best explain the intention of the parties. The interpretation adopted by the NCDRC strikes fundamentally at the purpose of policy and is not in accordance with the sound commercial principles. The interpretation altered the character of risk insured beyond the scope of policy as agreed between the parties.

The provisions of an insurance contract must be imparted a reasonable business like meaning bearing in mind the intention conveyed by the words used in the policy documents. The Court must interpret the words in which the contract is expressed by the parties & not to embark upon making a new contract for the parties. A reasonable construction must therefore be given to each clause in order to give effect to the plain and obvious intention of the parties as ascertainable from the whole instrument. The liability of insurer cannot extend to more than what is covered by insurance policy. In order to determine whether the claim falls within the limits specified by the policy, it is

necessary to define exactly what the policy covered and to identify the occurrence of a stated event or accident prior to the expiry of policy

Civil Appeal No. 2235 of 2020
Sushilaben Indravadan Gandhi & Anr. v. The New India Assurance Co. Ltd. & Ors.
Decided on: April 15, 2020

In this case, Hon'ble Supreme Court applied the principle of contra proferentum (i.e. the ambiguity of exclusion clauses is generally construed against the insurer) and ordered payment of around 38 lakhs and interest thereon to the widow of the deceased.

A motor vehicle accident had taken place on 09.06.1997 near Kabhar Patiya, in which one Dr. Alpesh Gandhi lost his life. He was an honorary ophthalmologist with the Rotary Eye Institute, Navsari and was travelling in the mini-bus of that particular institute which met with an accident due to the negligence of its driver. The main contention that arose was whether Dr. Gandhi's association with the Rotary Eye Institute comes within the ambit of regular employment or an outside expert on contract? The Institute, which was the insurer, had paid additional premium in accordance with IMT-5 endorsement, which provided that the Insurer's liability was limited to payment of compensation for bodily injury sustained by any passenger other than those coming under the scope of Workmen Compensation Act, 1923 and as far as IMT-16 (which deals with general liability) is concerned, no such additional premium was paid. Therefore, if Dr. Gandhi was treated as an employee, he would not receive coverage as per terms of insurance contract. The MACT had held insurer liable and the relationship was held to be 'Contract for service' and not 'Contract of service'. The High Court, on appeal reversed this decision. On the question of relationship between the institute and Dr. Gandhi, the Supreme Court, after considering various precedents, held that in this case, no regular employment was there as the terms of contract make it clear that it is a contract for service. Moreover, from the date from which the said contract came into force, Dr. Gandhi ceased to be regular employee and became an independent professional. Thereafter, the Bench held that the exclusion clause in the insurance contract is to be construed against the Insurer in light of the contra proferentum principle. Reliance was placed on several precedents: {Industrial Promotion & Investment Corpn. of Orissa Ltd. v. New India Assurance Co. Ltd. (2016) 15 SCC 315, United India Insurance Co. Ltd. v. Orient Treasures (P) Ltd. (2016) 3 SCC 49, General Assurance Society Ltd. v. Chandumull Jain (1966) 3 SCR 500.}

Quoting from its decision in General Assurance Society Ltd. v. Chandumull Jain (1966) 3 SCR 500 "in a contract of insurance there is requirement of uberrima fides i.e. good faith on the part of the assured and the contract is likely to be construed contra proferentem, that is, against the company in case of ambiguity or doubt", the Court observed - 'assuming that there is an ambiguity or doubt, the contra proferentum rule referred to hereinabove, must be applied, thus making it clear that such 'employment' refers only to regular employees of the Institute, which, as we have seen hereinabove, Dr. Alpesh Gandhi was certainly not'. The Bench thereafter set aside the Judgment of the High Court and restored the award of the Tribunal.

Civil Appeal No. 2375 of 2020
Mohd. Asif Naseer v. West Watch Company Through Its Proprietor
Decided on April 24, 2020

In this case, the release application filed

under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter 'the rent control act') was under question. The prescribed authority had allowed the application and directed the tenant to vacate the shop. The appeal filed by the tenant was dismissed by the Addl. District Judge, directing the tenant to vacate the premises. Further, in a writ petition at the High Court, the release application was dismissed as not maintainable for want of six months prior notice as required under Section (21)(1)(a) Proviso of the Rent control Act. The High Court had set aside the release application granted in favour of the landlord on the primary finding that there was no proof of service of notice to the tenant.

In an SLP filed by the appellant, the Supreme Court had to consider the issue whether a landlord had served proper notice to the tenant for vacation of premises in accordance with Section 21(1)(a) of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972

The SC observed:

"It may be so that mere receipt of notice having been sent under certificate of posting, in itself, may not be sufficient proof of service, but if the same is coupled with other facts and circumstances which go to show that the party had notice, the same could be held to be sufficient service on the party".

The Supreme Court firstly observed that Section 21 of the Rent Control Act does not prescribe any particular mode of giving notice to the tenant. The same could be given orally or in writing. If it is in writing, then it is not necessary that it should be sent only by registered post. What is required is that 'the landlord has given a notice' in that behalf to the tenant.

The Court then noted that, in terms of the judgment in Sumitra Devi v. Sampuran Singh, (2011) 3 SCC 556, notice sent under certificate of posting is sufficient service, and the same may be determined from a case to case basis. The bench also referred to the decision in in the case of V.S. Krishnan v. Westfort Hi-Tech Hospitals (2008) 3 SCC 363, which held that service of notice sent under certificate of posting would be sufficient where there are materials to show that notices were sent, the burden is on the addressee to rebut the statutory presumption. The Supreme Court has reaffirmed that Notice sent under Certificate of Posting is sufficient, where mode of service is not mentioned.

Civil Appeal No. 2376 of 2020
Firm Rajasthan Udyog & Ors. v. Hindustan Engineering & Industrial Ltd.
Decided On: April 24, 2020

The question for consideration in the present appeal was as to whether an Arbitration Award, which determined the Compensation amount for the land to be paid under agreement for sale, can be directed to be executed as a suit for specific performance of agreement, when the reference to the Arbitrator (as per the agreement) was only for fixation of price of land in question, and the Arbitration Award was also only with regard to the same.

The Supreme Court held that the award of the arbitrator was only with regard to the fixation of the price of the land and not for the enforcement of the agreement. The award was only declaratory of the price of the land as per the agreement dated 01-02-1980. The appellant had the option either to accept the price or reject it. What was thus executable was the agreement not the award. The relief granted by the court below for execution of the sale deed in terms of award, is thus outside the realm of the law, as the award did not contemplate the transfer of land in favour of the respondent, but only to determine the price of the land.

Once the respondent had given up its

claim of execution of sale deed in terms of Agreement dated 01-02-1980, by withdrawing the suit for specific performance of the agreement, which was permitted to be withdrawn unconditionally on 13-02-2006, the respondent had abandoned its claim for execution of the sale deed. Thus the respondent could not be permitted to achieve the goal of the execution of sale deed by indirectly claiming for the execution of award, when the direct claim of the execution of sale deed of agreement dated 01-02-1980 had been abandoned by respondent.

Civil Appeal No. 4594 of 2010
Shankar Sakharam Kenjale (Died) Through his LR's v. Narayan Krishna Gade & Anr.
Date of decision: April 17, 2020

The Supreme Court reiterated the principle that right to redeem a mortgage can be extinguished only by a process known to law. It was observed that-

"It is well-settled that the right of redemption under a mortgage deed can come to an end or be extinguished only by a process known to law, i.e., either by way of a contract between the parties to such effect, by a merger, or by a statutory provision that debars the mortgagor from redeeming the mortgage. In other words, a mortgagee who has entered into possession of the mortgaged property will have to give up such possession when a suit for redemption is filed, unless he is able to establish that the right".

Following the above established principle, the Supreme Court also opined that the re-grant to the Appellant's predecessor based on actual possession as mortgagee cannot be divorced from the existence of the underlying mortgagor and mortgagee relationship between the parties. Therefore, any benefit accruing to the mortgagee must necessarily ensue to the Mirashi tenant-mortgagor.

The Supreme Court also applied the principle under Section 90 of the Indian Trusts Act, regarding which it said, "A bare reading of this provision indicates that if a mortgagee, by availing himself of his position as a mortgagee, gains an advantage which would be in derogation of the right of the mortgagor, he must hold such advantage for the benefit of the mortgagor".

The circumstances of the case were covered by the precedents laid down in the cases Jayasingh Dnyanu Mhoprekar and Another v. Krishna Babaji Patil and Another, (1985) 4 SCC 162 and Namdev Shripati Nale v. Bapu Ganapati Jagtap and Another, (1997) 5 SCC 185.

Civil Appeal No. 2378 of 2020
Quippo Construction Equipment Limited v. Janardan Nirman Pvt. Limited
Decided on: April 29, 2020

Four agreements read with Arbitration Clauses were signed between two parties. While three agreements stipulated that New Delhi shall be the designated "Venue", one of them stated Kolkata as the "Place of Arbitration". Arbitration Rules of the Construction Industry Arbitration Association were to be followed and reference was agreed to be made in this regard vis-a-vis intricacies of the proceedings. Due to the dispute arising between the parties, Appellant invoked the Arbitration Clause and notice to the Appellant, wherein a sole Arbitrator was appointed and the proceeding were to be conducted in New Delhi.

The Respondent, however, disputed the existence of Arbitration Agreement between parties and filed a suit in the Court of Civil Judge at Sealdah, praying that the agreements be declared null and void and for permanent injunction restraining the appellant from relying on the arbitration clauses contained in the agreement. Appellant' s application

was allowed and in Respondent's plaint was returned. Following this, appeal was preferred by the respondent before the District Court, contending, inter alia, that one of the four agreements designated Kolkata as the venue of arbitration. This plea was eventually dismissed and was challenged in Calcutta High Court where plea decided in favor to the respondent.

The Supreme Court, in further appeal held that non-participation in arbitration proceedings would amount to waiver of right. It was observed as under:

"It was possible for the respondent to raise submissions that arbitration pertaining to each of the agreements be considered and dealt with separately. It was also possible for him to contend that in respect of the agreement where the venue was agreed to be made at Kolkata, the arbitration proceedings be concluded accordingly. Considering the facts that the respondent failed to participate in the proceedings before the arbitrator and did not raise any submission that the arbitrator did not have jurisdiction that he was exceeding the scope of his authority, the respondent must be deemed to have waived all such objections."

Writ Petition (C) NO. 936/2018
Dinesh Kumar Gupta v. High Court of Rajasthan & Ors.
Decided on: April 29, 2020

Hon'ble Supreme Court was dealing with the following issues among others;

"whether the judicial officer promoted on ad-hoc basis as Additional District & 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. They sought for reckoning their services as Additional District & Sessions Judges in fast track court for determining the seniority as District Judge.

The Supreme Court observed that the issue was settled against the petitioners in various precedents such as: 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. State of Andhra Pradesh (2019) 10 SCALE 834.

In Debabrata Dash, is was held that,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.

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 Competent 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. 6076 of 2009
Shivkumar & Ors. v. Sharanabasappa & Ors.
Decided on: April 24, 2020

Supreme Court considered the scope of remand of civil case by the Appellate Court. It would be profitable to quote the observations of the Court, as under:

"25.2. Rule 23A came to be inserted in Order XLI CPC by way of the Code of Civil Procedure (Amendment) Act, 1976. Prior to this amendment, it was generally accepted by the Courts that although under Rule 23, an order of remand could be made only on

reversal of a decree disposing of suit on a preliminary point but, the Appellate Court has the inherent power of remanding a case where it was considered necessary to do so in the interest of justice. Some of the High Courts had made similar provisions by way of their respective amendments. Insertion of Rule 23A in Order XLI by the Amending Act of 1976 makes it explicit that even when the suit has been disposed of otherwise than on a preliminary point and the decree is reversed in appeal, the Appellate Court shall have the power of remand, if a re-trial is considered necessary.

25.3. A comprehension of the scheme of the provisions for remand as contained in Rules 23 and 23A of Order XLI is not complete without reference to the provision contained in Rule 24 of Order XLI that enables the Appellate Court to dispose of a case finally without a remand if the evidence on record is sufficient; notwithstanding that the Appellate Court proceeds on a ground entirely different from that on which the Trial Court had proceeded.

25.4. A conjoint reading of Rules 23, 23A and 24 of Order XLI brings forth the scope as also contours of the powers of remand that when the available evidence is sufficient to dispose of the matter, the proper course for an Appellate Court is to follow the mandate of Rule 24 of Order XLI CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a re-trial is considered necessary that the Appellate Court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice. An order of remand only on the ground that the points touching the appreciation of evidence were not dealt with by the Trial Court may not be considered proper in a given case because the First Appellate Court itself is possessed of jurisdiction to enter into facts and appreciate the evidence. There could, of course, be several eventualities which may justify an order of remand or where remand would be rather necessary depending on the facts and the given set of circumstances of a case.

25.4.1. The decision cited by the learned Counsel for the appellants in the case of Mohan Kumar (supra) is an apt illustration as to when the Appellate Court ought to exercise the power of remand. In the said case, the appellant and his mother had filed the civil suit against the Government and local body seeking declaration of title, perpetual injunction and for recovery of possession in respect of the land in question. The Trial Court partly decreed the suit while holding that the plaintiffs were the owners of the land in dispute on which trespass was committed by the respondents and they were entitled to get the encroachment removed; and it was also held that the Government should acquire the land and pay the market value of the land to the appellant. Such part of the decree of the Trial Court was not challenged by the defendants but as against the part of the decision of the Trial Court which resulted in rejection of the claim of the appellant for allotment of an alternative land, the appellant preferred an appeal before the High Court. The High Court not only dismissed the appeal so filed by the appellant but proceeded to dismiss the entire suit with the finding that the plaintiff-appellant had failed to prove his ownership over the suit land inasmuch as he did not examine the vendor of his sale deed. In the given circumstances, this Court observed that when the High Court held that the appellant was not able to prove his title to the suit land due to non-examination of his vendor, the proper course for the High Court was to remand the case to the Trial Court by affording an opportunity to the appellant to

prove his title by adducing proper evidence in addition to what had already been adduced. Obviously, this Court found that for the conclusion reached by the High Court, a case for re-trial was made out particularly when the Trial Court had otherwise held that the appellant was owner of the land in dispute and was entitled to get the encroachment removed as also to get the market value of the land. Such cases where retrial is considered necessary because of any particular reason and more particularly for the reason that adequate opportunity of leading sufficient evidence to a party is requisite, stand at entirely different footings than the cases where evidence has already been adduced and decision is to be rendered on appreciation of evidence. It also remains trite that an order of remand is not to be passed merely for the purpose of allowing a party to fillup the lacuna in its case.

25.5. It gets perforce reiterated that the occasion for remand would arise only when the factual findings of Trial Court are reversed and a re-trial is considered necessary by the Appellate Court.

Civil Appeal No. 2103 of 2020
Ramjit Singh Kardam & Ors. v. Sanjeev Kumar & Ors.
Decided on: April 8, 2020

The Supreme Court has reiterated that in the matters of public employment when there are glaring illegalities committed in the procedure for selecting the candidates, the principle of estoppel by conduct or acquiescence has no application.

Referring to earlier judgments in Rajkumar & Ors. v. Shakti Raj & Ors., 1997 (9) SCC 527 and Bishnu Biswas & Ors. v. Union of India & Ors., 2014 (5) SCC 774, the Court observed that—

"When candidate is not aware of the criteria of selection under which he was subjected in the process and the said criteria for the first time was published along with final result dated 10.04.2010, he cannot be stopped from challenging the criteria of selection and the entire process of selection. Further when the written examination as notified earlier was scrapped and every eligible candidate was called for interview, that too only by Chairman of the Commission whereas decision regarding criteria of selection has to be taken by Commission, the candidates have every right to challenge the entire selection process so conducted.

[IN RE: GUIDELINES FOR COURT FUNCTIONING THROUGH VIDEO CONFERENCING DURING COVID-19 PANDEMIC, Order dated 06.04.2020]

Hon'ble Supreme Court, in the wake of impending Covid-19 pandemic and exigency to provide access to justice in urgent hearing matters, issued general guidelines to conduct court proceedings through Video-conferencing. Exercising it's power under Article 142 of the Constitution, the Court, hence, issued the following guidelines:

All measures that have been and shall be taken by this Court and by the High Courts, to reduce the need for the physical presence of all stakeholders within court premises and to secure the functioning of courts in consonance with social distancing guidelines and best public health practices shall be deemed to be lawful;

The Supreme Court of India and all High Courts are authorized to adopt measures required to ensure the robust functioning of the judicial system through the use of video-conferencing technologies;

Consistent with the peculiarities of the judicial system in every state and the dynamically developing public health situation, every High Court is authorised to determine the modalities which are suitable to the temporary transition to the use of video-conferencing technologies;

The concerned courts shall maintain a helpline to ensure that any complaint in regard to the quality or audibility of feed shall be communicated during the proceeding or immediately after its conclusion failing which no grievance in regard to it shall be entertained thereafter.

The District Courts in each State shall adopt the mode of Video-conferencing prescribed by the concerned High Court.

The Court shall duly notify and make available the facilities for video-conferencing for such litigants who do not have the means or access to video-conferencing facilities. If necessary, in appropriate cases courts may appoint an amicus-curiae and make video-conferencing facilities available to such an advocate.

Until appropriate rules are framed by the High Courts, video-conferencing shall be mainly employed for hearing arguments whether at the trial stage or at the appellate stage. In no case shall evidence be recorded without the mutual consent of both the parties by video-conferencing. If it is necessary to record evidence in a Court room the presiding officer shall ensure that appropriate distance is maintained between any two individuals in the Court.

The presiding officer shall have the power to restrict entry of persons into the court room or the points from which the arguments are addressed by the advocates. No presiding officer shall prevent the entry of a party to the case unless such party is suffering from any infectious illness. However, where the number of litigants are many the presiding officer shall have the power to restrict the numbers. The presiding officer shall in his discretion adjourn the proceedings where it is not possible to restrict the number.

Courts throughout the country particularly at the level of the Supreme Court and the High Courts have employed video-conferencing for dispensation of Justice and as guardians of the Constitution and as protectors of individual liberty governed by the rule of law.

[IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION, Order dated 23.03.2020]

The 3-judge bench of the Supreme Court invoking its jurisdiction under Article 142 read with Article 141 of the Constitution of India extended limitation period for filing appeals from High Courts or Tribunals on account of COVID-19 pandemic.

In order to ensure that lawyers and litigants do not have to physically come to file petitions, applications, suits, appeals or other proceedings in respective Courts or Tribunals across the country including the Supreme Court, it directed,

> "a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."

The Order of the Court is an outcome of suo motu cognizance of the situation by the Supreme Court, arising out of the challenge faced by the country on account of COVID-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions, applications, suits, appeals or other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws.

The order of the Supreme Court order shall be binding on all Courts, Tribunals and Statutory Authorities.

Interaction of Hon'ble Mr Justice Rajesh Bindal with Judicial Officers and Trainee Munsiffs of 2019 batch

Because of the impending Covid-19 pandemic the activities of the Judicial Academy remained subdued. Since third week of March 2020, training programmes in the Judicial Academy remain suspended. In that view of the matter Induction Training for newly selected Munsiffs (Civil Judges Jr. Division) 2019 – batch was deferred for one month. Hon'ble Mr. Justice Rajesh Bindal, Chairman High Court Committee for the Judicial Academy earnestly desired the academic activities to be initiated again, especially the Induction Training programme, by employing all the available resources, including the digital platform and online discussion forums. In this regard Justice Bindal interacted with the Trainee Munsiffs through video-conferencing, facilitated by eCourts staff of the High Court. Justice Bindal highlighted the need to continue the academic activities with renewed vigour, inspite of the problems and difficulties posed by the impending pandemic. The trainees were told that the process of achieving excellence should never stop and for that efforts should be made to indulge in useful activities with whatever resources are handy. They must explore the new ideas for personal development. This would include reading not just the law books, which is of course essential prerequisite for a judicial officer, but also the literature of varied interests. He also advised then to find opportunity to engage in pursuits of knowledge, and in this regard attending webinars and online discussions on the legal forums is important. Justice Bindal recalled that the trainee officers had got very useful learning inputs at Chandigarh Judicial Academy in two weeks of training programme, and the resources available shall be utilised to get help from the CJA faculty members. CJA faculty would be requested to make online presentations and deliberations with trainee officers, for better learning even in the times of constraints. Justice Bindal also interacted with some of the judicial officers who had shown their interest and inclination in contributing towards the initiatives of the Academy. Senior judicial officers were also guided by Justice Bindal to be usefully engaged in endeavours of the Academy to create a pool of knowledge and legal resources for uplifting the standards of justice dispensation. The judicial officers and trainee officers got inspiration on working for the cause of quality dispensation of justice. The officers were also told to contribute towards the cause of social service in the Scenario of pandemic.

Under the guidance of Justice Bindal the Judicial Academy has initiated the activity of collective working and knowledge sharing, to enable each of the trainee officer to learn from each other's efforts. In this regard some in service judicial officers of various ranks have also been requested to work with the training officers in preparing handbooks on different subjects and topics, which then shall be compiled as quick reference guides. This would enable the new entrants in the judicial system to quickly adopt to the atmosphere of judicial institution and to get benefited by the collective efforts made by the judicial officers. To begin with, the trainee officers have been given assignments to work on the topics of civil and criminal procedure, in which they would work together and compile the case law handed down by the Supreme Court, High Court of Jammu and Kashmir and other High Courts. This would be helpful in compiling useful case law requisite at all stages in the trial of civil and criminal cases. This would save the time and energy of the officers.

Webinars and online discussions

Judicial officers are utilising the time available with them in attending Webinars and online discussions organised on digital platforms by eminent institutions. In these discussions Hon'ble Judges of the Supreme Court and various High Courts, prominent Senior Advocates and law professional held discussions and made presentations on subjects of varied legal interests and latest developments of law. Theses discussions are proving to be useful in professional development and broadening the sphere of knowledge of law. The digital platforms have given entirely a new medium for intellectual discourses, which shall further strengthen in times to come. This medium of discussions is expected to be futher explored and shall continue to prove beneficial post Covid-19 era. Judicial Academy provided useful inputs to the judicial officers on such Webinars and discussion forums. Many such resources were shared with the officers for their benefit.

Activities of JK SLSA amidst COVID-19 Pandemic

The COVID-19 pandemic has certainly changed the world with more than half of humanity now under some form of lockdown resulting in multifarious problems of different magnitudes including shelter for the people stranded out of their homes, food for labourers/daily wagers, no class-work and outdoor activity for the students, medical issues of senior citizens, grievances of victims of domestic violence & survival of other marginalized sections of society.

To mitigate the sufferings of many, J&K SLSA under the guidance of Hon'ble Ms. Justice Gita Mittal, Chief Justice, High Court of J&K and Patron-in-Chief J&K SLSA & Hon'ble Mr. Justice Rajesh Bindal, Executive Chairman, J&K SLSA drew up a comprehensive plan to reach out to people in distressand help them fight their fears and anxiety in this period of lockdown.In this connection following remedial measures were undertaken for different sections of society:

Redressal of the Grievances of the Labourers /Daily Wagers belonging to the other parts of the Country and Stranded in the UTs of J&K and Ladakh:

In order to redress the grievances of the labourers /daily wagers belonging to the other parts of the country and stranded in the UTs of J&K and Ladakh, a helpline was created, which is managed by Mr. Amit Sharma, Secretary, DLSA Ramban (9419035006) and Ms. Rafia Hassan, Secretary, DLSA Anantnag (9149450377). Ever since the helpline was created 825 calls have been received which were redressed by providing ration, food stuff etc.

Redressal of the Grievances of the People including the Students belonging to the UTs of J&K and Ladakh:

As the panic across the country engulfed far and wide, another helpline to redress the grievances of the people including the students belonging to the UT's of J&K and Ladakh who were stranded outside in other parts of the Country was created with Mr. Faizan-ul-HaqIqbal (9622200042) and Ms. Swati Gupta (9419190340), Secretaries, DLSA Baramulla and Samba respectively as its nodal officers. In this helpline as many as 1458 calls were received and redressed

Senior Citizens:

Realising the fact that the elderly are doubly effected by the COVID-19 lockdown and are not only vulnerable to contracting the virus in view of their old age but are in tremendous difficulty to manage their day-to-day needs, particularly groceries, medicines etc, JK SLSA launched another helpline comprising of six nodal officers to specifically help and facilitate the senior citizens who live alone and are unable to step out to get medicines, groceries etc. Moreover, their

mandatory hospital visits were also facilitated by the officers on the helpline. In this helpline 238 calls were received and redressed.

Victims of Domestic Violence:

The present scenario created by the COVID-19 Pandemic, has made the legal aid imperative and more demanding. The lives of women could not be put on hold till we emerge out of the pandemic. JK SLSA is already engaged in providing legal aid to the needy and distressed women especially victims of domestic violence. The PLVs are the first line of contact with the victims of domestic violence and other crimes against women. They have been educated on the issue and are providing legal aid to the needy victims. JK SLSA is also coordinating with the police stations and retainer lawyers to redress incidents of violence being faced by women.

In order to increase tele/online legal and counselling services for women and girls, teams of women lawyers have been nominated in each district of the UTs of J&K and Ladakh by SLSA, to coordinate with One Stop Centres (OSCs) and officials handling Women Helpline Number 181 .During the lockdown period, 19 incidents of domestic violence were reported in UT of J&K, whereas, no such incident was reported in UT of Ladakh.

Guidance to the Youngsters:

Sensing multifarious problems being confronted by youngsters amidst Lockdown, JK SLSA launched Helpline to address the queries of youngsters relating to their educational guidance, e-learning, general knowledge about art galleries and world museums in addition to counselling related to their intellectual and physical well being. The Helpline is being manned by six secretaries of DLSAs namely Mr. Naushad Ahmad Khan (9622283677), Ms. Sandeep Kour (9419223000), Mr. Noor Mohd. (9419005744), Mr. Khursheed-ul-Islam (9419092103), Ms. Spalzes Angmo (9419341131) and Mr. Tsewang Phuntsog (9419978757). Since the launch of the helpline on 16th April, 2020, a total of 6849 calls involving 7929 youngsters were received up till 30 April, 2020.

Transgenders:

JK SLSA also conducted a survey activity to identify the transgender community members across UT's of Jammu and Kashmir and Ladakh. A total of 680 transgender were identified. This community earns its livelihood by alms being offered by the people. JK SLSA reached out to them and with the help of administration and NGO's provided ration/food stuff to them.

KARONA Activity for Children:

An initiative to enhance creative instincts of youngsters has been coupled with offering counselling during the current times of novel CORONA-19 Lockdown.

The initiative of J&K SLSA began in collaboration with Directorates of School Education Jammu, Kashmir and Ladakh by forming a creative activity forum, "ACTIVITY KARO NA" to engage the children in constructive activities during the lockdown period due to the COVID-19 pandemic. Under this activity number of students in the age group of 03-06 years exhibited their artistic skills by submitting paintings, self-composed poems on the topic "Save the Planet". The students in the age group of 07-10 years submitted posters, short stories and slogans on the topic "Advantages of Lockdown in the wake of COVID-19 Pandemic" or "COVID-19 Hygiene Practices". Moreover, students in the age group of 11-15 years submitted photographs and articles and slogans on the topic "Preservation of Rich Heritage of our Composite Culture". Uptill 25.04.2020, 706 entries had been received.

The process of helping the Countrymen is going on with zeal and enthusiasm.

Special eCourts Initiatives of the High Court of Jammu & Kashmir

In view of the widespread effects of impending Covid-19 pandemic, the High Court of Jammu & Kashmir has taken special initiatives to keep the justice delivery system running and access to justice to remain available. Following initiatives need special mention:

1. In the wake of the nationwide lockdown imposed by Government of India to curb the spread of the novel corona virus (COVID-19), the High Court of J&K as well as the District Courts of UTs of J&K and Ladakh are taking up exceptionally urgent matters for hearing through Virtual mode only.
2. After the imposition of national lockdown due to COVID-19, access to all the courts of UTs of J&K and Ladakh including that of the High Court was closed by the High Court and it was decided to hear exceptionally urgent cases only through Video conferencing/calls.
3. To carry out the proceedings via video conferencing/calls, the Judges are hearing urgent cases from their respective residences/Offices and the lawyers are advancing arguments in such listed matter from their respective homes or offices.
4. It is pertinent to mention that during the lockdown period, High Court of Jammu and Kashmir has heard a total of 127 cases of exceptionally urgent nature through Virtual mode while as District Courts of UTs of Jammu and Kashmir & Ladakh have heard 4344 matters.
5. The protocol governing the hearing of cases through virtual mode has already been issued by the High Court of J&K. As per the directions issued by Chief Justice, the concerned Registrar Judicial of the wing in coordination with e-Courts Wing of the High Court, after seeking necessary orders, make necessary arrangements for hearing of exceptionally urgent cases from the residence(s) of the Hon'ble Judges through virtual mode only.
6. In majority of the cases heard through Virtual mode, High Court is conducting hearing through the "Vidyo" app which is easily available for download on mobile phones as well as desktop. Vidyo app is recommended by e-Committee Supreme Court of India as a VC solution for the Courts and is hosted on NIC servers. A web -link is sent by the Courts to Lawyers and litigants for joining the hearing of the cases through Video Conferencing.
7. Such is the extent of adaptability of the Information Technology tools by the High Court as well as lawyers of J&K that on some occasions, in a single case, more than 30 lawyers appear before the court through Video Conferencing/calls.
8. Helpline numbers for redressal of complaints regarding Video Conferencing related issues in High Court as well as District Courts have also been issued and hosted on the official website of the High Court as well as on websites of all the District Courts.
9. In order to ensure easy access of litigants, lawyers and general public to information relating to a case, a separate and dedicated space is earmarked on the official website of the High Court for hosting orders and judgments passed by different benches of the High Court during the present COVID-19 lockdown.
10. In a first in the country, during the COVID-19 lockdown period, High Court of Jammu and Kashmir has taken the initiative of giving advance dates to the cases so as to streamline further listing of the cases as well as keeping lawyers and litigants informed about the progress of their respective cases.

Epidemic Diseases (Amendment) Ordinance, 2020

President gave assent for promulgation of Epidemic Diseases (Amendment) Ordinance, 2020, 5 of 2020, intended to protect healthcare service personnel and property including their living/working premises against any kind of violence during epidemics. Notification came to be issued by Ministry of Law and Justice (Legislative Department) on 22nd April, 2020.

The Ordinance provides for making such acts of violence cognizable and non-bailable offences and for compensation for injury to healthcare service personnel or for causing damage or loss to the property in which healthcare service personnel may have a direct interest in relation to the epidemic.

The Ordinance is intended to ensure that during any situation akin to the current COVID-19 pandemic, there is zero tolerance to any form of violence against healthcare service personnel and damage to property. The general public fully cooperates with healthcare personnel and have expressed their gratitude in a very organized manner several times during the past month. Nevertheless, some incidents of violence have taken place which has demoralized the medical fraternity. It is felt that separate and most stringent provisions for emergent times are needed toact as effective deterrents to any such incidents of violence.

Violence as defined in the Ordinance will include harassment and physical injury and damage to property. Healthcare service personnel include public and clinical healthcare service providers such as doctors, nurses, paramedical workers and community health workers; any other persons empowered under the Act to take measures to prevent the outbreak of the disease or spread thereof; and any persons declared as such by the State Government, by notification in the Official Gazette.

The penal provisions can be invoked in instances of damage to property including a clinical establishment, any facility identified for quarantine and isolation of patients, mobile medical units and any other property in which the healthcare service personnel have direct interest in relation to the epidemic.

The amendment makes acts of violence cognizable and non-bailable offences. Commission or abetment of such acts of violence shall be punished with imprisonment for a term of three months to five years, and with fine of Rs.50,000/- to Rs.2,00,000/-. In case of causing grievous hurt, imprisonment shall be for a term six months to seven years and with fine of Rs.1,00,000/- to Rs.5,00,000/-. In addition, the offender shall also be liable to pay compensation to the victim and twice the fair market value for damage of property.

Offences shall be investigated by an officer of the rank of Inspector within a period of 30 days, and trial has to be completed in one year, unless extended by the court for reasons to be recorded in writing.

Looking at the interventions required during the current Covid-19 outbreak, the Central Government has been given a concurrent role with the State Governments to take any measures that may be needed to prevent the outbreak of an epidemic or the spread thereof. In addition, the scope of inspection of vessels arriving or leaving the country has been enlarged to include road, rail, sea and air vessels.

Note on Common Defects of Investigation Affecting the Outcome of Trial

Trial of criminal cases, as has been generally experienced, is affected by the following common defects, which if taken care of during the course of investigation would greatly improve quality of investigation and thereby the criminal justice dispensation:

1. Delay in recording of FIR.— Resulting in Loss of crucial evidence. And Defence takes the argument of the case being false and an afterthought.

2. Errors in collection of evidence.
For instance, omission to collect blood stained earth by the IO.

3. Failure to seek expert opinion.
For instance, not sending firearms for comparison and for opinion that the bullets seized from the spot have been fired from the weapon recovered from the accused.

4. Not recording statements u/s 164 of the CrPC.
This increases the chances of the witness turning hostile/being won-over. Statement u/s 161 has no evidentiary value.

5. Getting statement u/s 161 of the CrPC signed.

6. Not recording a statement u/s 161 at all.

7. Belated examination of crucial eye-witnesses. Though this is not always fatal. There are judicial precedents which have recognized that if the officer was overburdened and also had Law & Order functions, delay, if explained, may not be fatal. Much depends on cross examination of officer on this count.

8. Not holding a Test Identification Parade. Or press conference before a TIP with the accused sitting alongside. Not covering the face of the accused before the TIP. Showing photograph of the accused to the witness ahead of the TIP.

9. Filing of a charge-sheet without sanction (in case of prosecution of a public servant or an offence, for instance, against the central government); (S.17A POCA, 2019 Investigation may also need sanction)

10. Not putting the right and entire material before the sanctioning authority.

11. Filing of a charge-sheet without FSL/expert reports.

12. Non seizure of crucial documents.

13. Not sending crucial evidence to the FSL, especially, electronic evidence.

14. Not involving independent witnesses in a search/seizure or discovery of an incriminating article. 15. Using stock witnesses.

16. Failure to send bloodstained articles or other objects to the FSL.

17. In the recording of a dying declaration– not taking proper endorsement from the doctor as to victim's competency to make the statement (orientation and disposition).

18. Delayed sending of the occurrence report to the Magistrate concerned.

19. In cases of evidence to be obtained from outside India –Mutual Legal Assistance Treaties ("MLATs") to be carefully examined and complied with and letters rogatory sought in the requisite format.

20. Proper preparation in case of extradition requests. Most extradition requests fail because of lack of proper filings.

21. Proper witness protection and having witnesses fill bonds in terms of Section 170(2) CrPC. Proper address verification for accused persons and the

witnesses.

22. Insist on admissions and denials. (Section 294 of the CrPC).

23. The Investigating Officer should not be the complainant also (Mohan Lal vs. State of Punjab, (2018) SCC Online SC 974)

24. Keeping in mind jurisdiction. Police station's jurisdiction is co-terminus with the jurisdiction of the court taking cognizance.

25. Withholding material exculpatory evidence.

26. Recording dying declaration oneself when the same can be got recorded through an Executive Magistrate/ Judicial Magistrate.

27. Conducting narcoanalysis, taking specimen signatures, handwriting samples, conducting TIP without moving an application to that effect before the jurisdictional court.

It is needed that Investigating Officers while investigating the cases have insight into theses common defects which lead to failure of prosecution in proving the case before the court of law. Some time very good cases turn bad owing to unprofessional attitudes or lack of understanding by the Investigating Officers. Though the courts may, while analysing evidence, may take holistic view of the evidence and these defects may not prove fatal, but it is requisite that the Investigating Officer, having the full opportunity to prepare a truthful and foolproof case does his duty assigned to him by law with complete diligence and competence. All the resources available with the Investigating Officer need to utilised to ensure fair investigation uninfluenced by the outside factors. It is necessary for an Investigating Officer to weigh every factor which is likely to influence investigation of the case or which may have crucial bearing on the trial of the case. After addressing all these issues arising during investigation of the case, fair assistance to the judicial processes can be rendered. It is not that the Investigating Officers are not instructed on these aspects during their professional training but either they do not use their skills effectively or they allow lethargy to takeover their competence. It is also needed that the superior Police Officers who are assigned the job of supervising the investigation take proper care to ensure that the defects do not trickle in, intentionally or unintentionally.

Contributed by
Mr. Jatinder Singh Jamwal
Additional Distt. & Sessions Judge
Kathua

Guiding principles for deferral of cross-examination of prosecution witnesses

Section 231(2) of the Code of Criminal Procedure, confers a discretion on the Judge to defer the cross-examination of any witness until any other witness or witnesses have been examined, or recall any witness for further cross-examination, in appropriate cases. Judicial discretion has to be exercised in consonance with the statutory framework while being aware of reasonably foreseeable consequences. The party seeking deferral of cross-examination under Section 231(2) of the Code of Criminal Procedure must give sufficient reasons to invoke the exercise of discretion by the Judge. Deferral cannot be asserted as a matter of right.

Hon'ble Supreme Court considered this aspect in Criminal Appeal No. 1321 of 2018, decided on 30.10.2018, reported as *State of Kerala* v. *Rasheed*, AIR 2019 SC 721, and made important observations which are as under:

"Several High Courts have held that the discretion Under Section 231(2) of the Code of Criminal Procedure should be exercised only in "exceptional circumstances", or when "a very strong case" has been made out.

However, while it is for the parties to decide the order of production and examination of witnesses in accordance with the statutory scheme, a Judge has the latitude to exercise discretion Under Section 231(2) of the Code of Criminal Procedure if sufficient reasons are made out for deviating from the norm.

The circumstances in which the High Courts have approved the exercise of discretion to defer cross-examination, so as to avoid prejudice due to disclosure of strategy are:

- Where witnesses were related to each other, and were supposed to depose on the same subject-matter and facts;
- Where witnesses were supposed to depose about the same set of facts.

However, the circumstances in which deferral has been refused are:

- where the ground for deferral was the mere existence of a relationship between the witnesses;
- where specific reasons were not given in support of the claim that prejudice would be caused since the defence strategy would be disclosed;
- where no prejudice would have been caused.

The Delhi High Court, in Vijay Kumar v. State (Govt. of NCT of Delhi), laid down useful directions for the conduct of criminal trials. The directions are commendable, and relevant excerpts are reproduced hereinbelow:

"42. ...(vi). Since the expectation of law is that the trial, once it commences, would continue from day-to-day till it is concluded, it is desirable that, keeping in mind the possible time required for recording of evidence (particularly of the prosecution), a detailed Schedule of the dates of hearing on which evidence would be recorded is drawn up immediately after charge is framed - this, taking into account not only the calendar of the court but also the time required by the prosecution to muster and secure the presence of its witnesses as well as the convenience of the defence counsel. Once such a Schedule has been drawn up, all sides would be duty bound to adhere to it scrupulously.

(vii). While drawing up the Schedule of dates for recording of the evidence for the prosecution, as indicated above, the presiding judge would take advice from the prosecution as to the order in which it would like to examine its witnesses, clubbing witnesses pertaining to the same facts or events together, for the same set of dates.

(viii). If the defence intends to invoke the jurisdiction of the criminal court to exercise the discretion for deferment of cross-examination of particular witness(es) in terms of Section 231(2), or Section 242 (3) Code of Criminal Procedure, it must inform the presiding judge at the stage of setting the Schedule so that the order in which the witnesses are to be called can be appropriately determined, facilitating short deferment for cross-examination (when necessary) so that the recording of evidence continues, from day-to-day, unhindered avoiding prolonged adjournments as are often seen to be misused to unduly influence or intimidate the witnesses.

(ix). It is the bounden duty of the presiding judge of the criminal court to take appropriate measures, if the situation so demands, to insulate the witnesses from undue influence or intimidatory tactics or harassment. If the court has permitted deferment in terms of Section 231(2), or 242(3) Code of Criminal Procedure, for cross-examination of a particular witness, it would not mean that such cross examination is to be indefinitely postponed or scheduled for too distant a date. The court shall ensure that the deferred cross-

examination is carried out in the then on-going Schedule immediately after the witness whose examination ahead of such exercise has been prayed for.

There cannot be a straitjacket formula providing for the grounds on which judicial discretion Under Section 231(2) of the Code of Criminal Procedure can be exercised. The exercise of discretion has to take place on a case-to-case basis. The guiding principle for a Judge Under Section 231(2) of the Code of Criminal Procedure is to ascertain whether prejudice would be caused to the party seeking deferral, if the application is dismissed.

While deciding an Application Under Section 231(2) of the Code of Criminal Procedure, a balance must be struck between the rights of the Accused, and the prerogative of the prosecution to lead evidence.

The following factors must be kept in consideration:

- possibility of undue influence on witness (es);
- possibility of threats to witness(es);
- possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy;
- possibility of loss of memory of the witness(es) whose examination-in-chief has been completed;
- occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of Section 309(1) of the Code of Criminal Procedure.

These factors are illustrative for guiding the exercise of discretion by a Judge Under Section 231(2) of the Cr.P.C.

The following practice guidelines should be followed by trial courts in the conduct of a criminal trial, as far as possible:

i. a detailed case-calendar must be prepared at the commencement of the trial after framing of charges;

ii. the case-calendar must specify the dates on which the examination-in-chief and cross-examination (if required) of witnesses is to be conducted;

iii. the case-calendar must keep in view the proposed order of production of witnesses by parties, expected time required for examination of witnesses, availability of witnesses at the relevant time, and convenience of both the prosecution as well as the defence, as far as possible;

iv. testimony of witnesses deposing on the same subject-matter must be proximately scheduled;

v. the request for deferral Under Section 231(2) of the Code of Criminal Procedure must be preferably made before the preparation of the case-calendar;

vi. the grant for request of deferral must be premised on sufficient reasons justifying the deferral of cross-examination of each witness, or set of witnesses;

vii. while granting a request for deferral of cross-examination of any witness, the trial courts must specify a proximate date for the cross-examination of that witness, after the examination-in-chief of such witness(es) as has been prayed for;

viii. the case-calendar, prepared in accordance with the above guidelines, must be followed strictly, unless departure from the same becomes absolutely necessary;

ix. in cases where trial courts have granted a request for deferral, necessary steps must be taken to safeguard witnesses from being subjected to undue influence, harassment or intimidation.

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Child Prostitution, Innocence Turning Into Curse

Introduction: Children in India have always been deprived of their childhood, human rights, and dignity. Child prostitution is a significant global problem but it has not received adequate attention. It has forced migration of children for sexual purpose. There is a need of strict law regime and enforcement not only for child prostitution but also for the similar issues like child trafficking and child pornography.

Prostitution: ''Prostitution'' means the "Sexual exploitation or abuse of any person for commercial purpose. "Child prostitution" is one of its kind. It is defined as, "the use of a child in sexual activities for financial purpose.'' This problem not only exists in India but is prevalent throughout the world. It is an outrageous evil as nothing can be more horrible than exploiting innocent children sexually and engaging them in prostitution. As revealed in report in the year 1994, on child prostitution, prepared by the Ministry of human resource Development (HRD) GOI, 30% of child prostitutes are in six major cities of India like, Delhi, Mumbai, Bangalore, Calcutta, Hyderabad and Chennai. They all were under 20 years of age, and the survey further revealed that "Nepal" is the largest identifiable source of sending child prostitutes to Indian Brothels.

What does Child Prostitution mean? Various organizations have tried to define child prostitution. Some of the definitions are given as under;

UN Convention on the Rights of the Child, 1990: according to this convention, "child prostitution is a sexual assault/ exploitation of child below the age of 18 years for remuneration in cash or kind."

International Labour Organization: It describes, "child prostitution as the use, procuring, or offering of a child for prostitution.''

Historical Background: Prostitution of children dates to antiquity. Prepubescent boys were commonly prostituted in brothels in ancient Greece and Rome. According to Ronald Flowers, ''The most beautiful and highest born Egyptian maidens were forced into prostitution and they continued as prostitutes until their first menstruation,'' Chinese and Indian children were commonly sold by their parents. In Europe, child prostitution flourished until the late 1800's. Minors accounted for 50% of individuals involved in prostitution in Paris. In India, prostitution is not a new thing, it has existed from the ancient times.

Factors Responsible: Following are the causes for the child prostitution:-

i. Ill-treatment by the parents;
iii. Children in bad company;
iii. Social customs prevailing;
iv. Family prostitutes;
v. Lack of sex education to children;
vi. Poverty and economic distress.
vii. Early marriage and desertion;
viii. Prior incest and rape.

Dangers faced by them: The innocents are faced with those dangers which they would hardly understand at that age. These are as under -

a. Sexual abuse;
b. Physical abuse that may result in serious injury or even death;
c. Sexually transmitted diseases as serious as HIV/AIDS;
d. Pregnancy at tender age;
e. Drug addiction;
f. Human trafficking.

Legal framework on child prostitution in India: In India, we have various provisions to deal with such problems. Under the Constitution of India, we have Article 23 which deals with prohibition of trafficking in human beings, forced labour and all forms of exploitation. Article 39(e) and 39(f) deals with the health and strength of children and

protection of their childhood.

Under Indian Penal Code, there are special laws enacted to curb prostitution. Like we have section 366A, which makes procreation of a minor girl from one place to another punishable and section 366B, which makes importation of a girl below 21 years punishable. Then we also have section 372 and 373 were there is legal protection.

The Criminal Procedure Code also protects girl from sexual exploitation. Section 98, is intended to give immediate relief to a woman or a female child under 18 of years abducted or detained for any unlawful purpose.

There are lot many Acts and Legislations passed for the protection of the child from such kind of abuses. But still the things are at same place.

Directions issued by the court to rehabilitate the prostitutes and their children in the case of Gaurav Jain v. *UOI, 1997*: The court issued following directions;

1) It is duty of the government and all voluntary organizations to take necessary measures for protecting them from prostitution and rehabilitate them so that they may lead a life with dignity of person.

2) The court directed that they should be provided opportunity of education, financial support, developed marketing facilities for goods produced by them. If possible, their marriages may be arranged so that the problem of child prostitution can be eradicated.

3) The court held that the economic empowerment is one of the major factors that prevents the practice of dedication of the young girls to prostitution. Referring to the various measures taken by the different states, the court directed that the social welfare department should undertake similar rehabilitation programs for the fallen victims so that the foul practice is totally eradicated and they are not again trapped into prostitution.

4) The court directed to constitute a committee within a month from the judgement which would be I depth study into these problems and evolve suitable schemes as are appropriate and consistent with the directions given above.

5) The court directed the rescue and rehabilitation of the child prostitute and their children should be kept under nodal department namely, Department of women and child under Ministry of welfare and Human Resources, GOI, which will devise suitable schemes for proper and effective implementation. The court directed the ministry of social welfare, GOI for the establishment of juvenile Homes. (now children homes)

Conclusion and suggestions: Despite of so many laws, children are abused like anything which is often hidden from the public eye. This problem is not only faced by India but by the entire world at large. The sad part is, it does not receive appropriate medical and public health attention. The children involved in such activities rarely choose to be a part of this business, instead they are tricked and lurked into the business. They go through such kind of traumatic psychological and physical abuse, that no person like a child should ever experience. It is very difficult for them to escape. Lucky are those who are able to, but still they remain traumatized for the rest of their lives. Others remain sex workers for whole of their lives.

Children are the upcoming future of the family, society and nation. Their protection is our basic duty. They should be at least provided with basic education in such an improved manner, so that they are able to think by their own and choose a life with human dignity. Counselling programs should be organized regularly in schools for the guidance of the children. Awareness about child prostitution should be given to public

as well as children. Laws will not work unless there is a behavioral change in the mindset of the people. Also the implementation of such laws needs more strict actions so that it deters the people, involved in such activities.

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Absence of complete express mode of Enforcement of Monetary relief granted under Section 20 of DV act & the way out

Protection of women from Domestic violence Act, 2005 (for convenience "D.V Act") came to be enacted by parliament in the year 2005 with the Object to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. Section 12 provides for making an application by the aggrieved person to the Magistrate for grant of relief provided under the act. Sec 18, 19, 20, 21 & 22 provides various reliefs and among all these reliefs, the monetary relief which is provided under section 20 is claimed almost in all the applications or we can say that in every application this relief is included irrespective of the fact that the relief of similar nature i.e under section 125 Cr.P.C or under Sec 24 Hindu marriage act or any other provision had already been granted or not. So far as the other similar reliefs are concerned there is clear provision for their enforcement. However, on perusal of the D.V act though we find two provisions for enforcement one of which is Section 31 and another is Section 20 (6) of the D.V Act but the provisions are more or less incomplete and there is a grey area for which interpretations of Higher courts is required.

Why incomplete mechanism for enforcement of monitory reliefs?

Let us understand why the provision is incomplete in respect of enforcement. Section 31 Penalty for breach of protection order by respondent.—

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

If we carefully peruse the above mentioned provisions, it is gathered that the same is with respect to breach of protection order or interim protection order. Now a question arises whether order passed in terms of section 20, granting monetary relief is a protection order/interim protection order within the meaning of section 31 of the Act. The answer is NO.

As per section 2(o) protection order means an order made in terms of Section 18 of the act. If we go by this, it is gathered that for the breach of only those orders which are passed under section 18, the provision under section 31 can be resorted to.

This question was dealt with by Kerela Court wherein the Court held that provision of section 31 can only be resorted when there is a breach of protection order or interim

protection order made under section 18 of the Act. Breach of order of monetary relief does not attract section 31 [*Kanaka Raj* v. *State of Kerela*, decided on 24.06.2009]

If this is the position then Section 31 cannot be employed for enforcing monetary relief. Now the provision left is Section 20(6). Let's see what this provision says-

Section 20 (6): Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

Here we find that order passed under this section can be enforced or money ordered to be paid can be recovered by directing the employer of the respondent to deduct the same from his wages or salary. So far as the wives who are having salaried husband are concerned they could be benefited from this provision but a grey area appears in cases where respondent is not salaried person but is a professional or self employed person. In those cases to whom the direction would be issued, as they don't have any employer?

Keeping in view the above discussion we may say that the D.V act is not a complete legislation in terms of mode of enforcement of monetary relief.

The way out:

Problem arises only in grey area cases and in the absence of any express provision dealing with the grey area the only provision in the act which could guide us is Sec 28. It says -

Procedure.- (1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

From this provision an idea can be drawn that for giving effect to the provisions of this act the court can lay its own procedure and for that Code of Criminal Procedure, 1973 can also be resorted.

Resolving the issue, the High Court of Kerela while dealing with this issue, has set the matter at rest and held that for enforcement or recovery of monetary relief made under section 20, the provisions contained for enforcement under section 125 Cr.P.C shall be resorted but with a modification that no formal application shall be required. [*Kanchan* v. *Vikramjeet Setiya*, (2013 KHC 2115)]

Similar view was taken in *Mini Shanmughan* v. Shanmughan & Ors., [2012 (3) KHC 814] & *Sudhesh* v. *Umadevi & Anr.,* [2015 KHC 5275].

DV Rules, 2006: Rule 6 Clause 5 may also be taken into consideration. Therefore, the way out is adopting procedure under section 125(3) Cr.P.C, resultantly Warrant for levy of fine under section 386 Cr.P.C. can be issued and upon failure the respondent can be sent to jail as a mode of enforcement as provided under 125(3) Cr.P.C.

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