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FROM THE DESK OF CHIEF EDITOR

Constitution of India has completed 69 years of its journey. 70th birthday of the Constitution was on November 26, 2018. It was celebrated as the Constitution Day. The Supreme Court of India celebrated jointly with all the three organs of the State. It was celebrated with the inauguration of the programme by Hon'ble the President of India, Sh. Ram Nath Kovind in Vigyan Bhawan, New Delhi. I had the opportunity of being part of the celebrations. Indeed, it was a special occasion.

The work of drafting the Indian Constitution started on December 09, 1946. The Constitution was approved and adopted on November 26, 1949. It was signed on January 24, 1950 and came into effect on January 26, 1950. It took 166 days spread over a period of 2 years, 11 months and 18 days for the Constituent Assembly to finalize the Constitution. Eventually, 308 members of the Assembly signed two copies of the document, one in Hindi and the other in English.

I was a little over 2 years old when the drafting of the Constitution started. Till I had completed 20 years, I did not understand the importance and the relevance of the Constitution. It was in 1964, I was introduced to the Constitution when I joined my LL.B course at the Panjab University. From 1964 to 1968, I studied the Constitution as a student. From 1969 to 1990, I had the opportunity to teach Constitution Law. 1991 to 2012, I was at the Bar. The Constitution was a regular fixture both at the High Court and the Supreme Court. From 2013 till date, I have heavily relied upon the Constitution as Judicial Educator at different levels nationally and internationally. Thus, it would be evident that I have grown with the Indian Constitution. I have seen the Constitution growing and grown. It has endured itself in every possible way. The Constitution of 1949 and of 2018 are not the same. In many ways, the Indian Constitution has shaped the other Constitutions of different countries.

Sir Iver Jennings did not expect the Indian Constitution to last long. Jennings has been proved wrong. Jennings was commissioned to draft the Constitution of Ceylon (now Sri Lanka). He took reasonably long to craft the Constitution. The Constitution of Sri Lanka lasted only for seven years. We have completed seven decades. We are looking forward to its century. Its longevity does not seem to be in doubt.

There are critics of the Indian Constitution. However, if today a new Constitution is to be drafted and crafted, it may not be practically possible. It has become difficult to even enact the ordinary laws. It is difficult to achieve unanimity. The weaving of the new Constitution in the present scenario is not something which is easy.

What has made the Indian Constitution workable? The Constitution provides limitations on the powers of each organ. The fundamentals of the Constitution are non-negotiable. The Indian Supreme Court laid down that the 'Basic Structure' of the Constitution cannot be destroyed or damaged. The 'Basics' must be retained. It is the retaining of the 'Basics' which has contributed to the working of the Indian Constitution. The 'Basics' keep the Constitution in shape. The creative judiciary has enlarged the concept of 'Right to Life'. The Indian Judiciary has interpreted the Directive Principles innovatively. These principles have emerged from Primary Human Needs to Human Rights. This is a meaningful change-over. 'Constitutional morality' must be injected. The Indian citizenry must imbibe the Constitutional morality. In every possible area of state activity. In politics, one never knows who is the winner. In sports, at the end of the match, one knows who has won the match. Constitution belongs to the people of India. Ultimately, it is the Constitution which continues to aid the people of India. The Constitution is the winner.

To the Judicial Fraternity, may I say, the Constitution is the present day scripture. Follow the Constitution. Nurture 'Constitutional morality'. I am a firm believer that the Indian Constitution would live long. Once it completes its century, the next would follow. Long live the Indian Constitution.

Balram K. Gupta

LATEST CASES : CIVIL

“Every person is required to respect and obey the orders of the court with due dignity for the institution. The government departments are no exception to it.”

S.H. Kapadia, C.J., K.S.P. Radhkrishnana & Swatanter Kumar, JJ.
in *Maninderjit Singh Bitta vs. Union of India*, (2012) 1 SCC 273

S. Sarojini Amma vs. Velayudhan Pillai Sreekumar : 2018 SCC OnLine SC 2200: Party within his rights to cancel a conditional transfer deed executed for consideration before completion of condition – Held – The Summit court allowed an appeal while setting aside the judgment and order of the High Court concerning a ‘gift deed’. The Supreme Court on placing the analysis of provisions of Transfer of Property Act along with the decisions pertaining to the same subject matter stated that: **“A conditional gift with no recital of acceptance and no evidence in proof of acceptance, where possession remains with the donor as long as he is alive, does not become complete during lifetime of the donor. When a gift is incomplete and title remains with the donor the deed of gift might be cancelled.”**The appeal was allowed and judgment and order under appeal were set aside.

P.E.C. Ltd. vs. Austbulk Shipping SDN BHD: 2018 SCC OnLine SC 2549 : Application for enforcement of foreign award shall not be dismissed merely for non-production of requisite documents ‘At The Time Of Application’ – Held – The Supreme Court has held that, at the initial stage of filing of an application for enforcement of a foreign award, non-compliance of the production of the documents mentioned in Section 47 of the Arbitration and Conciliation Act shall not entail in dismissal of the application for enforcement of an award. The court said that there would be no prejudice caused to the party objecting to the enforcement of the Award by the non-filing of the arbitration agreement at the time of the application for enforcement. Taking note of the procedures followed in New York Convention, the bench said: “Keeping in view the object and purpose of the New York Convention, we are of the view that the word “shall” in Section 47 of the Act has to be read as “may”. The opposite view that it is obligatory for a party to the arbitration agreement or the original award or the evidence to prove that the award is a foreign award at the time of filing the application would have the effect of stultifying the enforcement proceedings. The object of the New York Convention will be defeated if the filing of the

arbitration agreement at the time of filing the application is made compulsory. At the initial stage of filing of an application for enforcement, noncompliance of the production of the documents mentioned in Section 47 should not entail in dismissal of the application for enforcement of an award. The party seeking enforcement can be asked to cure the defect of non-filing of the arbitration agreement. The validity of the agreement is decided only at a later stage of the enforcement proceedings.”

South Delhi Municipal Corporation vs. SMS AAMW Tollways Pvt. Ltd. : 2018 SCC OnLine SC 2549–Held–The Supreme Court has observed that if jurisdiction of a designated officer mentioned in the agreement cannot be invoked by both parties to the dispute, such an officer is not intended to be an arbitrator by the parties. In an agreement clause provides for the resolution of disputes at two stages. If a case arises wherein a contractor finds that if the work demanded is outside the scope of the agreement or feels the need to dispute any decision of the competent officer or if any record created by him is unacceptable, he may request the competent officer to decide its representation or give instructions. If the competent officer fails to decide it within 30 days or if the contractor is dissatisfied with his decision, the contractor may, within 15 days from receipt of the decision by the competent officer, file an appeal to the Commissioner, SDMC. The high court allowed the petition for appointment of arbitrator and the issue before the apex court, in the appeal filed by SDMC, was whether Clause which provides for an appeal, really provides for an arbitrator. The Apex court after referring to relevant clauses of the agreement, has observed that the purpose of this Clause is to vest the Competent Officer and the Commissioner with supervisory control over the execution of work and administrative control over it from time to time and thus to prevent disputes. The intention is not to provide for a forum for resolving disputes. Further, the high Court under Section 11(6) of the Arbitration and Conciliation Act, 1996, could not appoint arbitrator and order of high court was set aside.

Arun Kumar Jha vs. Ranvir Singh & Anr. : 2018 SCC OnLine SC 246–Held–The appellant

was denied the benefit of functional disability. While disposing of the appeal the apex court observed that in view of the judgment **K. Janardhan vs. United India Insurance Company Limited & Another, reported in (2008) 8 SCC 518**, the law is well settled that being a driver, in the nature of injury resulting in amputation of right leg below one third the thigh, there cannot be any dispute that there is 100% functional disability. The Commissioner, Workmen Compensation has granted compensation only to the tune of Rs.3,87,187/- with penalty. The respondent No.2/Insurance Company had argued that the benefit of the amendment introduced in the year 2009 cannot be extended to the appellant since the date of incident is prior to the amendment. After reiterating the decision of **Kalema Tumba vs. State of Maharashtra and Another, reported in (1999) 8 SCC 257** and having regard to the entire facts and circumstances of the case, a lump sum amount of Rs.10 Lacs was granted. The respondent No.2 / Insurance Company was directed to pay amount of Rs.10 Lacs to the appellant, within a period of three months.

Vimla Devi & Ors. vs. National Insurance Company Ltd. & Ors.: 2018 SCC OnLine SC 2458 – Held – The claim petition filed by the claimant was dismissed by the Tribunal and high court. The claimants examined three witnesses in support of their case. The Insurance Company did not examine any witness, the Tribunal dismissed the appellants' claim petition. It was held that the claimants failed to prove the accident including involvement of offending Truck, which caused death of deceased. It was held that though the claimants filed the documents but since those documents were not exhibited, the Insurance Company could not cross-examine the claimants' witnesses on the documents. Tribunal held that the claimants failed to prove the accident for want of evidence and the one document was not exhibited and on two findings the claim petition was dismissed. By allowing the appeal it was observed by the apex Court that the Act is a beneficial piece of legislation enacted to give solace to the victims of the motor accident who suffer bodily injury or die untimely. The Act is designed in a manner, which relieves the victims from ensuring strict compliance provided in law, which are otherwise applicable to the suits and other proceedings while prosecuting the claim petition filed under the Act for claiming compensation for the loss sustained by them in the accident.

State of Madhya Pradesh and Ors. vs. Abhijit Singh Pawar : 2018 SCC OnLine SC 255: Employer can consider antecedents and suitability of candidate even after disclosure made by him of pending criminal cases –

Held – The Supreme Court has observed that even after disclosure is made by a candidate about criminal cases pending against him, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. The bench mainly referred to Avtar Singh vs. Union of India, wherein it was observed that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate. It said, in the present case, there is nothing on record to suggest that the decision taken by the authorities concerned in rejecting the candidature was in any way actuated by mala fides or suffered on any other count.

Pratap Mehta vs. Sunil Gupta and Ors.: 2018 SCC OnLine SC 2304 : SC upholds MP HC judgment invalidating State Bar Council Election to the post of representative to BCI

– Held – The Supreme Court upheld the Madhya Pradesh High Court order that invalidated the election conducted by the State Bar Council in 2014 to the post of representative in the Bar Council of India. **“The notices dated 16.07.2014 and 19.07.2014 having not contained any agenda and the meeting also not being described as adjourned meeting, issuance of agenda for the meeting was necessary.”** The Bar Council of India had dismissed the Election Petition filed by Advocate Sunil Gupta holding that there is no infirmity in the election of Advocate Pratap Mehta as representative to the Bar Council of India. The court said: “The notices dated 16.07.2014 and 19.07.2014 cannot be read as notice as required under Rule 7 for holding election of a member to the Bar Council of India from the State Bar Council, hence, the conduct of election of a member as a representative from State Bar Council to Bar Council of India in the meeting dated 02.08.2014 cannot be said to be in conformity with Rule 7 of Bar Council of India Rules.” During the pendency of appeal before the Apex court, the state bar council had conducted fresh election to this post. Now, dismissing the appeals, the bench observed that the said election already conducted on 12.08.2018 be given effect to by all concerned.

LATEST CASES : CRIMINAL

“Criminal law is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society.”

K.S.P. Radhakrishnan, J. in *State of Rajasthan vs. Shambhu Kewat*, (2014) 4 SCC 149

State of Kerala vs. Rasheed : 2018 SCC OnLine SC 2251 : Factors guiding exercise of discretion by Judge under Section 231 (2) Cr.P.C, “practice guidelines” for trial court in conducting criminal trial & trial court directed to prepare the detailed case calendar at the commencement of the trial – Held – Supreme Court, while allowing an appeal filed against the judgment of Kerala High Court, highlighted the factors guiding exercise of discretion by the Judges under Section 231 (2) Cr.P.C and the practice guidelines to be followed by the trial courts while conducting criminal trials. It was further stated that the following illustrative factors must be kept in consideration:

- (a) possibility of undue influence on or threats to witness;
- (b) possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy;
- (c) possibility of loss of memory of witness;
- (d) occurrence of delay in trial.

The Court further stated “practice” guidelines to be followed by trial courts in criminal trial which includes: (a) detailed case calendar must be prepared at the commencement of trial that specifies dates on which examination-in-chief and cross will be conducted; (b) testimony of witnesses deposing on the same subject-matter must be proximately scheduled; (c) request for deferral must be preferably made before preparation of calendar; (d) grant of request to be promised on sufficient reasons and date of cross-examination after deferral to be specified; (e) case calendar to be followed strictly and the witnesses to be safeguarded. The appeal was disposed of in the terms above.

Sangitaben Shaileshbhai Datanta vs. State of Gujarat : 2018 SCC OnLine SC 2300 : Section 439 Cr.P.C guiding principle to adjudicate on bail application; ordering forensic tests while considering same not allowed–Held–The Apex court of our country, while allowing an appeal, set aside the order of the High Court which clearly violated the settled principles of criminal law jurisprudence and

statutory provisions. The facts of the case were that, an FIR was lodged against Respondent 2 under Sections 376(2)(f) and 376(2)(i) IPC and Sections 4, 5(c)(f)(m), 6, 8, 9(c)(f)(m) and 10 of the POCSO Act, by the appellant who was the grandmother of the victim. The victim was a minor aged 7 years. The High Court had directed accused as well as the appellant along with the parents of the victim to undergo scientific tests viz., lie detector, brain mapping, and Narco Analysis. Further, the learned Judge of the High Court had in its order revealed the identity of the “victim”. The Court highlighted the fact that the matter was converted into a mini-trial by the High Court due to mentioning of the tests & Court disapproved the manner in which the High Court adjudicated the bail application and accordingly quashed the High Court order.

Kamil vs. State of Uttar Pradesh : 2018 SCC OnLine SC 2280 : Conviction can’t be set aside if no prejudice has been caused to accused by non-framing of charge – Held – The Supreme Court has held that a conviction for the substantive offence without a charge can be set aside only if the accused shows that prejudice has been caused to him and that “failure of justice” has occasioned thereby. The Apex court was dealing with the contention of the accused that charge under Section 302 IPC was not framed against him and therefore the conviction of the appellant/accused under Section 302 IPC was not maintainable. Referring to Section 464 Cr.P.C the bench observed that absence of charge would vitiate the conviction only if it has caused prejudice to the accused. The court also noted that throughout the accused has been defending himself only for the charge under Section 302 IPC. The appeal was dismissed.

Reena Hazarika vs. State of Assam: 2018 SCC OnLine SC 2281: Section 313 Cr.P.C. can well be considered as a constitutional right under Article 21; invocation of last seen theory sans facts and evidence does not shift onus on accused – Held – Supreme Court allowed criminal appeal filed against the judgment of Gauhati High Court whereby trial court’s decision convicting the appellant under

Section 302 IPC was upheld. The appellant was accused of murdering her husband. She was convicted by the trial court which was affirmed by the High Court holding that the present was a case of circumstantial evidence. The last seen theory established the presence of the appellant with the deceased at night. She was assailant of the deceased. Aggrieved by the judgment of the High Court, the instant appeal was filed. **The Supreme Court observed that mere invocation of the last seen theory, sans the facts and evidence in a case, will not suffice to shift the onus upon the accused under Section 106 of the Evidence Act, 1872 unless the prosecution first establishes a prima facie case.** It was noticed that the courts below did not notice defence of the appellant under Section 313 Cr.P.C. It was observed that Section 313 cannot be seen simply as part of *audi alteram partem*. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313 (2). If the accused takes a defence after the prosecution evidence is closed, under Section 313 (1)(b) the Court is duty bound under Section 313(4) to consider the same. It was held that unfortunately in the instant case, complete non-consideration of the appellant's defence caused prejudice to her. In facts and circumstances, the Court held that the guilt of the appellant was proved beyond reasonable doubt. Therefore, the appeal was allowed and the appellant was acquitted.

Nipun Saxena vs. Union of India Ministry of Home : 2018 (4) RCR (Criminal) 223 – POCSO Act – Sec.33(8)–POCSO Rules 2012, Rule 7 – special court may , in appropriate cases, on its own or on application having been filed pass order for interim compensation for immediate needs of the child – Held – The SC took note of the fact that as far as children were concerned there were no guidelines or rules for compensation to the victims of sexual abuse under the provisions of the POCSO Act & issued guidelines. Needless to say that the Scheme and the Guidelines will be operational from 2nd October, 2018”.

Social Action Forum for Manav Adhikar and Another vs. Union of India Ministry of Law and Justice and Others : 2018 (4) RCR

(Criminal) 226 – Sec.498A IPC – Only HC can quash cases on settlement; a third agency created by courts can't exercise statutory functions. Along with some directions the Supreme Court has also directed the Director General of Police of each State to ensure that investigating officers who are in charge of investigation of cases of offences under Section 498A of IPC should be imparted rigorous training with regard to the principles stated by this Court relating to arrest.

Dr. Sr. Tessa Jose and Ors. vs. State of Kerala : 2018 SCC OnLine SC 957 : 2018 (4) RCR (Criminal) 114 – Section 19 (1) and 21 (1) of POCSO – Rape of a minor– criminal liability cannot be fastened on the appellants on the ground that they attended the minor rape victim when brought to the hospital and failed to inform the relevant authority – Held – FIR under the provisions of POCSO Act was registered & charge sheet was filed wherein the appellants were arrayed as accused nos. 3, 4 and 5. The allegations against them were under Sections 201 of IPC & Section 19(1) read with Section 21(1) of POCSO Act. The case of the prosecution was that accused no. 1 had raped the victim when she was a minor. As a result, she became pregnant. When the victim complained about pain in the stomach, she was brought to the hospital where the appellants were working. It was found that the victim was in advance stage of pregnancy. In fact, soon after she was brought to the hospital, she went into labour & delivered a child. The appellants attended to the victim. Appellant no. 1 was a Gynecologist and had conducted the delivery. Appellant no.2 was a Pediatrician who had attended to the baby of the victim after the delivery. Appellant no. 3 was Hospital Administrative. She was roped-in in that capacity though she did not attend to the victim or the baby. The SC observed that there was nothing on record to show that appellants had any knowledge about the alleged rape of the victim. In fact, they did not come into picture before the time when the victim was brought to the hospital. The appellants performed their professional duties. The provisions of Section 19(1), put a legal obligation on a person to inform the relevant authorities, when he/she had knowledge that an offence under the Act had been committed. The appeals were allowed & proceedings against the appellants were quashed.

FAMILY LAW CASES

“There are so many reasons for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their ‘young’ days in chasing their ‘cases’ in different courts.”

S. Saghir Ahmad, J. In *G.V. Rao vs. L.H.V. Prasad*, (2000) 3 SCC 693

Dr. Amit Kumar vs. Dr. Sonila and Others: 2018 SCC OnLine SC 2204 : Remarriage not a ground to deprive a man custody of his children – Held – The Supreme Court held that merely because a man remarried and is residing with second wife’s child, he could not be deprived of the custody of his child. In the present case, the couple, who got two kids, parted after they obtained divorce by mutual consent in December 2016. As per the decree, it was agreed that custody of both children would be with the husband. It was also agreed that the husband would provide for education, medicines and marriage of the son while the wife would do the likewise for the daughter. All started with a demand raised by the husband asking the wife to honour the commitments made during the settlement. She responded to this letter stating that the consent decree was not acceptable to her, and also alleged that the transfer of children to the boarding school was a unilateral and that the expenses quoted were exorbitant. She filed custody applications which later reached the High court. The High court, taking note of the second marriage of husband and also the fact that the children were sent to a boarding school, directed that the children would remain in the custody of the mother for a period of one year. This order was assailed by the husband, before the apex court. The court noted that as due to the exigencies of his service condition that the children had to be put in a boarding school for some time, which exigency also does not remain at present. **Held:** “**The second wife of the appellant is an educated lady. Merely because the appellant has decided to go ahead in life, and has had a second marriage, it provides no ground whatsoever to deprive him of the custody of the children as agreed upon between the appellant and respondent No.1, especially when he has been looking after the children and has not gone back on any of his commitments.**” The bench then set aside the High court order observing that the rights and obligations as envisaged in the decree of divorce by mutual consent will bind both the parties.

Abhijeet Nand Kishore Singh vs. Viveka Kumar Idar: Transfer Petition (Civil) No. 1412

of 2017 (Marriage Petition No. A-545 of 2017 before the Family Court Bandra, Mumbai) : DoD 14.11.2018 : SC allows fighting couple to part ways, on the ground of their efforts to amicably settle their differences as per the direction of the court – In respect of marital discord litigations, the Apex Court is continuing its efforts to put quietus to litigations by persuading parties to settle the issues, instead of clinging on with cases against each other. **“We are happy to note that the parties have cooperated with the suggestions made by the Court and have taken a conscious decision to put an end to their litigation.”** Under the said petition, a man approached the Apex court seeking transfer of a divorce case filed against him by his wife to New Delhi. Then bench referred the matter to mediation, but the mediator could not make them arrive at a settlement. The mediation report opined that it is a case where the dispute can be settled through the intervention of the Court. Thereafter, the bench, interacted with both the parties, before which both of them expressed their regret for their conduct towards each other. The husband also agreed to pay an amount of Rupees Five Crore to the wife in consideration of the full and final settlement for the dissolution of the marriage/divorce. The bench then directed the parties to move a formal application under Section 13B of the Hindu Marriage Act, 1955 for Court for dissolution of marriage.

Kailash and Anr. vs. Santosh and Anr.: 2018 SCC OnLine SC 2452 : SC relief to couple who pleaded guilty for marrying off their under-age kids – Held – The Supreme Court recently set aside a high court order to conduct de novo trial under the Prohibition of Child Marriage Act, 2006 against a couple who were convicted by the trial court under the Child Marriage Restraint Act, 1929 for marrying off their under-aged son and daughter. Kailash and his wife had pleaded guilty in the case and he was sentenced to sit in court till rising of the court, along with a fine of Rs. 1,000 each. His brother had then approached the high court contending that, since on the date of the commission of offence, the Child Marriage Restraint Act, 1929 had been repealed by the Prohibition of Child Marriage Act, 2006, the

order passed by the Judicial Magistrate would have to be set aside and a de novo trial has to be conducted under the Prohibition of Child Marriage Act, 2006. The high court allowed his revision petition and ordered de novo trial. This order was challenged before the apex court. The bench observed that the offence under Section 6 of the Child Marriage Restraint Act, 1929 and the offence under Section 11 of the Prohibition of Child Marriage Act, 2006 are the same insofar as the accused in this case are concerned. **“It is true that the maximum sentence under the Act of 1929 was three months whereas under the Act of 2006, it is two years. That, however, would make no difference on the facts of this case.”** The bench then allowed the appeals by treating the order passed by the Judicial Magistrate, as an order under the Prohibition of Child Marriage Act, 2006.

Lalita Toppo vs. The State of Jharkhand: 2018 SCC OnLine SC 2301 : Live-in partner can seek maintenance under Provisions of Domestic Violence Act – Held – The Supreme Court observed that a live-in partner can seek maintenance under the provisions of the Protection of Women from Domestic Violence Act, 2005. The Summit court was considering the questions referred to it in Lalita Toppo vs. State of Jharkhand. It observed; **‘In fact, under the provisions of the DVC Act, 2005 the victim i.e. estranged wife or live-in-partner would be entitled to more relief than what is contemplated under Section 125 of the Code of Criminal Procedure, 1973, namely, to a shared household also.’** Referring to provisions of Domestic violence Act, the bench observed that the petitioner, in this case, would have an efficacious remedy to seek maintenance under the Act even assuming that she is not the legally wedded wife and, therefore, not entitled to maintenance under Section 125 of the Code of Criminal Procedure, 1973. It also said that economic abuse also constitutes domestic violence as per the provisions of the Act. The bench disposed of the appeal directing the appellant to approach the appropriate forum under the provisions of the Domestic Violence Act.

Kamala and Others vs. M.R. Mohan Kumar: 2018 SCC OnLine SC 2121: Strict proof of marriage not needed for ‘Maintenance’ Proceedings Under Sec. 125 Cr.P.C – Held – The Supreme Court, while setting aside a Karnataka High Court order that had dismissed

a maintenance petition for want of proof of marriage, has reiterated that in the proceedings under Section 125 of the Code of Criminal Procedure, such strict proof of marriage is not necessary. In this case, the Family court had observed that there was a husband-wife relationship between the parties and children are born out of the said wedlock. It had then directed the ‘husband’ to pay maintenance. In revision petition filed by the ‘husband’, the High Court held that the petitioner did not produce any evidence to show that the marriage was solemnized as per custom and she, not being the legally wedded wife, is not entitled for any maintenance. The Supreme Court, referring to the evidence on record, said the oral evidence given by the ‘wife’ coupled with documents raise a strong presumption of a valid marriage. Referring to testimonies of other witnesses, it said that it is established that the parties cohabitated as husband and wife and that the people around them treated them as husband and wife. The bench said that, unlike matrimonial proceedings where strict proof of marriage is essential, in the proceedings under Section 125 Cr.P.C, such strict standard of proof is not necessary as it is summary in nature meant to prevent vagrancy. Quoting from the apex court judgment in Chanmuniya v. Virendra Kumar Singh Kushwaha, the bench said a broad and extensive interpretation should be given to the term “wife” under Section 125 Cr.P.C. In the said judgment, it was observed: **“We are of the opinion that a broad and expansive interpretation should be given to the term “wife” to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a precondition for maintenance under Section 125 Cr.P.C, so as to fulfill the true spirit and essence of the beneficial provision of maintenance under Section 125. We also believe that such an interpretation would be a just application of the principles enshrined in the Preamble to our Constitution, namely, social justice and upholding the dignity of the individual.”** Restoring the Family court order granting maintenance, the bench said when the Family court held that there was a valid marriage, the high court, being the revisional court, has no power to reassess the evidence and substitute its views on findings of fact.

NOTIFICATION**THE NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT, 2018**

NO. 20 OF 2018

[2nd August, 2018.]

An Act further to amend the Negotiable Instruments Act, 1881.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:

1. (1) This Act may be called the Negotiable Instruments (Amendment) Act, 2018.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Negotiable Instruments Act, 1881 (hereinafter referred to as the principal Act), after section 143, the following section shall be inserted, namely:

“143A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant —

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty percent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section.”

3. In the principal Act, after section 147, the following section shall be inserted, namely:—

“148. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.”

EVENTS OF THE MONTH

1. The second National Judicial Pay Commission organized **Regional Conference for the States of Punjab, Haryana, UT Chandigarh and Himachal Pradesh on Nov. 17, 2018** at CJA. The different stakeholders: the State Government, the High Court, Judicial Officers and Associations – serving and retired participated in the conference. Former SC Judge, Justice P.V. Reddy and R. Basant, Senior Advocate and former Judge of the Kerala High Court addressed the conference and interacted with the participants on different issues involved.

2. **Sixth Colloquium of National Company Law Tribunal (NCLT) for the Hon'ble Members of NCLT** was organized at Chandigarh Judicial Academy from November 21-23, 2018. In the inaugural session, Justice A.K. Mittal, Judge, Punjab and Haryana High Court was the Chief Guest. In his address, Justice Mittal focused on various issues of concern. Justice M.M. Kumar, President, National Company Law Tribunal and former Chief Justice of J&K High Court also addressed the gathering of Hon'ble Judges, Senior Advocates, Chartered Accountants, Company Secretaries : the corporate coparcenary. Besides the inaugural session, the whole programme was divided into nine working sessions. The sessions were taken by

Judges and Technical Members of NCLT. Dr. Balram K. Gupta, Director (Academics), CJA took a session on Judgment Writing Standard Expression and other related issues.

3. Juvenile Justice Committee of Punjab and Haryana High Court in collaboration with Chandigarh Judicial Academy organized **State Level Consultation on November 25, 2018** relating to the Issues under the Juvenile Justice Act, 2015 focusing on Safety of Children under JJ Act. The Introductory Session was addressed by HMJ Jaswant Singh, Chairman, Juvenile Justice Monitoring Committee of Punjab & Haryana High Court. The different sessions were taken by : Dr.K.P. Singh, DGP, Haryana, Human Rights Commission, Sh. Sanjay Baniwal, DGP, UT Police, Ms. Harpreet Kaur Jeewan, Member Secretary, PSLSA, Sh. Puneesh Jindia, Member Secretary, HSLSA, Sh. Mahavir Singh, Member Secretary, SLSA, Chandigarh, Ms. Mandeep Pannu, ADJ, SBS Nagar, Ms. Sangita Vardhan, Chairperson, Child Welfare Committee. The Consultation covered topics : Audit of Earlier Conference, Key Role of Police, Probation Officers and Protection Officers to watch the Safety of Children, Key Role of CWC in watching the safety of the child in need of Care and Protection, Importance of Skill Development

and Juvenile Justice. The Closing Observations were addressed by HMJ Jaswant Singh. Expression of Gratitude was given by Dr. Balram K. Gupta, Director (Academics), CJA. A total of 152 officers attended this State Level Conference.

4. Ten Days Training Programme of Fifth Batch of 30 Public Prosecutors from Punjab commenced on Nov. 26, 2018 at Chandigarh Judicial Academy. The training includes four sessions of 1.15 hours per day. There would be 39 sessions covering different aspects relevant for the Public Prosecutors regarding Criminal and Civil Matters : Prosecution Sanction for Public Servants, Determination of Compensation under Land Acquisition Act, Law on Bails-Regular and Anticipatory, Recent Changes in Criminal law-Substantive and Procedural, Protection against self Incrimination-Dimensions and Applicability, Sentencing Policy & Restitutive Justice- Legal and Procedural Aspects-I, Sentencing Policy & Restitutive Justice – Legal and Procedural Aspects-II, Suits against and by the Government – Legal implications, Criminal Appeals & Revisions – Law and Procedure, Important Aspects in Checking of Challans by the Prosecutors, Process of Trial in Civil Cases-Best Practices, & Law on Amendments of Pleadings, Role of Post-mortem in Aid of Justice, The Role of Prosecutor and the Constitution, Legal Facets of Human Trafficking, Law of Admissions and Confessions, General Aspect of Service Law, Jurisprudence of

Circumstantial Evidence, Mens-Rea Presumptions under NDPS Act & its constitutionality, Medical Evidence – Legal Aspects, Law on Constructive & Joint Criminal Liability, Ramifications of Personal Search under NDPS Act, Child in Conflict with Law – Legal Rights and Protection, Cyber Crime Parameters of Investigation-Challenge, Executions-Speedy & Expeditious Disposals, Law Relating to Under Trials, Parole, Furlough & Pre Mature Release of Prisoners, Cordiality amongst Prosecutors, Police, Judiciary & District Administration, Electronic Evidence Admissibility & Appreciation, Access to Justice – Legal Aid Special Ref to Kasab Case, Delays in Criminal Trials-Causes & Remedial Measures, Interpretation of Revenue Records & their Applicability in Cases-I, Interpretation of Revenue Records & their Applicability in Cases-II, Examination of witnesses–Principles and Procedures, Law of Custody during Investigation and special legislations, Compensation under MACT Act, Forensic Evidence – Legal Scenario, DNA Profiling & Evidence, Miscellaneous Applications under Civil Procedure Code, Awards under Arbitration & Reconciliation Act – Legal Issues, Summoning of Additional Accused and Evidence – Legal Parameters. The training is imparted to enhance the capacity of Public Prosecutors to perform their duties effectively and efficiently. The training programme would conclude on December 06, 2018.