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FROM THE DESK OF CHIEF EDITOR

The e-Newsletter keeps the Judicial Fraternity connected and linked with CJA. The whole effort on the part of CJA is to serve the fraternity in the best possible manner. The concern is to bring the latest relevant developments to the knowledge of the Judicial Officers so that the same helps them in the performance of their judicial functions. In the month of August 2016, the CJA conducted an Orientation Course on Commercial Courts under the Act of 2015. The Senior Most Additional District and Sessions Judge in each District has been designated as the Commercial Court in the states of Punjab, Haryana and UT Chandigarh. The Act of 2015 has brought about vital changes. Accordingly, it was felt that the Senior Most ADJs should be given the required inputs so that they have the requisite background to man and manage effectively the Commercial Courts.

The Hon'ble Supreme Court has understandably shown serious concern with regard to Food Safety and Adulterated Milk in its judgment dated August 05, 2016 in the case of Swami Achyutanand Tirth vs. Union of India. This is a matter which is of concern to all. The necessary amendments in the Legislation are not forthcoming. In any case, serious vigilance is required on the part of all Stakeholders. In the case comment in this issue, role which the District Judiciary can play has been focused. It is earnestly urged that the Judges at all levels need to take this aspect with utmost seriousness. It should be clear to those who are indulging in this menace that no one would be spared.

We keenly look forward to meaningful suggestions as to what more can be added to our monthly e-Newsletter. The absence of the response from the Judicial Fraternity gives a feeling as if the monthly e-Newsletter is not be put to use as it ought to be. The positive response in this regard would give us the feeling that the effort is being appreciated. If this effort is not reciprocated, the same would warrant that the Judicial Fraternity needs to be motivated so that they make use of the material which is being supplied. Your response would help us in serving you better.

Balram K. Gupta

COMMENT
ON
THE NATIONAL CONCERN FOR FOOD SAFETY AND ADULTERATED MILK

The Hon'ble Supreme Court issued certain directions on August 05, 2016 in the case of **Swami Achyutanand Tirth vs. Union of India**. This was a petition filed in public interest highlighting the menace / issue of Food Safety in general and Adulterated Milk in particular. The background of this PIL was the report of 2011 on National Survey of Milk Adulteration, 2011. It reported that at the national level, 68.4% milk was adulterated. Further, the worst performers were the states of Bihar, Chhattisgarh, Orissa, West Bengal, Mizoram, Uttrakhand and Daman and Diu, the adulteration of milk was found upto 100%. In the states of Uttrakhand and Uttar Pradesh, 88% of milk samples were found adulterated. Shockingly, milk which was the major diet of growing children was found adulterated with hazardous substances like uria, detergent, refined oil, caustic soda etc. Food Safety and Standards Act, 2006 (FSS Act) had come into force from 05.08.2011. Section 272, IPC provides that whoever adulterates any article of food or drink shall be punishable with imprisonment of either description for a term which may extend upto six months or with fine which may extend to one thousand rupees, or with both. Taking note of the seriousness of the offence, state of Uttar Pradesh amended Section 272, IPC by enhancing the sentence to imprisonment for life and also fine. Similar amendments have been made by the states of West Bengal and Orissa. State of Madhya Pradesh decided to amend Section 272, IPC by enhancing sentence of imprisonment for life with our without fine. Considering the seriousness of the offence, the Supreme Court vide its order dated 30.01.2014 directed that similar amendments to be made in other states as well. Further, the Supreme Court vide its order dated 10.12.2014 directed Union of India to come up with necessary amendments in Food Safety and Standards Act, 2006 and also in the Indian Penal Code to make penal provisions at par with the state amendments. When the matter came up for hearing on 10.12.2014, Union of India submitted that the bill seeking to amend FSS Act by inserting new section, section 7(A) was withdrawn and the Parliamentary Standing Committee on Health and Family Welfare recommended that the Government may re-look into all the aspects of the matter and come up with a comprehensive bill at the earliest. It was in this context that directions had been given by the apex court on 10.12.2014. It is in this background that the Hon'ble Supreme Court has given ten different directions vide its judgment dated August 05, 2016.

The seriousness of the matter cannot be doubted. The directions are understandable. The backing of Law is far more important. Some of the states by amending Section 272 IPC, whereby life imprisonment has been provided for such an offence. It is not understandable at all as to why the same serious concern has not been shown by the Parliament in amending Section 272, IPC. The three organs of the state have to play a collective role in this particular context. The first initiative has to come from the Parliament. As long as Section 272, IPC remains as it is, the Executive and the Judiciary will not be able to play any effective role. The directions given by the Supreme Court even if they are carried out, in the absence of a deterrent punishment by way of life imprisonment, it would not have the desired effect. Of course, the District Judiciary in particular and Judiciary in general has to play a pivotal role in combating this particular menace which is effecting adversely the health at all levels of people in different age groups. This is not a matter which can be allowed to be taken casually. Equally, this is not a matter which can be allowed to be delayed. It is not understandable as to why the necessary amendments in the Food Safety Act as also the Indian Penal Code have not been brought about inspite of the clear and categorical directions given by the summit court in its order dated 10.12.2014. It is urged that immediate effective steps be taken to combat this gigantic problem. Once the necessary changes in the Legislation are brought about, the Judiciary would be able to play its effective role. The fact remains that the directions given by the Hon'ble Supreme Court in its judgment dated 05.08.2016 can be meaningful only if the necessary legislative action is taken in the matter.

Balram K. Gupta

LATEST CASES : CIVIL

"Administration of justice calls for independence of mind, freshness of outlook, uninhibited by normal service life and routine. It also calls for experience in writing judgments and knowledge gathered in conducting cases from lower rank and gaining experience thereby and any ideal system would be where there is complete fusion between these two sources..."

Sabyasachi Mukharji, J. in O.P. Singla v. Union of India, (1984) 4 SCC 450

M/s Industrial Promotion & Investment Corporation of Orissa Ltd. v. New India Assurance Company Ltd. and Ors.: MANU/SC/0920/2016 : Civil Appeal No. 1130 of 2007 (SC) : DoD 22.08.2016 – This Insurance Policy provided cover against loss or damage by Burglary or House breaking i.e. (theft following an actual, forcible and violent entry of and/or exit from the premises) – It was detected that some parts of the plant and machinery were missing from the factory premises. FIR was registered. The Insurance Company was informed and claim was lodged. It is clear from the facts that no case was made out of theft with forcible entry. The plea was that forcible entry was not required for a claim to be made under the policy – Held – A contract of insurance like any other commercial contract is to be strictly interpreted. The policy covers loss or damage by burglary or house breaking by forcible and violent entry from the premises. Accordingly, a person or an entity cannot seek compensation if theft happened without violence.

Madina Begum and Ors. v. Shiv Murti Parsad Pandey and Ors.: 2016 (7) SCALE 478 – Limitation Act 1963 – Schedule 1 – Article 54 – CPC – S.96 – Specific Performance Agreement – Whether barred by limitation – The Trial Court held that the suit was not barred by limitation as the agreement did not specify a calendar date as the date fixed for the performance of the agreement. However, the suit was dismissed on merits by the trial court. On appeal, the Division Bench did not go into the merits of the dispute between the parties but only adverted to the issue of limitation. It was found that the institution of the suit was barred by time. Hence, there was no necessity of considering the case on merits. On appeal, the Supreme Court agreed with the trial court on the issue of limitation as the first part of Article 54 was clearly applicable to the facts of the case. As regards the consideration of the case on merits, the High Court had not gone into the same. It was held that this was not permissible. There was no option but to set aside the view taken by the High court. The case was remanded back to the High court to decide the remaining issues in the first appeal filed u/s 96 of CPC.

Indrani Wahi v. Registrar of Cooperative Societies and Ors.:(2016) 6 SCC 440 – Ss.79 & 80 – West Bengal Cooperative Societies Act, 1983 – Rights of Nominee – Substantiality over inheritors – A member of the Cooperative Society who was allotted the flat appointed his daughter as his nominee. On the death of the member, the wife and the son made a claim to the flat by inheritance /succession – Held – Where nomination is made as per S.79, S.80(1)(a) postulates that the share or interest of the member of the Society, "on his death" shall be transferred to a person nominated u/s 79. It is essential to notice that the right of others on account of inherence/ succession is a subservient right. It is only if a member had not exercised the right of nomination u/s 79, then and then alone, the existing share or interest of the member would devolve by way of succession or inheritance.

Gayathri v. M. Girish: 2016 (7) SCALE 461 – Virus of seeking adjournments causes colossal insult to the concept of speedy justice – The examination-in-chief continued for long. The matter was adjourned seven times. The defendant sought adjournment on some pretext or the other. The trial court eventually granted permission subject to payment of costs. He still prayed for adjournment as if it was his right to seek adjournment on any ground whatsoever and on any circumstance. The disregard shown to the plaintiff's age was also visible from

the marathon of Interlocutory Applications filed – Held – A counsel appearing for a litigant has to have institutional responsibility. Applications cannot be filed on any ground whatsoever. The professional ethics decries such practice. By such conduct, colossal insult to justice and to the concept of speedy disposal of civil litigation has been caused.

Messer Holdings Ltd. v. Shyam Madanmohan Ruia & Ors. : 2016 (4) SCALE 224 – **Abuse of Discretionary Jurisdiction – Exemplary costs for wasting Time of the Supreme Court – The rich and powerful in the name of "fight for justice" abuse the judicial process –** The instant SLPs arise out of various interlocutory proceedings. Arguments were advanced on either side for a period of about 18 working days as if this Court were a Court of Original Jurisdiction trying the various above-mentioned suits. The fact remains that in none of the suits even issues have been framed so far. We believe that it is only the parties who are to be blamed for the state of affairs. This case, in our view, is a classic example of the abuse of the judicial process by unscrupulous litigants with money power. Accordingly, it was deemed appropriate to impose exemplary costs quantified at ₹25 lacs to be paid by each of the three parties.

M.P. Housing Board v. Mohanlal and Company : 2016 SCC OnLine SC 738 – **Limitation Act 1963 – S.14 – When attracted, Arbitration and Conciliation Act, 1996- Ss.11 & 34 –** S.14 (1) of the Act lays down that the proceedings must relate to the same matter in issue. It emphasises on due diligence and good faith. Filing of an application u/s 11 of the Act of 1996 for an appointment of arbitrator is totally different then an objection to award filed u/s 34 of the Act. One is at the stage of initiation and the other at the stage of culmination. By no stretch of imagination, it can be said that the proceedings relate to "same matter in issue". Moreover, the respondent had participated in the arbitral proceedings and was aware of passing of the award. We are conscious that liberal interpretation should be placed on S.14 of the Act, but if the fact situation exposits absence of good faith of great magnitude law should not come to rescue of such a litigant.

Sandeep v. Narender Kumar: FAO No. 6258 of 2013 in MACT Case RT No. 161 of 2011/2012: DoD 23.05.2016 (P&H) – **S.158(6) of Motor Vehicles Act requires information regarding the accidents involving death or bodily injuries to be recorded and completed by a police officer and forwarded within thirty days from the date of recording of information to the Claims Tribunal having jurisdiction –** S.158 (6) of the Motor Vehicles Act is literally a tool for arriving at a just settlement without wasting much of time. The judgment records directions and suggestions given to the different parties namely: the State (Police and Transport Departments), the Insurance Companies, the Legal Services Authorities. The parties will undertake this drill and apprise the court of the implementation of the directions and difficulties encountered by anyone of them so that the creases of obstructions are ironed out. The respective Motor Vehicles Rules of Punjab, Haryana and Chandigarh shall be fully applied and the directions shall be taken as laying further emphasis for the same rules and containing additional duties to be performed, wherever, they are not supported by the rules.

Venugopal K. v. Union of India and Ors.: W.P.(C) No. 4559 of 2015: MANU/KE /0169/2015 – **IPC, 1860 – S.494 – Whether S.494 discriminates between an offender belonging to Hindu / Muslim / Christian male or female belonging to any cast or creed–**Held– S. 494 does not discriminate between an offender belonging to Hindu / Muslim / Christian. S.494 will be attracted only when the second marriage of the person is void on account of existence of first marriage. In the case of Muslims, the Personal Law permits a Muslim male to marry upto four wives at a time. Hence, the second marriage will not become void even if the first marital tie is intact. In a case, where a Muslim male marries a fifth wife, he can be prosecuted u/s 494 since fifth marriage will be void. Similarly, a Muslim female contracting the second marriage can be proceeded with for offence u/s 494. Thus, the submission that offence u/s 494 IPC is discriminatory between Hindu / Muslim / Christian is not acceptable.

LATEST CASES : CRIMINAL

"A criminal court, while trying an offence, acts in the interest of society and in the public interest. A criminal court cannot remain a silent spectator. It has got a participatory role to play having been invested with enormous powers under Section 311 Cr.P.C, as well as Section 165 of the Evidence Act."

F.M. Ibrahim Kalifulla, J. in Mina Lalita Baruwa v. State of Orissa, (2013) 16 SCC 173

Raju Devade v. State of Maharashtra: 2016 (3) RCR (Criminal) 700 – **Multiple Dying Declarations -** each dying declaration has to be considered independently on its own merit so as to appreciate its evidentiary value and one cannot be rejected because of the contents of the other. In cases where there is more than one dying declaration, it is the duty of the court to consider each one of them in its correct perspective and satisfy itself that which one of them reflects the true state of affairs.

Praful Sudhakar Parab v. State of Maharashtra: 2016 (3) RCR (Criminal) 707 – **Circumstantial Evidence** – Principles of law regarding basing of conviction on circumstantial evidence, as previously laid down by Supreme Court in K.U. Chacko versus State of Kerala, 2001 (9) SCC 277 were reaffirmed as: (i) Circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by accused and none else.

Brij Lal v. State of Rajasthan: MANU/SC/0912/2016 : Criminal Appeal No. 991 of 2010 - DOD 17.08 2016 (SC) – **Plea of self-defence** – Held – It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case, the Court can consider it even if the accused has not taken it. If the same is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872, the burden of proof is on the accused, who sets of the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances – Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused.

Kala @ Chandrakala v. State through Inspector of Police : 2016(7) SCALE 735 – **Extra judicial confession** – Held – Extra-judicial confession is weak piece of evidence. Before acting upon it the Court must ensure that the same inspires confidence and it is corroborated by other prosecution evidence. – There should be no suspicious circumstances surrounding it. – Reliability of the same depends upon the veracity of the witnesses to whom it is made – Main features of confession are required to be verified – In the case of retracted confession, it is unsafe for the Court to rely on it.

Dr. Vijai Tripathi v. Central Bureau of Investigation : 2016 SCC OnLine SC 804, DoD 09.08.2016 – **Special Judge under the PC Act can also try non-PC Act cases with the object of trying connected cases before the same court** - Deciding the matter relating to the question that whether the Special Judge can try a non PC Act case when his appointment is to try all cases of the category which covers the case at hand, the Court held that procedure of Code of Criminal Procedure

is applicable to trial before Special Judge and there is no prejudice to trial that is taking place before Special Judge duly appointed to deal with non PC cases when the object of doing so was to try connected cases before same court.

Rini Johar v. State of MP : 2016 (3) RCR (Criminal) 300 – In the matter where the legality of the arrest of a Doctor and her mother who is a Practicing Advocate on the basis of an FIR registered against them u/s 420 (cheating) of the Penal Code, 1860 and Section 66-D (Punishment for cheating by personation by using computer resource) of the Information Technology Act, 2000 was challenged – Held – that the officers of the State had played with the liberty of the petitioners and, in a way, experimented with it, directed the State to pay compensation ₹ 5,00,000 to each petitioner. The Court agreed with the contention that the police had violated the procedures that were needed to be followed for arresting the petitioners. The Court further held that the dispute was purely of a civil nature, but a maladroit effort had been made to give it a criminal colour. The bench said that the dignity of the Petitioners had been seriously jeopardized. They further added that that the liberty of the petitioner was curtailed in violation of law. – It is an assault on his/her identity. The said identity is sacrosanct under the Constitution – There has been a violation of Article 21 of the Constitution.

Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage : (2016) 6 SCC 277 – **Criminal Procedure Code, 1973 – Ss. 154, 156(1) & (3) and 36 – Non-registration of FIR or improper investigation by police** – Remedy in such matters does not lie before High Court under Article 226 of Constitution but before Magistrate concerned under S. 156(3) Cr.P.C. If on an application under S. 156(3) Cr.P.C, Magistrate is prima facie satisfied, he can: (i) direct registration of FIR; (ii) if FIR has already been registered, issue a direction for proper investigation to be made, which includes, if he deems it necessary, recommending change of investigating officer, and can also; (iii) monitor the investigation.

Mukhtiar Singh v. State of Punjab : 2016 (3) RCR (Criminal) 558 – **Prevention of Corruption Act, 1988 – S.7** – It is settled principle of law that once the demand and voluntary acceptance of illegal gratification knowing it to be bribe are proved by evidence then conviction must follow under S.7 of the PC Act against the accused. – These twin requirements are sine qua non for proving the offence under S.7 of PC Act.

State of Rajasthan v. Jag Raj Singh : 2016 (3) RCR (Criminal) 539 – **NDPS Act, 1985 – S.42 –** Where the prosecution himself has come with case that secret information was received which information was recorded in Roznamacha and thereafter the SHO with police party proceeded towards the same. It was not a case where SHO suddenly carried out search at a public place. The SHO in his statement has also come up with the facts to prove compliance of S.42. When search is conducted after recording information u/s 42 (1), the provision of S.42 has to be complied with.

Baldev Singh v. State of Punjab : 2016 SCC OnLine P&H 4509 – **Deciding on the matter – Whether the crime registered under Section 304-A of Penal Code, 1860 can be quashed on the basis of compromise arrived at by the legal heir/legal representative of the victim/deceased, with the offender** – Held that to quash the proceedings under Section 304-A solely on the basis of a settlement or compromise arrived at between the accused and the legal representatives is not permissible and militates against all canons of justice. It was further said that in the case under Section 304-A IPC, the victim is obviously not present to settle the matter and hence, to permit a legal representative or legal heir to compromise or settle the matter is indeed an invitation to a dangerous trend and cannot be permitted. Rejecting the contention that the offence under Section 304-A IPC is private in nature, the Court observed that, to consider that an offence under Section 304-A is private in nature is wholly incorrect and it is an offence which impacts society as a whole.

EVENTS OF THE MONTH

1. One Additional District & Sessions Judge, newly selected from the state of Punjab joined CJA for three months Induction Training on August 10, 2016. In fact, the Induction Training of the earlier six ADJs had been earlier completed in July 2016.

2. Refresher-cum-Orientation Course for the Additional District and Session Judges from the States of Punjab and Haryana was held on August 20, 2016 on Sentencing, Victimology and Compensation. This Refresher Course was sub-divided into four different sessions which were taken by HMJ M.M.S. Bedi, Judge, P&H High Court, Mr. Vivek Puri, Legal Remembrancer and Secretary to Govt. of Punjab and Mr. H.S. Bhangoo, Faculty, CJA. Forty different ADJs from both the states participated in the programme. The programme was also attended by the Judicial Officers of Punjab undergoing Induction Training at CJA. The CJA provided the background material to the participating judges and judicial officers in the form of relevant judgments particularly on "sentencing" of the Hon'ble Supreme Court.

3. In view of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, an Orientation Course was organized for Senior Most Additional District & Sessions Judges of Punjab, Haryana and Chandigarh on August 21, 2016. The course was attended by forty one ADJs. The course was divided into four different sessions. The sessions were taken by HMJ Rajesh Bindal, HMJ R.K. Jain, HMJ Amit Rawal and Prof. Shashi K. Sharma, Faculty. The programme was focused on the salient changes brought out by the Act, 2015. There was active participation on the part of the ADJs who would be manning the Commercial Courts in different Districts.

4. Awareness Programme about Mediation was organized for the Trainee Judicial Officers and the Additional District Judges on August 14, 2016. This Programme was carried out by Mr. Mahabir Singh, Member Secretary, SLSA, UT, Chandigarh and Ms. Manjit Kaur, Advocate spread over two different sessions of one and half hour each duration.

5. The State Legal Services Authority, UT, Chandigarh in collaboration with University Institute of Legal Studies organized one day workshop on issues pertaining to Child Friendly Legal Services with Specific Impetus to Juvenile Justice Act, 2015. The Trainee Judicial Officers attended and participated in this Workshop. Besides others, HMJ Suryakant addressed and interacted with the participants. A particular mention also needs to be made with regard to the session on Management of Judicial Stress by Mr. V.K. Kapoor, IPS (Retd.).

FORTHCOMING EVENTS

1. There would be Refresher-cum-Orientation Course for Civil Judges of Punjab and Haryana to sensitize them about the Execution of Decrees and various Orders passed in different cases on September 03, 2016. The course would be covering: Orders under Domestic Violence Act and 125 Cr.P.C: Execution thereof, Sales under Execution, Execution: Attachment of Property and Adjudication of Claims and Speedy and Expeditious Disposal of Executions.

2. There would be Refresher-cum-Orientation Course for Additional District and Sessions Judges of Punjab, Haryana and Chandigarh on September 17, 2016.