



CJA e-NEWSLETTER

JULY 2022

Monthly Newsletter of
Chandigarh Judicial Academy of Punjab & Haryana High Court
For circulation among the stakeholders in Judicial Education

FROM THE DESK OF CHIEF EDITOR

REMINISCENCES OF PUNJAB HIGH COURT (1955-65)

The High Court of Punjab came into existence in 1955. The PEPSU High Court got merged with Punjab High Court in 1956. My father was working with PEPSU High Court on the administrative side. Therefore, we shifted to Chandigarh in 1956. I have seen this court grow in size and stature. From its inception.

The first wing of the High Court comprising the Court of the Chief Justice and eight other court rooms became operational on January 17, 1955. It was officially inaugurated by the first Prime Minister, Pt. Jawaharlal Nehru on March 19, 1955. Le Corbusier conceived, designed and executed this great architectural marvel. It was not an easy exercise. Particularly, the labour force being not used to modern building techniques coupled with the very poor quality of materials. Moreover, how to beat the most violent sun, the habit of siesta and laziness. The rainy season also had its own problems. The building had to be so designed so that the courts could function throughout the year in Chandigarh itself. Without annually migrating to the hills. So many factors were to be kept in mind. The task was gigantic. It must be acknowledged that this task was completed in speed time. Even now, in spite of technological developments, it may not be possible to achieve this feat in such a short time. The Court continues to function throughout the year in Chandigarh.

The Judges occupied the High Court building. They parked their cars in the front porch. Soon Corbusier came on a visit to the High Court. He found the oil stains. Our Ambassador cars used to leave plenty behind. Particularly, at that time (1955-56). Just like the pigeons. He was furious. He stormed into the Chief's court. He protested that this was not the parking lot. The Chief told that the judges cannot be made to enter from the common entry. That is not my concern. You must find a way out. He took up the matter with Nehru. When Nehru met the Chief,

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he told him to sort it out. The fact remains it continues to be the judge's parking lot. Sans oil stains. In spite of the fact, the number of cars is far more. The court-rooms produced a problem in acoustics. With such high ceilings and such spacious court-rooms. It was felt necessary to introduce more sound-absorptive surface. The solution to this problem was found out by Corbusier himself. He created a series of large tapestries to cover the interior walls behind the judge's benches. The design of these tapestries was composed by Corbusier himself. Initially, the weaving was to be done in villages and in prisons. This proved to be impractical. Eventually, the entire 650 meters tapestries were executed in five months by a Kashmir firm. One wonders, is it possible today! The fact remains, one could pick up even a whisper of a judge. It was a division bench of JJ Ashok Bhan and M.R.Agnihotri. A beautiful young lady lawyer had come from Delhi to argue a matter. J Bhan wanted to dismiss the petition. J Agnihotri, whispered, let us issue, 'notice of motion'. She would come again. Of course, she smiled and was happy.

Corbusier believed in originality. The original wing of the High Court had Chief Justice's Court and eight other Judges Court-Rooms. The Chief's Court is a beauty in every possible way. A joy forever. During my term at National Judicial Academy, Bhopal, we had a Regional Conference in collaboration with High Court of Chattisgarh, Bilaspur during 2013-14. Justice Yatindra Singh was the Chief Justice. We visited the High Court which had been newly constructed. On seeing the Chief's Court-Room, Justice Singh asked me, is it not majestic? The Chief's Court-Room in Chandigarh was anytime better. My response was, I invite you to Chandigarh. After that we would exchange our notes. He had a hearty laugh, and said, you are being diplomatic. The fact remained, the grandeur of Chief's Court in Chandigarh could not be matched. Close to the High Court, in Sector 4, is the Chief's residence and eight other Judges residences. They were designed and built at the same time. What lawns! What a luxury! To live in such clean environment. So soothing. So refreshing. So invigorating. Perfect for judicial minds. Over the years, sometimes I have enjoyed lunch in winter sun and dinner in full moon setting out in the lawns.

In front of Chief's Court there is a Fountain of Justice. It continues to flow 24 X 7. It is the insignia and symbol of the role played by the Judicial and Legal Coparcenary of the region. It is a reminder that Justice is not to be sold. Not to be denied. Not to be delayed. The original first wing of the High Court, the Library and the Bar Room were too small in the plan. It was after partition (1947) that the High Court and the lawyers shifted to Shimla. The lawyers came from Shimla to Chandigarh to discuss the matter with Corbusier. Though the number of lawyers at that time was small. Yet the number was to grow in due course of time. When the lawyers pleaded for a bigger size Bar room, the response of Corbusier was: surely you do

not expect more than 40-50 lawyers drinking at the same time during the court hours. The Bar Room in courts is often misunderstood. I once happen to introduce a judge. He had been elevated after a long standing at the Bar. I was quietly asked, does he drink so much. It is high time; we must understand the difference between the Club-Bar and the Court-Bar. There is a Bar in every court room which separates the Judge from the lawyer. The Judge sits on that side of the Bar and the lawyer stands to argue on this side of the Bar. Therefore, the lawyers room is known as the Bar room. The lawyers and the judges constitute the Bar and the Bench.

The Punjab High Court had the last English Judge, Donald Falshaw, ICS to serve the Indian High Courts. It was early in 1960s. He was hearing a criminal appeal. The counsel had difficulty in expressing himself in English language. He fumbled for words. Justice Falshaw hurriedly went through the district court judgment. The counsel was asked, what have you done! You gave such a deadly blow! There was no provocation. The counsel said, there was sudden provocation, my lord. He took away my 'she – dog'. The judge asked she-dog! What do you mean? The counsel fumbled. He explained: He-dog (male), She-dog (female). The judge said, oh you mean a bitch. The counsel said, yes, the same thing. The judge said, even then, it was just a bitch. The counsel said, it was not just a bitch, it was not an ordinary one. The judge thundered, what, it was not an ordinary bitch. He said, my lord, it was a 'foreign-bitch'. In fact, it was of my lord's 'nationality'. Justice Falshaw put away the file and left the court-room.

Justice H.R.Khanna was the bench partner with CJ Falshaw. Justice Khanna in his autobiography: *Neither Roses Nor Thorns* has recorded that the judges used to meet in the Judges Conference Room. There was a big square table. Justice Falshaw occasionally would come out with some witty remark. The other judges would crack a joke or talk about other matters. One or two judges were real good conversationists. They would regale with spicy talk. I may add that this was a good way to relax. I recall that during my sojourn with National Judicial Academy, Bhopal, Dr.Justice S.Muralidhar, (then a judge of Delhi High Court and now Chief Justice of Orissa High Court) used to come as a resource person in different programmes. We used to share different court happenings. He was full of them. I was equally fond of them. He suggested that in the High Court Judges programme, we must have a close door session where judges would share and regale with interesting happenings/anecdotes. They are the spice of black robes life.

LATEST CASES: CIVIL

"It was not for the Court to substitute its opinion in respect of acceptance of bank guarantee. When a particular format for a bank guarantee is prescribed, then the bidder is required to stick to that particular format alone with the caveat that the State reserves the right to deviate from the terms of the bid document within the acceptable parameters."

- *Hemant Gupta, J. in N.G. Projects Ltd. v. Vinod Kumar Jain, (2022) 6 SCC 128, para 11*

Indian Oil Corporation Limited vs NCC Limited : 2022 SCC OnLine SC 896: Section 11, 11(6A) Arbitration and Conciliation Act, 1996-HELD-

The Hon'ble Apex court in an appeal filed by Indian Oil Corporation Limited against the order of the High Court of Delhi allowing Arbitration Petitions by which, in exercise of powers under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Arbitration Act", the High Court has allowed the said petitions and has appointed the learned Arbitrator by referring the dispute between the parties for arbitration held: "Though the Arbitral Tribunal may have jurisdiction and authority to decide the disputes including the question of jurisdiction and non arbitrability, the same can also be considered by the Court at the stage of deciding Section 11 application if the facts are very clear and glaring and in view of the specific clauses in the agreement binding between the parties, whether the dispute is non arbitrable and/or it falls within the excepted clause. Even at the stage of deciding Section 11 application, the Court may prima facie consider even the aspect with regard to 'accord and satisfaction' of the claims."

Further, referring to the case of **Vidya Drolia v. Durga Trading Corpn. (2021)2 SCC 1**, Hon'ble Apex Court held that even if an aspect with regard to 'accord and satisfaction' of the claims may/can be considered by the Court at the stage of deciding Section 11 application, it is always advisable and appropriate that in cases of debatable and disputable facts, good reasonably arguable case, the same should be left to the Arbitral Tribunal. Further held: "Parties to the contract are free to agree on applicability of (1) proper law of contract, (2) proper law of arbitration agreement and (3) proper law of the conduct of arbitration. Parties to the contract also may agree for matters excluded from the purview of arbitration. Unless the effect of agreement results in performance of an unlawful act, an agreement, which is otherwise legal, cannot be held to be void and is binding between the parties."

R.M. Sundaram @ Meenakshisundaram vs Sri Kayarohanasamy And Neelayadhakshi Amman Temple: 2022 SCC OnLine SC 888: Section 11,CPC - Res Judicata- HELD-

General principle of res judicata under Section 11 of the Code contains rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff's appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be res judicata in a subsequent suit. The reason is that the first suit is not decided on merits.

Gayatri Devi vs Ambika Tiwari: Petition(s) for Special Leave to Appeal (C) No(s).

11333/2022 dt. 15.07.2022: whether an application for withdrawal of suit should be followed by an order of the court?-HELD-

In this case, the Jharkhand High Court had set aside an order of the Trial Court which allowed an application to withdraw a partition suit, on the ground that the order of such withdrawal was passed on an application filed by plaintiff, after his death. Referring to the case of Shiv Prasad v. Durga Prasad (1975) 1 SCC 405, it was held by the Apex Court : "Every applicant has a right to unconditionally withdraw his application and his unilateral act in that behalf is sufficient. No order of the Court is necessary permitting him to withdraw the application. The Court may make a formal order disposing of the application as withdrawn but the withdrawal is not dependent on the order of the Court. The act of withdrawal is complete as soon as the applicant intimates the Court that he withdraws the application."

Asha Rani Gupta v Sir Vineet Kumar: 2022 SCC OnLine SC 829 –HELD-

The present appeal arises out of a suit for eviction and recovery of arrears of rent as also damages for use and occupation, as filed by the plaintiff-appellant against the defendant-respondent, wherein the order as passed by the Trial Court striking off the defence of the defendant-respondent for failure to pay or deposit the due rent, which was approved by the Revisional Court has been set aside by the High Court in its impugned order.

Code of Civil Procedure 1908 - Order XV Rule 5 – Held- it cannot be laid down as a general proposition that by merely denying the title of plaintiff or relationship of landlord tenant/lessor-lessee, a defendant of the suit of the present nature could enjoy the property during the pendency of the suit without depositing the amount of rent/damages.

Basic factors related to provision of Order XV Rule 5 were noted as : “as per these provisions, in a suit by a lessor for eviction of a lessee after the determination of lease and for recovery of rent or compensation for use and occupation, the defendant is under the obligation: (1) to deposit the entire amount admitted by him to be due together with interest at the rate of 9% per annum on or before the first hearing of the suit; and (2) to regularly deposit the monthly amount due within a week of its accrual throughout the pendency of the suit. The consequence of default in making either of these deposits is that the Court may strike off his defence. The expression ‘first hearing’ means the date for filing written statement or the date for hearing mentioned in the summons; and in case of multiple dates, the last of them. The expression ‘monthly amount due’ means the amount due every month, whether as rent or damages for use and occupation at the admitted rate of rent after making no other deduction except taxes, if paid to the local authority on lessor’s account. It is, however, expected that before making an order striking off defence, the Court would consider the representation of the defendant, if made within 10 days of the first hearing or within 10 days of the expiry of one week from the date of accrual of monthly amount.”

Further held that the question of good and adequate reason for not striking off the defence despite default would directly relate with such facts, factors and circumstances where full and punctual compliance had not been made for any bonafide cause, as contradistinguished from an approach of defiance or volitional/elective non-performance. In the facts and circumstances of

the present case, finding that there was no evidence on record to show the payment or deposit of rent in favour of plaintiff by the defendant / respondent, the defence was rightly struck off and further observing that the High Court, despite having not found any cogent reason for which discretion under rule 5 of Order XV CPC could have exercised in favour of respondent/ defendant, in the last line of the impugned order had abruptly stated ‘yet the defendant tenant deserves some indulgence’. It was held that the impugned order as passed by the High Court cannot be approved and was thus set aside.

Bharat Sanchar Nigam Limited vs Nemichand Damodardas : 2022 SCC OnLine SC 815:Land

Acquisition Act, 1894 -HELD- In this case, an appeal was filed before the Hon’ble Apex Court against the impugned order passed by the Bombay High Court, allowing appeal of land owners/claimants enhancing the amount of compensation for the lands acquired mainly relying upon the prevailing Ready Reckoner rates of the land. Held – *“There may be various factors, which are required to be considered for determining the market value of the land. The market value of the land depends upon the location of the land; area of the land; whether the land is in a developed area or not; whether the acquisition is of a small plot of land or a big chunk of land and number of other advantageous and disadvantageous factors are required to be considered. Therefore, there cannot be the same market value for the different lands while determining the compensation for the lands acquired under the Land Acquisition Act. Therefore, the rates mentioned in the Ready Reckoner, which are basically for the purpose of collection of stamp duty and as observed hereinabove, which are the uniform rates for all the lands in the area, cannot be the basis for determination of the compensation for the lands acquired under the Land Acquisition Act.”*

U N Krishnamurthy vs A M Krishnamurthy :2022 SCC OnLine SC 840 -Specific Relief Act, 1963; Section 16(c) – Readiness and willingness-HELD-

In an appeal against a final judgment and decree passed by the High Court of Judicature at Madras, dismissing the Appeal filed by the Appellants and confirming a judgment and order and decree passed by the Principal District Judge for specific performance of an agreement for sale of the suit property, the Hon’ble Apex set aside the impugned order and held:

“It is settled law that for relief of specific performance, the Plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the

contract. It is the bounden duty of the Plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.”

It was further held: “*Making subsequent deposit of balance consideration after lapse of seven years would not establish the Respondent Plaintiff’s readiness to discharge his part of contract.*” Reliance was placed on Umabai v. Nilkanth Dhondiba Chavan, 5 (2005) 6 SCC 243.

Relief Of Specific Performance Can Be Denied If Suit Was Not Immediately Filed After Breach; Rise In Real Estate Prices Also A Relevant Factor: In holding that the fact that the suit had been filed after three years, just before expiry of the period of limitation, was also a ground to decline the Respondent Plaintiff the equitable relief of Specific Performance for purchase of immovable property, the Apex Court relied on K.S. Vidyadnam v. Vairavan, (1997) 3 SCC 1 where it was observed “*we cannot be oblivious to reality – and the reality is constant and continuous rise in the values of urban properties -fuelled by large scale migration of people from rural areas to urban centres and by inflation.*” Also while holding that having paid an insignificant amount the Plaintiff was not entitled to discretionary equitable relief of Specific Performance, reliance was placed on Saradamani Kandappan v. S. Rajalakshmi, 4 (2011) 12 SCC 18.

Nanda Dulal Pradhan Anr. Versus Dibakar Pradhan Anr: 2022 SCC OnLine SC 822 - Code of Civil Procedure, 1908; Order IX Rule 13 –HELD- In the appeal against the impugned judgment and order passed by the High Court of Orissa at Cuttack by which the High Court has observed and held that mere setting aside the ex-parte judgment and decree would serve no purpose as the defendants cannot lead evidence in the absence of written statement filed by them and consequently set aside the order passed by the First Appellate Court who allowed the appellants to adduce the evidence apart from setting aside ex-parte judgment and decree, the Hon’ble Apex Court while setting aside the impugned judgment and order has held: “...as observed and held by this Court in the case of Sangram Singh (supra) on setting aside the ex-parte decree and on restoration of the suit the parties to the suit shall be put to the same position as they were at the time when the ex-parte judgment and decree was passed and the

defendants may not be permitted to file the written statement as no written statement was filed. However, at the same time they can be permitted to participate in the suit proceedings and cross-examine the witnesses. In that view of the matter the impugned judgment and order passed by the High Court is unsustainable”

Delhi Development Authority Versus Diwan Chand Anand & Ors.: 2022 SCC OnLine SC 855: Code of Civil Procedure, 1908; Order XXII Rule 1 – 4-HELD- In an appeal against the impugned order passed by the High Court of Delhi dismissing the appeal as a whole having abated on non-bringing the legal representatives of some of the respondents who died during the pendency of the appeal on record, the Hon’ble Apex Court while setting aside the impugned order held: “while considering whether the suit/appeal has abated due to non-bringing the legal representatives of plaintiffs/defendants or not, the Court has to examine if the right to sue survives against the surviving respondents. Thereafter the Appellate Court has to consider the question whether non-bringing the legal representatives of some of the defendants, the appeal could have proceeded against the surviving respondents. Therefore, the Appellate Court has to consider the effect of abatement of the appeal against each of the respondents in case of multiple respondents.” The Hon’ble Court considered the fact that in the present case the original plaintiffs – two co-owners/co-sharers of the entire land in question fought with respect to the entire land belonging to the plaintiffs and the co-owners jointly and thus observed that it can safely be held that the entire estate was represented through original plaintiffs in which even the co-sharers/coowners were also joined as defendants as proper parties. Therefore, it was held that even when the learned Trial Court passed the judgment and decree, it passed the judgment and decree with respect to the entire land and even granted the permanent injunction to protect the ownership and protection of the plaintiffs as well as the other co-sharers over the suit land. it was thus held: “ it appears that the High Court has mechanically and without holding any further enquiry which was required to be conducted as observed hereinabove, has simply dismissed the entire appeal as having abated due to non-bringing on record the legal representatives of some of the respondents – the original defendants who, as such, neither contested the suit nor filed the written statements.”

LATEST CASES: CRIMINAL

"For challenging the subordinate legislation on the ground of arbitrariness, it can only be done when it is found that it is not in conformity with the statute or that it offends Article 14 of the Constitution. It cannot be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant."

- *B.R. Gavai, J. in Dental Council of India v. Biyani Shikshan Samiti, (2022) 6 SCC 65, paras 28 and 29*

Narcotics Control Bureau Vs. Mohit Aggarwal : 2022 SCC OnLine SC 891:

Meaning of the expression “ reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 NDPS Act?-HELD-

Hearing a Criminal Appeal against the judgment and order granting post- arrest bail to the accused in case for the offence under Sections 8/22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the Hon’ble Supreme Court has held that “the expression “Reasonable Grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.”

The Hon’ble Supreme Court has further clarified that “at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.”

Dhananjay Rai @ Guddu Rai Vs. State of Bihar: 2022 SCC OnLine SC 880:

Whether an appeal against conviction filed by an accused under Sub-Section (2) of Section 374 of the Code of Criminal Procedure, 1973 can be dismissed on the ground that the accused is absconding?-HELD-Hearing

a Criminal Appeal against the judgment dismissing the appeal without advert to the merits of the appeal on the ground that the appellant was absconding, the Hon’ble Supreme Court has held that absconding and defeating the administration of justice is no ground to dismiss an appeal against conviction, which was already admitted for final hearing, for non-prosecution without advert to merits.

Ravi Sharma Vs. State (Government of N.C.T. of Delhi) & Anr. :2022 SCC OnLine SC 859:

Scope of Section 378 of the Code of Criminal Procedure?-HELD-

Hearing a Criminal Appeal against the judgment reversing an order of acquittal passed on a scrutiny of evidence, the Hon’ble Supreme Court quoted the relevant portion of a recent judgment in Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495) as follows:

“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court’s view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

Satender Kumar Antil v. Central Bureau of Investigation: Miscellaneous Application No.1849 Of 2021 In Special Leave Petition (Crl.) No.5191 Of 2021 Dt. 11.07.2022:

What are the factors to be considered while considering an application under Sec. 389 CrPC? What is the extent of power of court under Sec. 437 CrPC? What are the consequences of non-compliance of Secs

41 & 41A CrPC? Is there a need of a bail application while considering the application under Section 88, 170, 204 and 209 of the Code? Directions issued regarding bail-HELD- These directions are as under:

a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.

d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

e) There need not be any insistence of a bail application while considering the application under Section 88, 170, 204 and 209 of the Code. 83

f) There needs to be a strict compliance of the mandate laid down in the judgment of this court in Siddharth (supra).

g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.

k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

l) All State Governments, Union Territories and High Courts are directed to file affidavits/status reports within a period of four months.

Jatinder Singh @ Happy Vs State of Punjab

:CRA-S No. 250-SB of 2017: Date of Decision: 13.5.2022-HELD- Hearing a Criminal Appeal against the judgment convicting accused for the offence under section 21 NDPS Act, the Hon'ble Punjab & Haryana High Court has held that with no seals of Chemical Examiner, being made on the sample parcel concerned, resultantly lead to a conclusion that the stuff examined, and, as existing in the sample parcel, becomes unrelatable to bulk, and/or the sample parcel, even if it became produced before the learned trial Judge concerned, yet for reasons (supra), was tampered, and, conspicuously for wants thereons of the Seals; of the Chemical Examiner.

Darshan Singh Vs State of Punjab: CRM-M Nos.27287 of 2020 CRRNo.849 of 2018 (O&M) CRM-M No.14007 of 2019: Date of Decision:27.5.2022-HELD-Hearing

a Criminal Miscellaneous Petition in the matter of an offence under section 302 IPC, the Hon'ble Punjab & Haryana High Court has observed that the procedure against a witness, who has failed to appear despite notice of summons/warrants /bailable warrants, proclamation under Section 82(1) Cr.P.C., is to take action under Section 350 Cr.P.C. as well as Section 174 IPC.

Amrinder Singh Shergill

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LATEST CASES: JJ Act

"It has been consistently stressed by the Supreme Court that the need for overwhelming public interest should always be kept in mind to justify judicial intervention in contracts involving the State and its instrumentalities and while exercising power of judicial review in relation to contracts, the courts should consider primarily the question whether there has been any infirmity in the decision-making process."

— *Ajay Rastogi, J. in State of Punjab v. Mehar Din, (2022) 5 SCC 648, para 22*

Barun Chandra Thakur Vs. Master Bholu & Anr. And CBI Vs. Bholu: 2022 SCC OnLine SC 870: Preliminary assessment under section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015?-HELD-Hearing a Criminal Appeal against the judgment in a Criminal Revision under section 102 of the Act, 2015, remanding the matter to the Board for a fresh consideration, the Hon'ble Supreme Court has held that the power to carry out the preliminary assessment rests only with the Board and the Children's Court.

Sadhu Singh v. State Of Punjab And Others : CRM-M-8601-2022 dt. 06-07-2022: There can be no joint proceedings of 'juvenile in conflict with law' along with person who is not juvenile-HELD-that a conjoint reading of the provisions of the Juvenile Justice (Care and Protection) Act, 2000 (Sections 2 (k), 2 (l), 2 (p), 15 and 18) clearly show that there can be no joint proceedings of a 'juvenile in conflict with law' along with a person who is not a juvenile. from a conjoint reading of Sections 2 (k), (l), (p), 15 and 18 of the JJ Act, the Court was of the considered opinion that there can be no joint proceedings of a 'juvenile in conflict with law' along with a person who is not a juvenile.

"An order could only have been passed by the Juvenile Justice Board so constituted in terms of Chapter II of Juvenile Justice (Care and Protection) Act, 2000 and the procedure as contemplated therein is required to be followed", held the Bench, while also adding that in the present case, the said procedure was not adopted while passing the order declaring the petitioner as 'proclaimed person'.

Hence, the Court held that considering it from either perspective, the order passed

under Section 82 (1) Cr.P.C. was not only in violation of the statutory procedure prescribed under the Code of Criminal Procedure, 1973 but also without authority inasmuch as the juvenility of the petitioner was not a subject matter of dispute.

Even otherwise, it was observed that the main dispute was already resolved amongst the parties and the FIR, as well as other consequential proceedings, were already quashed.

"The continuance of the effect of the order passed under Section 82(1) Cr.P.C. so as to cast a stigma against the petitioner is not likely to advance any interest of justice and only be a source of harassment for the petitioner", held the Court.

Raman S/o. Prakash Mundhe and Ors v. The State of Maharashtra and Ors : ANTICIPATORY BAIL APPLICATION NO. 277 OF 2022 |dt. 15-07-2022: Child in conflict with law under Juvenile Justice Act, can file application for anticipatory bail u/s 438 of CrPC-HELD- Referring to Article 14 of the Constitution, the Aurangabad Bench of the Bombay High Court has clarified that any protection, which is available to any person under the law, is also available to a child as defined under the Juvenile Justice (Care and Protection of Children) Act, 2015. The background which gave rise to the present reference was such that an Anticipatory Bail Application was rejected by a Single Judge Bench of this Court on the ground that it was filed by the applicants who were minors and they were covered by the definition of Child in conflict with law as defined under the JJ Act and therefore, their application for anticipatory bail under Section 438 of the Cr.P.C was not maintainable.

In view of the disagreement with the view expressed by other Single Judge Benches of this Court, present reference was made to the Division Bench. As per the facts, the Anticipatory Bail Application in question was already disposed of by holding that it was not maintainable and the Division Bench herein was only discussing the issue only on the point of reference.

The Bench was of the opinion that section 438 of the Cr.P.C. does not exclude a child from the word 'person' and therefore, there is no reason to deny the benefit of the provisions of Section 438 of the Cr.P.C. to a child, who is likely to be apprehended. Mentioning that Article 14 of the Constitution of India as well as Sections 3(ii) and 3(x) of the JJ Act give a valuable right to a child to be treated equally with others, the Bench asserted that it would be in violation of all these principles and provisions to deny him an opportunity to exercise his right of preferring an application under Section 438.

Observing that there is no conflict between the provisions of Section 438 of the Cr.P.C. and Section 10 or 12 of the JJ Act, the Bench came to the conclusion that the availability of right u/s 438 of the Cr.P.C. is not taken away to the detriment of a child.

Also, the Bench took into consideration that the JJ Act is enacted as a beneficial legislation and therefore, if a child under the JJ Act has any right under the general law, it cannot be taken away to the child's detriment by relying on certain non-obstante clauses, particularly when there is no inconsistency between the JJ Act and the provisions of Section 438 of the Cr.P.C. Thus, the Bench held that a child in conflict with law can file an application u/s 438 CrPC.

[Rohit Kumar v.State Of Haryana: CRR-1788-2021 dt. 20-06-2022: P&H HC grants regular bail to Juvenile in POCSO case but forbids him to reside in/visit locality of child or contact her, strikes balance between Sec.12 of JJ Act & Top Court's directions on ensuring protection to child witnesses-HELD-](#) The Punjab and Haryana High Court has recently granted

the concession of regular bail to a juvenile in conflict with law in a POCSO Act matter wherein the said petitioner sexually assaulted the child-victim. The High Court has also put forth the condition that the petitioner shall not reside in or visit the village of the victim and shall not contact or try to contact or confront the victim or any of the members of her family.

The Bench of Justice Vinod S. Bhardwaj held, *"Taking into consideration the mandate of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 as well as the directions given by the Hon'ble Supreme Court for ensuring the protection of the child witnesses, I deem it appropriate to allow the instant petition by balancing the statutory mandate and directions of the Hon'ble Supreme Court."*

[Banu Begum v. State of Karnataka, Criminal Petition No. 100659 of 2021, decided on 07-04-2022: In the absence of any declaration that the child is deserted by his biological or adoptive parents or guardians; no offence can be made out under S. 80 JJ Act- HELD-](#) The Karnataka High Court allowed the petition and quashed the impugned proceedings initiated against alleged offence under Section 80 of Juvenile Justice (Care and Protection of Children) Act, 2015. The Court observed that a person is stated to have committed an offence, if he/she takes a child on adoption who is an orphan, abandoned or surrendered child without following the provisions or procedures as provided under the Act. It was further observed that in the present case, the allegation is that accused 3 has taken a child in adoption born to accused 1 and 2 who is not an abandoned child or orphan or surrendered child as defined under Sections 2(1), 2(42) and 2(60) of the Act. The Court held *"In the absence of any declaration that the child is deserted by his biological or adoptive parents or guardians, the filing of the charge sheet is also without any substance."*

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NOTIFICATION

1. Use of biodegradable plastic, introduced vide Plastic Waste Management (Second Amendment) Rules, 2022: On 6-07-2022 the Ministry of Environment, Forest and Climate Change further amended the Plastics Waste Management Rules, 2016 by adding a second amendment named Plastic Waste Management (Second Amendment) Rules, 2022. The Rules have added some new definitions, such as, biodegradable plastics, end of life disposal, plastic packaging, Plastic Waste Processors, pre-consumer plastic packaging waste, post-consumer plastic packaging waste, recyclers, waste to energy etc.¹

Key modifications:

S. No.	Rule/Sub-Rule	2016	2022
1.	Rule-9 Responsibility of producers, importers and brand owners Sub-Rule (1)	To work out modalities for waste collection system based on Extended Producers Responsibility and involve State Urban Development Departments through their own distribution channel or through the local body concerned, within 6 months from publication	Shall fulfil Extended Producers Responsibility for Plastic Packaging as per Schedule 2- (i) Producer (P) of plastic packaging; (ii) Importer (I) of all imported plastic packaging and / or plastic packaging of imported products; (iii) Brand Owners (BO) including online platforms/marketplaces and supermarkets/retail chains other than those, which are micro and small enterprises as per the criteria of Ministry of Micro, Small and Medium Enterprises, Government of India.; (iv) Plastic Waste Processors
	Sub- Rule (2)	Primary responsibility for collection of used multi-layered plastic sachet or pouches or packaging is of Producers, Importers and Brand Owners who introduce the products in the market. They need to establish a system for collecting back the plastic waste generated due to their products. This plan of collection to be submitted to the State Pollution Control Boards while applying for Consent to Establish or Operate or Renewal. The Brand Owners whose consent has been renewed before the notification of these rules shall submit such plan within one year from the date of notification of these rules and implement them within two years thereafter.	Primary responsibility for collection of used multi-layered plastic sachet or pouches or packaging is of Producers, Importers and Brand Owners who introduce the products in the market. They need to establish a system for collecting back the plastic waste generated due to their products.
	Sub- Rule (4)	For grant of registration- the producer, within 3 months of publication of these rules, have to apply to the Pollution Control Board/ Committee.	For grant of registration- the producer, within 3 months of publication of these rules, have to apply firstly to Central Pollution Control Board and State and then to the Pollution Control Board/ Committee.
	Sub- Rule (5)	Producers can manufacture and use any plastic only after getting registration from the State Pollution Control Board or the Pollution Control Committees.	Producers can manufacture and use any plastic only after getting registration from the Central Pollution Control Board if operating in more than 2 states or Union territories concerned State Pollution Control Board or the Pollution Control Committees
2.	Rule-10 Protocols for compostable plastic materials, 2016 / Protocols for compostable and biodegradable plastic materials, 2022 Sub- Rule (1)	Determination of the degree of degradability and degree of disintegration of plastic material shall be as per the protocols of the Indian Standards listed in Schedule-I to these rules. –	Determination of the degree of degradability and degree of disintegration of plastic material shall be as per the protocols of the Indian Standards listed in Schedule-I to these rules.
	Sub- Rule (2)	–	The compostable plastic materials have to conform to the IS/ISO 17088:2021, as amended from time to time
	Sub- Rule (3)	–	The biodegradable plastics have to conform to the standard notified by the Bureau of Indian Standards and certified by the Central Pollution Control Board.
	Sub- Rule (4)	–	Until a standard referred to in sub-rule (3) is notified by the Bureau of Indian Standards, biodegradable plastics

¹ <https://legalitysimplified.com/wp-content/uploads/2022/07/Plastic-waste.pdf>

			have to conform to tentative Indian Standard IS 17899 T:2022 as notified by the Bureau of Indian Standards.
	Sub- Rule (5)	–	As a transitory measure, provisional certificate for biodegradable plastics, must be issued by the Central Pollution Control Board, in cases, where an interim test report is submitted, for an ongoing test, which covers the first component of the IS 17899 T:2022 relating to biodegradability given at Sl. No. (i) or Sl. No. (ii) of Table 1 or Sl. No. (i) of Table 2 of the IS 17899 T:2022: Provided that the provisional certificate shall be valid till 30th June 2023 with the condition that production or import of biodegradable plastics shall cease after the 31st day of March, 2023.
	Sub — Rule (6)	–	The interim test report should be obtained from the Central Institute of Petrochemical Engineering and Technology or a laboratory recognized under the Laboratory Recognition Scheme, 2020, of the Bureau of Indian Standards or laboratories accredited for this purpose by the National Accreditation Board for Testing and Calibration Laboratories, and they shall certify the bio-degradation of plastic is in line with IS 17899 T:2022.
3.	Rule-11 Marking or labelling Sub- Rule (1)	Every plastic carry bag and multilayer packaging should have the following information: (a) name, registration number of the manufacturer and thickness in case of carry bag. (b) name and registration number of the manufacturer in case of multilayered packaging; and (c) name and certificate number [Rule 4(h)] in case of carry bags made from compostable plastic	Every plastic carry bag and multilayer packaging should have the following information: (a) name, registration number of the producer or brand owner and thickness in case of carry bag and plastic packaging. Provided that this provision shall not be applicable, – (i) for plastic packaging used for imported goods: (ii) for cases falling under rule 26 of the Legal Metrology Packaged Commodities Rules, 2011, after the approval of the Central Pollution Control Board: (iii) for cases where it is technically not feasible to print the requisite information mandated under this Rule, as per specifications given in the Guidelines for use of Standard Mark and labelling requirements under BIS Compulsory Registration Scheme for Electronic and IT Products? after the approval of the Central Pollution Control Board. (a) Name and registration number of the producer or brand owner in case of multilayered packaging (b) Name and certificate number [Rule 4(h)] in case of carry bags made from compostable plastic (c) The importer or producer or brand owner of imported carry bags or multi layered packaging or plastic packaging, alone or along with the products shall adhere to clause (a) and (b).
4.	Rule-12 Prescribed authority Sub- Rule (1)	Authority of enforcement- The State Pollution Control Board and Pollution Control Committee in respect of Union territory.	Authority of enforcement- The Central Pollution Board State and the Pollution Control Board and Pollution Control Committee in respect of Union territory.
5.	Rule-13 Registration of producer, recyclers and manufacturer Sub- Rule (1)	No person shall manufacture carry bags or recycle plastic bags or multilayered packaging unless the person has obtained a registration from the State Pollution Control Board or the Pollution Control Committee of the Union Territory concerned, as the case may be, prior to the commencement of production	No person shall manufacture carry bags or recycle plastic bags or multilayered packaging unless the person has obtained a registration from- i) Concerned State Pollution Control Board/ Pollution Control Committee of the Union Territory, if operating in two or more states or Union Territories ii) The Central Pollution Control Board, if operating in more than two States or Union Territories.
	Sub- Rule (2)	Every producer has to make an application to the State Pollution Control Board or Pollution Control Committee.	Every producer or importer has to make an application as per the guidelines specified in Schedule- II
6.	Rule-18 (INSERTED) Imposition of Environmental Compensation	–	The Compensation will be levied based upon polluter pays principle on persons who are not complying with the provisions of these rules, as per guidelines notified by the Central pollution Control Board
7.	SCHEDULE —1	–	Substituted

EVENTS OF THE MONTH

- Chandigarh Judicial Academy organized one day workshop on Sensitization of Various Stakeholders under JJ Act, 2015 for the Principal Magistrates & Members of Juvenile Justice Board, Probation Officers, Counsellors (WCD), Physiologists & Social Workers (DCPU) of the states of Punjab, Haryana and UT Chandigarh on July 09, 2022. Dr. Balram K Gupta, Director (Academics), CJA, gave the introductory remarks. Hon'ble Mr. Justice A.G. Masih, Judge, Punjab & Haryana High Court gave the opening remarks. This programme was divided into five sessions which were taken by: Mr. Pramod Goyal, District & Sessions Judge, Sonapat, Ms. Sonia Kinra, ADJ-cum-Faculty Member, CJA, Ms. Aarzoo Gupta, Asstt. Professor (Clinical Psychology), Department of Psychiatry, GMCH-32, Chandigarh, Dr. Monika Sharma, Asstt. Director, NIPCCD, Mohali and Ms. Sangita Vardhan, former Chairperson, Child Welfare Committee.
- A group of 87 Trainee Judicial Officers from Maharashtra Judicial Academy for Knowledge Sharing and Exposure came to the Chandigarh Judicial Academy from July 15 to July 22, 2022. They were accompanied by their Joint Director, Girish R. Agrawal & Additional Director, Mr. N.M. Jamadar. During their stay, the academic sessions were organized for two days which were taken by Dr. Balram K Gupta, Director (Academics) and the Faculty Members. Moreover, a motivational talk was organised which was delivered by Maj. Gen. Raj Mehta (Retd.): **Reach For The Sky**. They were also taken to visit the High Court, Amritsar (Golden Temple), Jalianwala Bagh & Wagha Border, Virasat-e-Khalsa at Shri Anandpur Sahib as also local sightseeing. A cultural evening was also organized in which the TJOs from both CJA and MJA enthusiastically participated. It was on the afternoon of July 21, 2022 that the valediction function was organized. Both the Directors of CJA spoke on this occasion. The TJOs from MJA were given the certificates and mementos. Mr. Girish R. Agrawal was also felicitated on this occasion. In turn, the TJOs from MJA appreciated the effort put in by the staff of CJA as also the faculty members. Both the Directors as also the Faculty Members and the Research Fellow were given pen attached with pen-drive.
- A group of 23 trainee judicial officers from the state of Punjab started their one year foundation training on August 2, 2021. They continued with their online training till April 21, 2022. It is only w.e.f. April 22, 2022 that they came to Chandigarh Judicial Academy for their remaining training in physical mode. They are completing their training on August 1, 2022. Accordingly, the valedictory function was scheduled for July 30 (Saturday), 2022. The Chief Guest for the Valedictory Function was HMJ Ravi Shanker Jha, Chief Justice, Punjab & Haryana High Court and presided over by HMJ H.S. Sidhu, President, BoG, CJA. The other members of BoG also attended the function. The function was also graced by Hon'ble sitting and retired High Court judges and others. They would start performing their judicial functions independently from August 2, 2022 at their respective posting stations.