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CJA

AUGUST 2017

e-NEWSLETTER

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

HMJ Rajesh Bindal completed his tenure as President, BOG, CJA on July 21, 2017. HMJ M.M.S. Bedi is the new President and HMJs Ritu Bahri has been nominated as Member of BOG. CJA hosted farewell and welcome dinner on August 03, 2017.

Farewell Address for HMJ Rajesh Bindal

I am happy to be part of this special occasion. It was March 10, 2016 that Hon'ble Mr. Justice Rajesh Bindal became the President of Board of Governors of CJA. I share a few lines of **Shakespeare**:

All the world is a stage
And all the men and women merely players
They have their exits and entrances
And one man in his time plays many parts
His acts being seven ages

One man in his time plays many parts. Justice Bindal had just sixteen months and plus. Yet he played many parts. This sums up his Lordship. I ask myself, how should I describe him? He was so attached to the Academy as he was to the Court. Both were close to his heart. He did not let either be ignored. The Academy in a way was his second home. Besides the Academy, even in his chamber, he used to be dealing with the Academy work. His leadership. His commitment. His dedication. Unmatchable. Sui generis. In this short span, how much did he contribute. The Annual Report for the year 2016-17 bears testimony. Personally speaking, the connectivity with him was day and night. 24x7. Telephone calls. Early morning. Day time. Late evenings. No embargo. Whatsapp. e-Mails. SMSs. They were the conveyer belts. A man with innovative ideas. An achiever. Whatever be the circumstances.

Managing an Academy of this kind required the leader to be firm and yet flexible. I would be less than honest, if I do not confess that we had difficult times. Equally, I hasten to add : what a support we had. What an understanding we had. At the end of the day, I reflect back. I find that nothing remained undone. I mean it. I am reminded of my court days when I used to argue in my lord's court. One had to be persuasive with him. Slowly. Gradually. I could turn around my lord. Of course, not always. This gradual persuasion was the good recipe for working together at the Chandigarh Judicial Academy.

My Lord, we owe a debt of gratitude to you for what all you did for the Academy. For bringing the Academy at the national and international level. I assure my lord, we would continue with our endeavour to move forward. When the story of this journey of the Academy would be written. I am sure, my lord's name and contribution would find a place of pride.

Men may come. Men may go. But I go on forever. These are the beautiful lines of **Tennyson's Poem : The Brook**. Yes—Presidents come and go. But my lord's imprint so far as the Chandigarh Judicial Academy is concerned, would continue and with time, cannot be erased. I am confident that your guidance and your support would always be available for this plant to grow further.

Welcome Address for HMJ M.M.S. Bedi

How very pleased we are to welcome HMJ M.M.S. Bedi as our new President. He is not new to the Academy. He has been the Member of Board of Governors for good some time. Now, my lord is the President. Speaking personally, I enjoy being on my legs, whenever my lord is sitting, either in Court or Class room. Even now. How very satisfying it is for a teacher to see his students adorning the Bench. I always say, a teacher lives in the reflected glory of his students. He basks in the sunshine of his students. My lord is the Captain of the ship now. We keenly look forward to the steering of the ship : Chandigarh Judicial Academy.

We are happy to welcome **Justice Ritu Bahri**. I, equally share my pleasure of being on my legs, be it Court or Class room. A difference. When we were together at the Bar, it would often happen, she would be on her legs arguing the case. I would be sitting and waiting for my turn. Believe me, I have enjoyed both my roles : A Teacher to begin with and a Lawyer to follow. My treasure of students is rich.

Looking forward to new vistas of meaningful Activities at CJA.

Balram K. Gupta

CASE COMMENT
MAN MOHAN SHARMA VERSUS MANJIT SINGH (A.I.R. 2016 P&H 175)

The present judgment (*Man Mohan Sharma versus Manjit Singh*) delivered by Justice Arun Palli, is a judgment with a difference, which sketches in detail a new horizon to the concept of “infringement of trademarks” in special reference to section 124 of the Trade Marks Act, 1999. Present appeal arose out of an application for injunction, under Order 39 Rule 1 & 2 of the Code of Civil Procedure, whereby defendant had been enjoined from infringing/imitating plaintiff's registered trade mark “MOHUN'S” and from using the impugned identical trade mark “MOHAN'S”, as also any other trade mark, which is, in any way, deceptively similar or identical thereto and from committing any unlawful acts of infringement and passing off the aforesaid goods as that of the plaintiff. The court also stayed the suit under Section 124 of the Trade Marks Act, 1999 till the final disposal of the rectification proceedings, initiated by the defendant, before the Intellectual Property Appellate Board (IPAB).

The judgment is an antithesis of the observations made in the preceding cases of ‘*Stokely Van Camp Inc and Anr. v. Heinz India Private Ltd.*’, (2012 (52) PTC 540) and ‘*Data Infosys Ltd. and Ors. v. Infosys Technologies Ltd.*’ (2016 (65) PTC 209). In *Stokely Van Camp Inc and Anr. v. Heinz India Private Ltd.*, the Court held that if no rectification proceedings are pending at the institution of the suit, it is mandatory to abide by the provisions of Section 124(1)(ii), to initiate any such proceedings. And, if the party concerned does not adhere to the said procedure, and still moves the IPAB/Registrar on his own, it shall not be entitled to ask for the stay of the suit.

Further, the Full Bench in *Data Infosys Ltd. and Ors. vs. Infosys Technologies Ltd.*, observed that, the IPAB has the exclusive jurisdiction to rule upon the validity/invalidity of registration of a trade mark and thus access to IPAB is not subject to any assessment of prima facie tenability of the invalidity plea by the court.

Allowing the appeal, the Court made following notable observations;

Interpretation of Section 124 of the Act:

Section 124(1)(i) not only takes within its sweep a situation where the rectification proceedings were already pending at the time of institution of the suit, but also, if subsequent to the filing of the suit a party concerned moves the Registrar/IPAB, for rectification of the register, and then sets up a plea of invalidity in the written statement or vice-versa. However, if the rectification proceedings are pending, the precise moment or stage at which the court shall have to stay the suit in terms of Section 124(1)(i) will be ‘when, post completion of the pleading of the parties, the court takes cognizance of the dispute for the first time, and applies its mind’.

Effect of Registration of Trade Mark:

Registration of a trade mark, in terms of Section 31 of the Act, is only a *prima facie* evidence of its validity and not a conclusive proof. This is why, the provisions of Section 28 of the Act suggest in no uncertain terms that right of the registered proprietor, for exclusive usage of the registered trade mark, and to obtain appropriate relief in the event of its infringement, is subject to valid registration and other provisions of the Act. And, that is how, even Section 124(1) of the Act entitles the party concerned to set up a

plea of invalidity of registration of a mark in the infringement suit.

If Civil Court could go into the Validity / Invalidity of a Registered Mark, albeit the exclusive Jurisdiction to Rule upon the Validity/Invalidity of Registration of a Trade Mark under Section 47 or 57 of the Act rests with the Registrar or the IPAB:

Section 124(5) of the Act, postulates that stay of the infringement suit shall not preclude the civil court from making an interlocutory order or granting ad interim injunction, which needless to assert involves prima facie determination of the dispute, as also the plea of invalidity if set up. Not just that, even in terms of Section 124(1)(ii), the civil Court is required to satisfy itself regarding *prima facie* tenability of invalidity plea to enable a party concerned to apply to the IPAB. Thus, the civil court has the jurisdiction to examine *prima facie*, the plea of invalidity of registration of a mark, but only for the purpose of deciding an injunction application.

Finding as to Invalidity of Registration Mark to be preceded by Analysis or Consideration:

In the present case, though, the trial court did record "it cannot be said that the trade mark registered in the name of the plaintiff is invalid", however, the said finding was not preceded by any analysis or consideration, least an adjudication of the said plea.

Expounding the Connotation of 'Distinctive and a Secondary Meaning':

There has to be regular, vigorous and uninterrupted long usage of the trade mark to acquire a secondary and distinctive meaning. On the contrary, if the evidence shows, for numerous business houses, establishments and manufacturers also using the identical word as part of their trade mark or trade name, such

name will attain the character of *publici juris*. The expression *publici juris* has been defined in the Black's Law Dictionary (Tenth Edition) as: "Of public right; of importance to or available to the public". Thus, words that are in general or common use and that are merely descriptive are *publici juris* and cannot be appropriated as a trade-mark.

Whether a person has Locus to Question the Registration of the Trademark, When he had himself sought Registration of a similar Mark:

A challenge to the registration of the mark cannot be dismissed only because a person, who questioned its registration, had himself once sought to register an identical or a similar trade mark. If registration of a trade mark is invalid, its invalidity or the defect which it suffers from does not stand cured just because the person, who has questioned it, had himself sought to secure registration of a similar/identical mark. Thus, there cannot be any estoppel against law.

Meaning of prior User/Adopter of the Mark:

Ex facie, the provision not only insulates the right of usage of a prior user, but also prohibits the authorities to decline registration of his mark, owing to the pre-existing first mentioned or registered trade mark. In essence, a prior and a continuous user of a trade mark prevails and/or has a precedence over an identical/nearly identical registered trade mark. The position of law is settled. First user rule is a seminal part of the Act.

Consideration to determine the Balance of Convenience for passing Order of Injunction:

While passing the order of injunction, the court must weigh one need against another and determine where the balance of convenience

lies. The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a *prima facie* case. The Court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

Conclusion

In the present case, a new dimension has been given to section 124 of Trade Mark Act. Going beyond the literal interpretation of statute, the Court here in preferred, to adopt the 'purposive' approach for interpretation. Looking into the fine threads of the clauses of section 124 of the Act, Justice Palli remarkably made the observation that, the reading and analyzing each of the clauses of the provision separately and collectively or in conjunction with each other, it is inappropriate to construe clause (i) of Section 124(1) to curtail its application only to a situation where rectification proceedings were instituted before institution of the suit. In fact, clause (i) of Section 124(1) is activated not only when the rectification proceedings are initiated before institution of the suit, but even post institution of the suit upto a specific stage. This specific stage is 'when the court takes cognizance of the dispute for the first time and applies its mind'. Undoubtedly, clause (i) and (ii) of Section 124(1) contemplate two different situations. The process that runs through these provisions is common till the court is required to determine the *prima facie* tenability of the invalidity plea. Meaning thereby, having taken cognizance of the pleadings of the parties, and

applied its mind to the dispute for the first time, if the court, at that moment, finds that IPAB is seized of the rectification proceedings, it would stay the suit. If no such proceedings are pending, but the court is satisfied as regards the tenability of the said plea, it would frame an issue in this regard and adjourn the proceedings to enable the party concerned to approach the IPAB. Explicitly, the provision of Section 124, operates itself to cater to diverse situations, and at no stage, indeed it finds the date of institution of the suit germane and/or necessary to run its full course or operation. The right of the party concerned to move the Registrar/IPAB under Section 47 or 57, for rectification or removal of the trade mark is independent and indefeasible which does not require sanction or prior permission of the court to move the Registrar/IPAB, post institution of the suit.

This 'purposive' approach adopted by Justice Palli will help the users of trade marks to avoid more conflicts as section 124 of the Act has been given expanded interpretation. The meaning in which the section has been explained is the 'meaning of the Statute' as it appears to those who have to obey it. I would like to share what **Lord Denning** once said in **Packer V Packer (1953) 2 ALL ER 127**;

"What is the argument on the other side? Only this, that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on: and that will be bad for both."

LATEST CASES: CIVIL

“... a judgment should be understood in the light of the facts of that case and no more should be read into it than what it actually says.”

B.P.Jeevan Reddy, J. in *Sarva Shramik Sangh, Bombay vs. Indian Hume Pipe Co. Ltd.*, (1993) 2 SCC 386

Jaspal Kaur Cheema vs. M/s Industrial Trade Links: 2017 (3) RCR 794 (SC) – Tenant cannot deny the title of his landlord, howsoever, defective it may be. The sale transaction by way of General Power of Attorney / Special Power of Attorney / Will is not permissible – In this case the tenant in the original written statement to the correction petition did not challenge the title of the landlord. Thereafter, he sought the amendment of the written statement and wanted to challenge the title of the landlord. The amendment petition was dismissed by the rent controller and he filed the revision petition before the High Court. The High Court allowed his petition and the apex court restored the order of the rent controller by holding that tenant cannot challenge the title of his landlord under Section 116 of Evidence Act.

Union of India & Ors. vs. Ex. LAC Nallam Shiva: 2017 (8) SCALE 643 – Overstay of casual leave without informing his seniors is serious misconduct – Coming down heavily on an Army man who overstayed his casual leave period without informing his seniors for about one and a half years, the Supreme Court has observed that such serious misconduct by Armed Force member amounts to indiscipline and cannot be countenanced. The Court set aside the order of the Tribunal, which had directed his reinstatement and observed that it would send a wrong signal and impact on the discipline of the Armed Forces. The Court, however, modified the order of dismissal from service to one of discharge from service simplicitor. The Tribunal had set aside the order of disciplinary authority which had sentenced Nallam Shiva to undergo punishment of four months' rigorous imprisonment, dismissal from service and reduction in rank. The Tribunal, taking note of the fact that it was his first offence and also Regulation 754(C) of the Defence Service Regulations for Air Force, held that the punishment awarded was excessive and disproportionate and order was assailed before the apex court. It was observed that he did not bother to intimate his whereabouts either to his superiors or to the nearest military station, if he was suffering from any illness personally or for that matter if his father suffered a paralytic attack, he ought to have

gone to the Military Hospital for treatment. However, he did not choose to go to the Military Hospital but to a quack. The Court also observed that the fact that he has already undergone punishment of sentence period for the offence of desertion can be of no avail so as to interdict the decision of the disciplinary authority to dismiss the respondent from service. The bench also observed that it was not a case of overstaying for couple of days or a technical and trivial offence committed by the respondent.

DN Joshi & Ors. vs. DC Harris & Ors. : 2017 (3) RCR 833 (SC) – The essentials of gift under the Muslim Law are discussed – In this case it has been observed by the apex Court that the gift deed in favour of the donee would not become invalid on the ground that the donor did not request the tenant to attorn to the donee as the property was under tenancy. The requirements of the gift under the Muslim law are that there must be a declaration of the gift by the donor, the acceptance of the gift by the donee, and delivery of possession. The transferee would get all the rights and the liabilities of the landlord in respect of the subsisting tenancy.

Kanchan Udyog Limited vs. United Spirits Limited : 2017 (3) RCR 433 (SC) – Waiver involves voluntary relinquishment of a known legal right, evincing awareness of the existence of the right and to waive the same – In this case there was a contractual obligation between the parties. There was a dispute regarding the interpretation of terms of the contract. The suit filed by the plaintiff on the basis of contract for damages was decreed by the trial court and in appeal the judgement of the trial court was reversed and suit was dismissed. The apex Court upheld the judgement of the High Court on the grounds that the law of contract permits compensation and damages to the plaintiff resulting from the defendant's breach. It does not compensate a plaintiff for damages resulting from his making a bad bargain.

Suraj Pal (D) through LR. vs. Ram Manorath & Ors. : 2017 (8) SCALE 672 – The land declared 'Chakout' means out of the consolidation scheme – It has been held by the Apex Court while interpreting the provisions

of **Land Reform Act** that the purpose of a consolidation scheme is to provide consolidation of agricultural holdings. Abadi land, groves etc. are kept outside the scope of consolidation scheme. They cannot be re-allocated or re-allotted to any other person. Therefore, strictly speaking, they are not subject matter of the consolidation scheme. The intention of introducing Section 5(c)(ii) of the U.P. Zamindari Abolition and Land Reforms Act, 1950, was that if the land holding is subject to consolidation proceedings then permission of the Settlement Officer (Consolidation) is required before the same is transferred. This is so because if the land, which is subject matter of consolidation proceedings, is sold or permitted to be transferred during consolidation proceedings, it could affect the entire consolidation scheme. However, if the land is not subject matter of the consolidation scheme, though it may be part of the holding of the tenure holder, then no permission is required. The suit property was "Chakout" and outside the purview of the consolidation scheme inasmuch as its value could not be taken into consideration while framing the scheme and it could not be allocated or allotted to any other person.

Abhey Kumar Jain vs. Rammanohar Panday: 2017 (3) RCR 846 (SC) – In this case the plaintiff filed suit for suppressing performance of the contract and decree was passed in favour of the buyer plaintiff. It was also directed by the court that buyer shall pay stamp duty and penalty in accordance with the provisions of Stamp Act within the stipulated period of 2 months. The buyer did not pay the stamp duty on the grounds that the court did not quantify the stamp duty. It is observed by the apex Court that the buyer was required to pay the stamp duty in accordance with the provisions of Stamp Act and direction was given to the plaintiff to pay as per the provisions of Stamp Act within one month.

J. Vasanthi vs. N. Ramani Kanthammal (D) represented by LRs.: 2017 (8) SCALE 632 – It has been held by the apex court while dealing the provisions of Court Fee Act, for the purpose of valuation of the suit that proper valuation of the suit property stands on a different footing than applicability of a particular provision of an Act under which court fee is payable and in such a situation, it is not correct to say that it has to be determined on the basis of evidence and it is a matter for the benefit of the revenue and the State and not to arm a contesting party

with a weapon of defence to obstruct the trial of an action. It is because the Act empowers the defendant to raise the plea of jurisdiction on a different yardstick.

U. Manjunath Rao vs. U. Chandrashekar: 2017 (8) SCALE 488 – While discussing the scope of Order XLI Rule 31 CPC, it was observed that it is well settled in law that the reason is the life of law. It is that filament that injects soul to the judgment. Absence of analysis not only evinces non-application of mind but mummifies the core spirit of the judgment. A Judge has to constantly remind himself that absence of reason in the process of adjudication makes the ultimate decision pregnable. While dealing with the first appeal preferred under Section 96 CPC, the Court in State of Rajasthan v. Harphool Singh (dead) (2000) 5 SCC 652, through his LRs took note of the exception to the judgment passed by the first appellate court by observing that there was no due or proper application of mind or any critical analysis or objective consideration of the matter, despite the same being the first appellate court. The decree passed by the High Court was set aside and the matter was remitted for fresh disposal in accordance with law.

Hira Lal vs. Kanwar Bhan : 2017 (3) RCR 481 (P&H) – Relevance of Bahi entries and the recovery suit filed on the basis of pronote – The suit on the basis of Bahi entries was decreed by the trial court. On appeal the decision of the trial court was upheld and appellant/defendant filed appeal before the High Court. It was held by the High Court that the Bahi entry alone is not sufficient evidence to charge any person with the liability, however, the said entries are admissible in evidence being a relevant piece of evidence. It was further held that the court cannot act as an expert to compare the signatures. When the signatures were disputed, as the matter involves intrinsic technicalities which require some technically trained or qualified to indulge in the comparison of handwriting. It was also observed that when an unstamped pronote is admitted in evidence and later on the admissibility of the pronote in evidence cannot be questioned at the appellate stage. The Bahi entry was signed by the debtor which was insufficiently stamped but it is a clear-cut acknowledgement under the law. It was also observed that the casual and occasional lending of money does not amount to money lending business.

LATEST CASES: CRIMINAL

“Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed.”

Dipak Misra, J. in *Shyam Narain vs. The State of NCT of Delhi*, (2013) 7 SCC 77

Ms. Eera through Dr. Manjula Krippendorf vs. State & Anr. : 2017 (3) RCR (Cri.) 734 (SC) : Law Finder Doc Id# 882075 – S.376 IPC – Rape on mentally retarded woman aged 39 years. Medical evidence showed that her mental age was 6 to 8 years. Plea that as mental age was 6 to 8 years accused be tried by Special Court under POCSO Act. **Held** – Plea not tenable. It is biological age and not mental age of rape victim which should be the yardstick for deciding whether the case would be tried under POCSO Act. **Further held** – Had the accused been alive, the trial would have taken place in a Court of Session as provided under the Code of Criminal Procedure. As the accused has died and the victim is certified to be a mentally disabled person, the State Legal Services Authority was directed to award the maximum compensation as envisaged in the scheme framed by the Government.

Virbhadra Singh vs. Enforcement Directorate : 2017 (3) RCR (Cri.) 576 (SC) : Law Finder Doc Id# 876164 – S.41 Cr.P.C – Food Safety and Standards Act, 2006 – S.59 – For dealing with an offence under section 59 (iii) or (iv) of the Food Safety and Standards Act, 2006, a Police officer would be obliged in law not only to take note of such cognizable offence in accordance with section 154 Cr.P.C as also to cause arrest, if the need arises to do so, in exercise of the power regulated by section 41 Cr.P.C. But, upon completion of investigation, the police officer would have the criminal action initiated in the court by calling upon the enforcement authorities under the special law to launch prosecution by filing a complaint before the competent court and consequently, the cognizance would be, not on the police report under section 190(1)(b) but, on such complaint under section 190(1)(a) Cr.P.C. Hon'ble Apex Court further held that in the crimes of lesser gravity, those covered by section 41(1)(b), of Cr.P.C., the police officer does not have a blanket power of arrest. In order to cause arrest without warrant in such cases, he must put on record the satisfaction about the necessary criteria having been met, which includes not only credible information about complicity but also the need to do so for

preventing commission further offences or for proper investigation or for preventing tampering with the destruction of evidence or influencing of witnesses or to ensure that the person in question is brought to justice.

Sarada Prasanna Dalai vs. Inspector General of Police, Crime Branch, Odisha : 2017 (3) RCR (Cri.) 413 (SC) : Law Finder Doc Id# 845805 – S.173 (8) Cr.P.C.–Further investigation – Additional charge – Death of a married woman by hanging-Police after investigation filed charge sheet under sections 498A, 306, 304-B IPC – Contention of brother of deceased that it was a murder case – Sessions court was directed before whom the case was pending to peruse the entire material on record in order to consider the aspects of framing of an additional charge for the offence punishable under section 302 of the Indian Penal Code.

Bharat Gurjar vs. State of Rajasthan : Law Finder Doc Id# 863711 – S.306 Cr.P.C., 302, 364 IPC – Conviction based on evidence of approver – One of the accused was made Prosecution witness. No application was moved under section 306 of Cr.P.C. before the Magistrate for tendering pardon to the accused before getting examined him as Prosecution witness. There was little corroboration of his testimony. The courts below had relied on the testimony of this witness, whose role was akin to that of one of the accused. It was contended on behalf of the defence that an approver is a most unworthy friend, and he, having bargained for his immunity, must prove his worthiness for credibility in court. **Held** – that since the charge against the appellant is not proved on the record beyond reasonable doubt, they are entitled to be acquitted.

Brijendra Singh vs. State of Rajasthan : 2017 (3) RCR (Cri.) 374 (SC): Law Finder Doc Id# 851765–S. 319 Cr.P.C.–Summoning of additional accused- Principles recapitulated – Power under section 319 Cr.P.C can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial

court finds that there is some evidence against such a person on the basis of which it can be gathered that he appears to be guilty of offence. (1) Evidence means the material that is brought before the court during trial – Insofar as the material/evidence collected by the investigating officer at the stage of enquiry is concerned – It can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under section 319 Cr.P.C. (2) Evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. (3) Since it is a discretionary power given to the Court under section 319 and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. (4) Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised – It is not to be exercised in a casual or a cavalier manner – The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.

Hari Shankar Shukla vs. State of U.P. : 2017 (3) RCR (Cri.) 424 (SC) : Law Finder Doc Id# 844913 – S.372 Cr.P.C. (as amended in 2009) – Appeal against an order of conviction – An injured eyewitness who did not file appeal against the judgment of the trial court dated 20th October, 1995, **Whether** can be heard without filing appeal – **Held** – That this being a technical objection, it is only by the 2009 amendment to section 372 of Cr.P.C. that persons like injured eyewitness have also been granted the right to appeal. Obviously, this provision not being there in 1995 could not, at that point of time have filed an appeal.

Vikram Singh @ Vicky Walia vs. State of Punjab : 2017 (3) RCR (Cri.) 648 (SC) : Law Finder Doc Id# 877591 – S. 65-B and 7 Evidence Act – electronic record – kidnapping for ransom – Complainant recorded conversation on landline phone by which ransom calls were made and cassette handed over to Police – Tape recorded conversation is primary evidence and not secondary evidence and admissible without any certificate under section 65B of Evidence Act. **Further held** – (1) If an electronic evidence is used as primary evidence, the same is admissible in evidence, without compliance with the conditions in section 65B.

Zahid vs. State : 2017 (3) RCR (Cri.) 701 (Delhi) (DB) : Law Finder Doc Id# 876303 – S.32 Evidence Act – Dying declaration made in presence of Police official – credibility of dying declaration – law as enunciated by Supreme Court summed up – (1) When dying declaration is recorded, no oath is necessary. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. (2) Statement made by the deceased to the investigating officer at the police station by way of first information report, which was recorded in writing, was held to be admissible in evidence.

CBI vs. M. Sivamani:2017 (8) SCALE 398– Bar of want of Sanction u/s 195 (1)(a) Cr.P.C. can't be Invoked when Probe is Ordered by HC–Held–that the bar under Section 195(1)(a) IPC cannot be pressed into service when an investigation is ordered by a High Court into a specified offence mentioned in Section 195 IPC. The court also said the expression “the public servant or his administrative superior” cannot exclude the High Court and the direction of the High Court is at par with the direction of an administrative superior public servant to file a complaint in writing in terms of the statutory requirement. The protection intended by the Section against a private person filing a frivolous complaint is taken care of when the High Court finds that the matter was required to be gone into in public interest. Such direction cannot be rendered futile by invoking Section 195 to such a situation. Once the High Court directs investigation into a specified offence mentioned in Section 195, bar under Section 195(1)(a) cannot be pressed into service.

Gannu vs. State of Punjab : 2017 (3) RCR (Cri.) 566 (P&H) : Law Finder Doc Id# 878185–S.15 and 52A NDPS (2)(C)– Procedure prescribed for drawing the representative sample of contraband in front of Magistrate as laid down in S. 52-A (2) (c) was not followed – It is obligatory for the officer concerned that as soon as contraband is seized, he is bound to approach the Magistrate for grant of permission to draw representative sample in his presence, then enlist the same and correctness of the list of samples has to be certified by the Magistrate, which was not done – Prosecution case became doubtful– Conviction cannot be sustained.

NOTIFICATIONS

1. **Ministry of Finance (Deptt. of Revenue) Noti. No. S.O. 1383 (E), dated May 2, 2017, published in the Gazette of India, Extra., Part II, Section 3 (ii), dated 2nd May, 2017, P.3 No. 1222 [F.No. N-11012 / 1/2016-NC.II][I]**- In exercise of the powers conferred by Section 3 of NDPS Act, the Central Government had made the following further amendment in the list of psychotropic substances specified in the Schedule of the said Act after Sr. No. 110J, namely-

- 110K - para-Methoxymethylamphetamine, PMMA
1-(4-methoxyphenyl)-N-methylpropan-2-amine
- 110L - α -Pyrrolidinovalerophenone, α -PVP
1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one
- 110M - para-Methyl-4-ethylaminorex, 4,4'-DMAR
4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine
- 110N - Methoxetamine, MXE
2-(ethylamino)-2-(3-methoxyphenyl) cyclohexanone
- 110O - Phenazepam
7-bromo-5-(2-chlorophenyl)-1,3-dihydro-2H-1,4-benzodiazepin-2-one

2. **Ministry of Finance (Deptt. of Revenue), Noti. No.S.O. 1384(E), dated May 2, 2017, published in the Gazette of India, Extra, Part II, Section 3(ii), dated 2nd May, 2017, p.5, No. 1222 [F.No. N-11012/1/2016-NC.II][L]** - In exercise of the powers conferred by clauses (viiia) and (xxiiiia) of section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government hereby makes the following amendment further to amend the notification of the Government of India, Ministry of Finance, Department of Revenue, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide number S.O. 1055 (E), dated the 19th October, 2001, namely-

It may be read under the following heads :

Sr. No., Non-Proprietary name, Chemical Name, Small Quantity (in gm), Commercial Quantity (in gm/kg.)

- 238 P.- Acetylfentanyl-N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]acetanamide-1.0 gm -50 gm;
- 238 Q.- MT-45-1-cyclohexyl-4-(1,2-diphenylethyl)piperazine-2.0gm-100 gm;
- 238 R. - para-Methoxymethylamphetamine, PMMA-1-(4-methoxyphenyl)-Nmethylpropan-2-amine-1.0 gm -50 gm;
- 238 S.- α -Pyrrolidinovalero phenone, α -PVP -1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one-0.1 gm- 5 gm;
- 238 T.- para-Methyl-4-methylaminorex, 4,4'-DMAR-4-methyl-5-(4-methylphenyl)- 4,5-dihydro-1,3-oxazol-2-amine -1.0 gm -50 gm;
- 238 U.- Methoxetamine, MXE- 2-(ethylamino)-2-(3-methoxyphenyl) cyclohexanone-5.0 gm- 250 gm;
- 238 V.- Phenazepam- 7-bromo-5-(2-chlorophenyl)- 1,3- dihydro-2H-1,4- benzodiazepin-2-one -0.5 gm- 25 gm.

3. **Government of Punjab, Department of Legal and Legislative Affairs, Punjab, the 27th July, 2017-No.18-Leg./2017. The Punjab Municipal (Amendment) Act, 2017. (Punjab Act No. 14 of 2017)** - An Act further to amend the Punjab Municipal Act, 1911. Be it enacted by the Legislature of the State of Punjab in the Sixty Eighth Year of the Republic of India as follows:

1. (1) This Act may be called the Punjab Municipal (Amendment) Act, 2017. (2) It shall come into force on and with effect from the date of its publication in the Official Gazette.
2. In the Punjab Municipal Act, 1911, in section 8, for sub-sections (2) and (3) the following sub-sections shall be substituted, namely:
 - "(2) One half of the total number of seats reserved under clause (a) of sub-section (1) shall be reserved for women belonging to the Scheduled Castes:
Provided that a fraction of a seat shall not be treated as a seat for the purpose of reservation.
 - (3) One half (including the number of seats reserved for women belonging to the Scheduled Castes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies to be known as wards in the Municipality:
Provided that a fraction of a seat shall not be treated as a seat for the purpose of reservation."

EVENTS OF THE MONTH

1. Training to the Judicial Officers at all levels in the State of Punjab and UT, Chandigarh was organized through Video-conferencing with regard to the Goods and Service Tax – GST on August 05, 2017. GST had been launched on July 01, 2017. It is claimed by the Government as India's biggest tax reform in 70 years of independence. It is an indirect tax applicable throughout India and replaced multiple taxes levied by the Central and State Governments. It was deemed necessary that the Fundamentals of GST need to be shared with the Judicial Officers. Accordingly, the needful was done by Sh. Anil Kumar Gupta, Additional Director General, National Academy of Customs, Indirect Taxes and Narcotics (NACIN). Sh. B.S. Khara and Sh. Rajesh Kaushal from GST Commissionerate Chandigarh and Customs Commissionerate Ludhiana respectively provided the required support to Sh. Gupta. Similarly, the same exercise was carried out for Judicial Officers of the State of Haryana on August 11, 2017 by the same team. It was meaningful.

2. On the request of Haryana Institute of Public Administration, CJA structured and organized four day Training Programme for IAS and HCS officers on "Law relevant to Executive Magistrates" from August 08 to 11, 2017. The entire programme was divided into 19 sessions spread over four days covering different aspects and legislations relevant to the Executive Magistrates. 27 HCS and 2 IAS officers participated in this programme. Different sessions were taken by Dr. Balram K. Gupta, Director (Acad.), Mr. Inderjeet Mehta, Director (Admn.) and Ms. Mandeep Pannu, Ms. Ranjana Aggarwal, Mr. Tejinderbir Singh, Dr.

Gopal Arora, Mr. H.S. Bhangoo, Mr. Pradeep Mehta, Prof. Shashi K. Sharma, Faculty, CJA.

3. Third Delegation of 31 Sri Lankan District Judges came for an Academic Programme from August 18-24, 2017. This delegation was led by HMJ Nalin Perera, Judge, Supreme Court of Sri Lanka. In four working days, the entire Programme was structured into 18 different sessions. Different sessions were taken by HMJ S.S. Saron, HMJ T.P.S. Mann, HMJ Mahesh Grover, HMJ Rajesh Bindal, HMJ M.M.S. Bedi, HMJ G.S. Sandhwalia, HMJ Raj Shekhar Attri, Dr. Justice B.B. Parsoon, Senior Advocate, Atul Nanda, Advocate General, Punjab, Dr. Balram K. Gupta, Director (Academics), CJA, Anupam Gupta, Senior Advocate, Anil Malhotra, Advocate and Author, Neeraj Aarora, Cyber Lawyer & International Arbitrator and Col. Gursewak Singh (Retd.). This programme was co-ordinated by Pradeep Mehta, Faculty, CJA. The welcome address was delivered by HMJ M.M.S. Bedi, President, BOG and the inaugural address by HMJ Nalin Perera, Judge, Supreme Court of Sri Lanka. Justice Bedi was presented a memento by Justice Perera. Justice Perera was present and participated on all the four working days and in all the sessions. The concluding session to do the honours was chaired by HMJ A.B. Chaudhary, Member, BOG. Justice Chaudhary presented books to Justice Nalin Perera and awarded the certificates to all the participating Sri Lankan Judges. Dr. Gupta presented books to Justice Chaudhary. Mr. Inderjeet Mehta gave the expression of gratitude.

FORTHCOMING EVENTS

1. Five Days Programme for imparting Training on Procedural Aspects of various Important Laws to Public Prosecutors from Haryana has been scheduled from September 11 to 15, 2017. It is proposed that the subjects like DNA, Ballistics, Cyber Crimes, NDPS Act and Forensic Medicine will be dealt in detail.

2. Refresher-cum-Orientation Course for Civil Judges and Judicial Magistrates from Punjab and Haryana is scheduled for September 16, 2017 to sensitize them with regard to important Criminal Matters.