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# CJA e-NEWSLETTER

DECEMBER 2019

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

The Constitution of India of 1950 under Article 23 prohibited Traffic in human beings. Seven decades have passed. The issues regarding human trafficking have multiplied. Their ramifications have assumed wider challenges. It is a global issue. Even the United Nations is engaged in this regard. Human trafficking is a serious concern of Investigating Agencies as also the courts. In India and beyond India. The different stakeholders including the judges need to be educated concerning the issues regarding human trafficking. Also their sensitization. Judicial Education is a continuing process. Judicial Academies are required to innovate new methodologies to practically train the young judicial officers. It is in this context that CJA in collaboration with UNODC and MHA organized Mock Trial concerning issues of Human Trafficking during December 6-8, 2019. Different meetings were conducted with the team of UNODC including Ms. Deepika Naruka, Programme Co-Ordinator and Mr. Chandan Barman, Project Officer. 57 Trainee Judicial Officers were undergoing Foundation Training at CJA. It was considered appropriate that the different roles in the Mock Trial be played by different judicial officers. **It was Mock Trial of judicial officer, for judicial officer and by the judicial officers.** The idea was to involve all of them. They were not to be merely the observers. Actually, they were to play different roles. The second step was to work out the case exercise involving different issues of human trafficking in the Indian context. The CJA team included Dr. Nandita Kaushik and Mr. Pradeep Mehta. The two teams worked together. The case exercise was structured which involved different legislations relating to human trafficking issues. The third step was to work out the agenda for three-day mock trial. On the first day (Dec.6), substantial issues concerning human trafficking were taken up, by the Resource Persons from UNODC which included Mr. Panagiotis Papadimitriou, Ms. Rahel Gershuni, Mr. Ravi Kant & Ms. Swati Chauhan. The case exercise had been given in advance. On the first day (Dec.6), the methodology to be followed in the Mock Trial was also discussed. Different roles were assigned to different Trainee Judicial Officers. On the second day (Dec.7), introduction to the Mock Trial was given by the Moderator. This was followed by preparation by the judicial officers during the pre-lunch period. After lunch, the trial took place. The judicial officers were-in-action. They were being closely observed both by the experts of UNODC as also observers of Trainee Judicial Officers. In short, the second day was packed with action. The trial was followed by the arguments of the prosecution and the defence. The bench of three Judicial Officers conducted the trial. The second day concluded with the conclusion of the different components of the trial. The three judicial officers were required to prepare the judgment to be pronounced in the morning of third day (Dec.8). Therefore, the three judicial officers had to work hard for writing the judgment overnight. In the morning of Dec.8, the judgment was pronounced. Separate arguments were heard on the quantum of sentence. Thereafter, debriefing. This was conducted by Mr. Panagiotis Papadimitriou, Ms. Rahel Gershuni & Dr. Balram K. Gupta. In this session, the three experts gave their observations regarding the conduct of the trial, the observers of the judicial officers also gave their own observations. Their observations were deep and sound. The experts also played their role. The endeavour was to ensure that different components of the trial and roles played by the judicial officers were blended effectively. The whole idea was to ensure that the trainee judicial officers were duly educated. This was the first Mock Trial undertaken by UNODC at CJA in India. Three mails have been received. The same are being included.

**Wish you all HAPPY 2020.**

Balram K. Gupta

## Mock Trial-in-Partnership with CJA

Dec.13, 2019

Dear Dr. Gupta,  
Good morning.

I would again like to thank you, and put on record that it is not very often that one comes across a combination of position, knowledge, kindness and humility, however - in the partnership with you and Chandigarh Judicial Academy under your leadership, - we have come across this rare combination.

We thank you once again for the immense collegiality and spirit of partnership. And add to this my further gratitude towards you in going out of your way to ensure our comfort during the event and travel in Chandigarh.

**The Punjab Judicial Officers indeed are lucky to learn through an institution which is imparting legal and procedural knowledge as a subset of humanity. We in turn have been impressed by the bar set high by all the participating Officers at the Mock Trial.**

Please also find attached two letters which our visiting Mock Trial Expert from Israel Ms. Rahel Gershuni, who requested these letters to be shared with you and your team.

I very much look forward to taking forward our steps on various aspects of strengthening the response to TIP in India, on institutionalising the TIP curriculum in the Academy, and explore partnerships on countering trafficking.

My very best regards,  
Deepika.

December 10, 2019

Dear Professor Gupta,

I wish to express my heartfelt thanks for your hospitality, your generosity and yours care. They were much appreciated and made us feel at home.

More than that, I learned so much from your stories and metaphors like "humility in an envelope of humanity" (which may be an inaccurate paraphrase) or the story of your meeting with Lord Denning. Most of all, it was uplifting to hear of your approach to judicial learning – that before becoming a good judge, you need to become a good human being. You are a true educator, something so rare in our day. It is shown by your patience with students who were undergoing a crisis, by your ability to give good feedback, by your criticisms being ever imbued with affection and care.

Thank you so much. **This trip was an experience I will not forget.**

I hope you will convey to the judicial officers who participated in the mock trial exercise how excellently they performed. **I have never seen such an ability to work together, to absorb new material, to use every ounce of creativity. The mock trial presented me with surprise on**

**surprise on surprise. There was never a dull moment.** The application of the prosecution to arraign the parents of Krishna; the defense's surprise witnesses; the prosecution's application to charge Krishna's alleged father with false testimony; the use of the various sections of the criminal procedure law; the victim protection measures used; the judges' outstanding judgment. All this showed a close familiarity with the law of evidence and criminal procedure, but also an understanding of the issues underlying trafficking in persons cases. **In short, this was a model mock trial and the insights we derived from it, will doubtless serve us well in other contexts.**

I attach a separate letter to the judicial officers who wrote the judgment. I feel that though its excellence was noted, they deserve to hear more about it.

Yours respectfully,  
Rahel Gershuni

December 10<sup>th</sup> 2019

Dear Ms. Anjali Narwal, Ms. Radhika Likhi, and Mr. Manjinder Singh:

Although many good words were said during the debriefing about your judgment, perhaps the minor criticisms obscured how strongly every expert perceived the excellence of your performance.

**Your judgment was so outstanding that in my opinion, it could easily be published as a leading trafficking in persons ruling.**

The analysis was punctilious, leaving no stone unturned, procedurally, evidentially and in the realm of trafficking in persons. The beginning of the judgment which noted the relevant sections of the Constitution and international conventions set the tone and anchored the judgment, not only in the technical elements of the crime, but in the values protected by trafficking in persons prohibitions. **This sets apart this ruling as a judgment of stature, rather than a merely good and workmanlike judgment.**

Your analysis of the elements of the crime was more than excellent and in particular, the insight that the preferential treatment given to Krishna could be seen as a form of psychological coercion.

Your reliance on both Indian and international cases was impressive and the various orders included in the sentence showed an appreciation of the big picture – that **punishing the perpetrator is not the only function of justice, but also trying to place the victim in a better situation.** Clearly, you took to heart Justice Swati Chauhan's approach that a judicial officer can affect the larger picture of a victim's life.

I have no words to express my appreciation of your work and I know that every expert who attended the mock trial feels the same.

**I expect great things of you.** Should you ever feel you wish to correspond and tell me what is happening with you, I would be very happy. My email details are rahel.gershuni@gmail.com

Yours with appreciation,  
Rahel Gershuni Adv.

## LATEST CASES : CIVIL

“Wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 of the Constitution especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”

V. Ramasubramanian, J. in *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society*, (2019) 9 SCC 538

**Ningappa Thotappa Angadi (D) through LRs. vs. The Special Land Acquisition Officer and Another : 2019 SCC Online SC 1611 – Held – No interest due to delay in approaching court on enhanced compensation and statutory benefits under Land Acquisition Act** – The Supreme Court while considering the issue of payment of interest on compensation while dealing with SLP declined interest while condoning delay in filing SLP. The appellant (s) who was/were also aggrieved by the impugned judgment of High Court did not file the appeal along with other similarly situated land owners for enhanced compensation. Appellant has come to this Court after a considerable long period seeking parity with the other expropriated land owners and craves for restoration of the compensation as was awarded by the Reference Court. The short question which, thus, falls for consideration was whether the appellant(s) whose predecessor-in-interest did not assail the High Court order in respect of the land which is subject matter of appeal as expeditiously as the other land owners under the same acquisition, be allowed to get the same compensation despite a delay of 2928 days and if so, whether they are entitled to seek interest as well. Further, it was held that the appellant(s) are also similarly placed claimants and are entitled to seek parity and claim the same amount of fair and just compensation as has been awarded to other land owners. However, not entitled to seek interest for the period for which they did not approach Court.

**Kaushaliya vs. Jodha Ram : 2019 SCC OnLine SC 1511 – Disputes about properties which are not subject matter of litigation can be settled in mediation – Held** – The Supreme Court observed that Settlement

Agreement which has become part of a Court's order is executable irrespective of the fact whether the Agreement is with respect to the properties which was/were the subject matter of the proceedings before the Court or not. The bench observed that, in the Mediation proceedings, it is always open for the parties to explore the possibility of an overall amicable settlement including the disputes which are not the subject matter of the proceedings before the Court.

**Kapilaben vs. Ashok Kumar Jayantilal Sheth: 2019 SCC OnLine SC 1512 – Assignment of interest is not valid merely because it was not expressly prohibited in contract– Held** – The Supreme Court observed that assignment of contractual interest cannot be held to be valid merely because there is no express bar against assignability stipulated in the contract. The bench observed that to examine whether an interest is assignable, it has to be seen whether the terms of the contract, and the circumstances in which the contract was entered into, lead to an inference that the parties did not intend to make their interest therein assignable.

**Perkins Eastman Architects DPC vs. HSCC (India) Ltd. : 2019 SCC OnLine SC 1517 – Person interested in outcome of decision of the dispute must not have power to appoint sole arbitrator – Held** – A person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator, the Supreme Court has reiterated in a judgment. The bench noted that in *TRF Limited vs. Energo Engineering Projects Limited*, the Court had examined a Clause which nominated the Managing Director himself to be the sole arbitrator and also empowered

said Managing Director to nominate another person to act.

**Odisha Forest Development Corporation Ltd. vs. M/s Anupam Traders : 2019 SCC OnLine SC 1524 – No party should suffer due to the act of court – Held** – The Supreme Court recently reiterated the maxim actus curiae neminem gravabit, namely, no party should suffer due to the act of Court. The bench was considering an appeal filed by Odisha Forest Development Corporation Ltd.

**Hindustan Construction Company Ltd vs. Union of India :2019 SCC OnLine SC 1446 – SC strikes down Section 87 of Arbitration & Conciliation Act inserted by 2019 Amendment – Held** – In a significant judgment, the Supreme Court struck down Section 87 of the Arbitration and Conciliation Act 1996, which was inserted through the 2019 amendment Act passed by the Parliament last monsoon session.

**M/s. Uttarakhand Purv Sainik Kalyan Nigam Limited vs. Northern Coal Field Ltd.: 2019 SCC OnLine SC 1518– Issue of limitation not to be examined while considering application seeking appointment of arbitrator** – The Supreme Court observed that, while considering an application under Section 11 of the Arbitration and Conciliation Act seeking appointment of an arbitrator, scope of examination by the Court is to be confined only to the existence of the arbitration agreement and nothing more.

**Ms. Singal Udyog vs. National Insurance Company Ltd. & Ors.: Civil Appeal No. 9161 of 2019 (arising out of SLP (Civil) No.23697 of 2019) : DoD 02.12.2019 – Consumer Forums / Commissions cannot consider complaint/appeal on merits after finding that it is time barred – Held** – The Supreme Court observed that a Consumer Forum/Commission after having come to the conclusion that the complaint/appeal was barred by limitation, could not consider the merits of the matter. The bench further observed that, In any case, the delay of 150 days, in the present circumstances, was not so alarming that the matter should have been rejected on the

ground of delay. Imposing costs of Rs. 25,000, the bench condoned the delay and restored the appeal before the National Commission.

**M/s Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors.:2019 SCC OnLine SC 1542 – High Court can intervene if NCLT passes order in a matter pertaining to public law – Held** – Supreme Court held that the High Court can exercise its powers under Article 226 of the Constitution, if NCLT has passed an order pertaining to a matter falling under the realm of public law. The court held that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016, especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.

**Harbhajan Singh vs. State of Punjab : 2019 SCC OnLine SC 1546 : Separate classification in favour of properties of religious institutions for rent laws not violative of Article 14 – Held** – The Supreme Court, while upholding the constitutional validity of the Punjab Religious Premises and Land (Eviction and Rent Recovery) Act, observed that separate classification of properties of religious institutions for rent legislation will pass a challenge under Article 14 of the Constitution of India.

**Sri Prabodh Ch. Das and Anr. vs. Mahamaya Das and Ors. : 2019 SCC Online SC 1614 – Held – Order 41 Rule 17 CPC bars deciding appeal on merits** – An appeal cannot be decided on merits in the absence of appellant. The Court had decided the appeal on merits after noticing "On this date a request for adjournment was made on behalf of Mr. Lodh when the matter was adjourned to 18.12.2014 and on 18.12.2014 Mr. Choudhury made a request for adjournment. Today Mr. Choudhury is not even present to argue the matter and no request has been made on his behalf. I, therefore, proceed to decide the appeal on merits itself." The Apex Court observed that order has been made clearly in contravention of Rule 17(1) of Order XLI of the CPC.

## LATEST CASES : CRIMINAL

“The power of review can be exercised only when the statute provides for the same. In the absence of any such provision in the statute concerned, such power of review cannot be exercised by the authority concerned.”

Vineet Saran, J. in Naresh Kumar v. State (NCT of Delhi), (2019) 9 SCC 416

**Gurjit Singh vs. State of Punjab : 2019 SCC OnLine SC 1516 : No automatic conviction u/s 306 IPC for abetment of suicide merely because accused was found guilty u/s 498A IPC – Held –** The Supreme Court observed that, merely because an accused is found guilty of an offence punishable under Section 498-A of the Indian Penal Code and the death of the wife has occurred within a period of seven years of the marriage, the accused cannot be automatically held guilty for the offence punishable under Section 306 of the IPC by employing the presumption under Section 113-A of the Indian Evidence Act.

**Vinod Kumar Garg vs. State:2019 SCC OnLine SC 1522 : Mere irregularity in sanction will not vitiate conviction in corruption cases – Held –** A mere error, omission or irregularity in sanction in corruption cases is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby, the Supreme Court reiterated. The bench observed while upholding the conviction of an accused under Sections 7 and 13 of the Prevention of Corruption Act.

**Union of India vs. Ramesh Bishnoi: 2019 SCC OnLine SC 1531 : There is no stigma with regard to any crime committed by a juvenile–Held–**The Supreme Court observed that even if a juvenile is convicted, there is no stigma with regard to any crime committed by such person as a juvenile. Juvenile in conflict with law was a minor when the charges were framed against him of offences under Sections 354, 447 and 509 of IPC. As the complainant

girl and her parents did not give any evidence against him, he was acquitted.

**Jai Prakash vs. State of UP : 2019 SCC OnLine SC 1525 : Any act of commission / omission of the investigating officer cannot go to the advantage of the accused – Held –** Any act of commission/omission of the Investigating Officer cannot go to the advantage of the accused, the Supreme Court has observed while dismissing a Criminal Appeal. The bench was considering the appeal filed by complainant and the state against the acquittal of murder accused by the High Court.

**P. Gopalkrishnan @ Dileep vs. State of Kerala : 2019 SCC OnLine SC 1532 : Section 207 Cr.P.C : Magistrate cannot withhold any document submitted along with police report except when it is voluminous – Held –** The Supreme Court observed that a Magistrate cannot withhold any "document" submitted by the investigating officer along with the police report except when it is voluminous. Further, in case of voluminous documents, the accused can be permitted to take inspection of the concerned document either personally or through his pleader in Court.

**Bhawna Bai vs. Ghanshyam : 2019 SCC OnLine SC 1540 : Section 228 Cr.P.C : detailed reasons need not be recorded while framing charges – Held –** The Supreme Court observed that for framing the charges under Section 228 of the Code of Criminal Procedure, a trial judge is not required to record detailed reasons. The bench observed that, at the stage of framing

the charge, the court is not required to hold an elaborate enquiry; only prima facie case is to be seen.

**Ramphal vs. State of Haryana: Criminal Appeal No. 438 of 2011 : Compromise between accused & victim is of no relevance in deciding rape cases – Held** – While disposing of a criminal appeal, the Supreme Court emphasized that compromise between rape accused and victim is of no relevance in deciding criminal cases.

**P. Chidambaram vs. Directorate of Enforcement : 2019 SCC OnLine SC 1549 : Denial of bail on findings based on sealed cover documents presented by prosecution is against fair trial – Held** – In the judgment granting bail to P Chidambaram in the INX Media case, the Supreme Court made certain pertinent observations regarding the practice of courts relying on sealed cover documents produced by prosecution during bail hearings. The court observed that recording of findings based on the sealed cover documents submitted by the prosecution as if the offence has been committed, and using of such findings to deny bail would be against the concept of fair trial.

**M. Jayanthi vs. KR Meenakshi : Criminal Appeal No.1817 of 2019 (arising out of Special Leave Petition (Crl.) No.741 of 2019): DoD 02.12.2019 : Section 482 Cr.P.C: HC should not embark upon an enquiry into validity of evidence available – Held** – While invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the High Court should not embark upon an enquiry into the validity of the evidence available, the Supreme Court has reiterated.

**Mahipal vs. Rajesh Kumar @ Polia : 2019 SCC OnLine SC 1556 : Unreasoned order granting/rejecting bail raises presumption of non application of mind – Held** – Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application

of mind, the Supreme Court observed while setting aside an order passed by High Court.

**Abdul Sattar vs. The State of Uttar Pradesh & Anr. : Criminal Appeal No. 1842 of 2019: (Arising out of SLP (Crl.) No. 7666/2018) : DoD 29.11.2019 : Victim girl being habitual to sex cannot be valid defence to act of rape – Held** – The Supreme Court observed that the fact that victim of rape is habituated to sex, cannot be a valid defence to the act of rape. The bench also cancelled the bail and directed the accused to surrender before the concerned Judicial Magistrate within a period of four weeks.

**Station House Officer, CBI vs. B.A. Srinivasan : 2019 SCC OnLine SC 1555 : Section 197 Cr.P.C – No protection of sanction where the acts are performed using the public office as a mere cloak for unlawful gains – Held** – The Supreme Court observed that protection of sanction to public servants under Section 197 of the Code of Criminal Procedure is not available where the acts are performed using the office as a mere cloak for unlawful gains. The Court also observed that the protection of sanction under Section 19 of the Prevention of Corruption Act would not be available to a public servant after he had demitted his office or retired from service.

**State of Telangana vs. Sri Managipet @ Mangipet Sarveshwar Reddy: 2019 SCC Online SC 1559 : Preliminary inquiry not mandatory in all corruption cases – Held** – The Supreme Court observed that a preliminary inquiry before registration of First Information Report (FIR) is not required to be mandatorily conducted in all corruption cases. The bench was considering State's appeal against the High court judgment which quashed the criminal proceedings against a Police Officer who was said to be in possession of assets worth Rs.3,18,61,500 alleged to be disproportionate to his known sources of income.

## IMPORTANT CASES: NDPS ACT

“Procedure entailing recovery of Narcotics/contraband from the body of the suspect requires invasion into the physical body of the suspect and an encroachment into his privacy. Such exercise being invasive in nature must not only be in strict compliance of statutory safeguards as contemplated in Section 103 of the Customs Act but also must be in consonance to the dignity of the suspect and ought not involve any cruel, degrading or inhuman treatment lest such procedure runs foul of Article 21.”

Joymalya Bagchi, J. in *Mursaleen Mohammad vs. Union of India*, (2018) SCC Online Cal 4885

**State of Punjab vs. Baljinder Singh: 2019 SCC OnLine SC 1408 – NDPS : Non-compliance of Section 50 during 'personal search' cannot invalidate recovery from vehicle – Held** – The Supreme Court has observed that merely because there was non-compliance of Section 50 of the Narcotic and Drugs and Psychotropic Substances Act as far as "personal search" of the accused was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle. *"The mandate of Section 50 of the Act is confined to "personal search" and not to search of a vehicle or a container or premises."*

**State of Rajasthan vs. Sahi Ram : 2019 SCC OnLine SC 1267 – NDPS Act – Non production of entire contraband by itself not a ground for acquittal – Held** – The Supreme Court has held that non-production of contraband material, by itself, is not a ground for acquittal, if its seizure is otherwise proved. *"If the seizure is otherwise proved, what is required to be proved is the fact that the samples taken from and out of the contraband material were kept intact, that when the samples were submitted for forensic examination the seals were intact, that the report of the forensic experts shows the potency, nature and quality of the contraband material and that based on such material, the essential ingredients constituting an offence are made out."*

**Vijay Pandey vs. State of UP : 2019 SCC OnLine 942 – NDPS: Mere production of a laboratory report that the sample tested was narcotics cannot be conclusive proof – Held** – The Supreme Court has held that mere production of a laboratory report that the sample tested was narcotics cannot be

conclusive proof in a case under Narcotic Drugs and Psychotropic Substances Act, 1985. The contention advanced by the accused was that there is noncompliance with Section 50 of the NDPS Act in as much as the prosecution failed to prove that the sample produced in court was the same as seized from the accused. The State's contention was that the Trial Court recorded its satisfaction that the sample produced in court was the same seized from the accused and it has caused no prejudice to the appellant. Hence the court held, "The sample seized and that tested have to be co-related."

**Rafiq Qureshi vs. Narcotic Control Bureau: (2019) 6 SCC 492 – Quantity of narcotic substance a relevant factor to award punishment higher than the minimum under NDPS Act – Held** – The Supreme Court has

observed that the decision to impose a punishment higher than the minimum prescribed under the Narcotic Drugs and Psychotropic Substances Act, 1985 is not confined or limited to the factors enumerated in clauses (a) to (f) of Section 32B of the. Section 32B enlists factors to be taken into account for imposing higher than the minimum punishment

a) The use or threat of use of violence or arms by the offender;

b) The fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;

c) The fact that the minors are affected by the offence or the minors are used for the commission of an offence;

d) The fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children

and students resort for educational, sports and social activities.;

e)The fact that the offender belongs to organized international or any other criminal group which is involved in the commission of the offences; and

f)The fact that the offender is involved in other illegal activities facilitated by commission of the offence.

**State of Punjab vs. Rakesh Kumar : (2019) 2 SCC 466 – Unauthorised bulk possession of manufactured drugs containing narcotic drugs or psychotropic substances triable under NDPS Act as well – Held –** The Supreme Court has held that persons who are found in bulk possession of manufactured drugs without any valid authorization can be tried under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, apart from the Drugs and Cosmetics Act, 1940. Further observed that, while the Drugs and Cosmetics Act deals with drugs which are intended to be used for therapeutic or medicinal usage, the NDPS Act intends to curb and penalize the usage of drugs which are used for intoxication or for getting a stimulant effect. It also highlighted that Section 80 of the NDPS Act clearly lays down that application of the Drugs and Cosmetics Act is not barred, and provisions of NDPS Act can be applicable in addition to that of the provisions of the Drugs and Cosmetics Act. *“We find that decision rendered by the High Court holding that the accused must be tried under the Drugs and Cosmetics Act, 1940 instead of the N.D.P.S Act, as they were found in possession of the “manufactured drugs”, does not hold good in law.”* the court held.

**Surinder Kumar Khanna vs. Intelligence Officer Directorate of Revenue Intelligence: (2018) 8 SCC 271 – Conviction cannot be based solely on co-accused’s ‘confessional statement’ – Held –** The Supreme Court has held that conviction under Narcotic Drugs and Psychotropic Substances Act, 1985, cannot be based solely on the confessional statement of a co-accused, in the absence of a substantive piece of evidence. *‘On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be*

*used or utilized in order to lend assurance to the Court.’*

**Mohan Lal vs. State of Punjab: 2018 (4) RCR (Criminal) 101 – Accused entitled to acquittal if informant and investigating officer is the same person – Held –** In a significant pronouncement, a three-judge bench of the Supreme Court has categorically held that the informant and the investigator in NDPS cases must not be the same person. The bench then proceeded to lay down the law with certainty. It said: *“It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.”*

*‘If an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion,’* observed by the court.

**Mohammed Fasrin vs. State: 2014 SCC OnLine SC 88 – NDPS Act – Court should be satisfied that confession is voluntary and accused was apprised of his rights – Held –** The Supreme Court has observed that, even if confessions made to investigating officers are held to be admissible under Section 67 of the NDPS Act, the Court has to be satisfied that it is a voluntary statement, free from any pressure and also that the accused was apprised of his rights before recording the confession. *“Even if it is admissible, the Court has to be satisfied that it is a voluntary statement, free from any pressure and also that the accused was apprised of his rights before recording the confession.”*

## NOTIFICATION

**Parliament passes the Citizenship (Amendment) Bill 2019: On 11.12.2019, the Citizenship (Amendment) Bill, 2019 was passed by both the houses of the parliament in favour of the Bill. Following are provisions to be amended as placed in the Bill:**

- **Amendment of Section 2:**

In the Citizenship Act, 1955 (hereinafter referred to as the principal Act), in section 2, in sub-section(1), in clause (b), the following proviso shall be inserted, namely:—

“Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act.”

- **Insertion of new Section 6B**

Special provisions as to the citizenship of person covered by the proviso to clause (b) of sub-section (1) of Section 2.

- **Amendment of Section 7D**

In section 7D of the principal Act,—

(i) after clause (d), the following clause shall be inserted, namely:—

“(da) the Overseas Citizen of India Cardholder has violated any of the provisions of this Act or provisions of any other law for time being in force as may be specified by the Central Government in the notification published in the Official Gazette; or”.

(ii) after clause (f), the following proviso shall be inserted, namely:—

“Provided that no order under this section shall be passed unless the Overseas Citizen of India Cardholder has been given a reasonable opportunity of being heard.”

- **Amendment of Section 18**

In section 18 of the principal Act, in sub-section (2), after clause (ee), the following clause shall be inserted, namely:—

“(eei) the conditions, restrictions and manner for granting certificate of registration or certificate of naturalisation under sub-section (1) of section 6B;”

- **Amendment of Third Schedule**

In the Third Schedule to the principal Act, in clause (d), the following proviso shall be inserted, namely:—

‘Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be read as “not less than five years” in place of “not less than eleven years”.<sup>1</sup>

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<sup>1</sup><https://pib.gov.in/newsite/PrintRelease.aspx?relid=195783>

## EVENTS OF THE MONTH

1. **Under Knowledge Sharing Programme** 49 (27 female and 22 male) newly recruited CJJDs and JMFCs (Maharashtra and Goa) from Maharashtra Judicial Academy (Batch 2019) visited CJA during **Nov. 25 to Dec. 02, 2019**. They visited High Court of Punjab and Haryana, Juvenile Justice Board (vulnerable witness room), Golden Temple, Amritsar, Wagah Border, local sites of Chandigarh. Two-days lecture sessions were also arranged. The Judicial Officers departed to Maharashtra in the morning of Dec. 02, 2019.
2. A group of **newly promoted ADJs from State of Haryana (12) and from State of Punjab (6) underwent one month orientation course** at CJA. During one month training the ADJs were sensitized with regard to Laws Relating to the Special Courts, Criminal & Civil Procedure and Basic Administrative Skills. The course commenced on Nov.04. The valedictory session was held on Dec.03, 2019.
3. **Refresher-cum-Orientation Course for ADJs** from the States of Punjab and Haryana was organized on Dec.14, 2019 at CJA. The ADJs were sensitized on the topics : NDPS Act I&II, Law relating to Sentencing in Criminal Cases, Salient Features of Specific Relief Amendment Act, 2018 and Training on Practical Use of Computers in Courts. The four sessions were taken by Sh. H.S. Bhangoo, Sh. Pradeep Mehta, Sh. Baljinder Singh Sra, Faculty Members, CJA and Resource Person from High Court of Punjab & Haryana respectively. 63 judicial officers participated in the course.
4. **United Nations Office on Drugs and Crime in collaboration with MHA and**

**Chandigarh Judicial Academy** organized **Mock Trial on Trafficking in Persons** from Dec. 6 to 8, 2019 at CJA. The Training Judicial Officers presently undergoing Induction Training at CJA were the participants in the Mock Trial. The welcome and introduction of the programme was addressed by Prof. (Dr.) Balram K. Gupta, Director (Academics), CJA. The sessions were on the topics : The International Legal Framework on trafficking in persons – Key Concepts and Issues, Trafficking in persons and allied crimes in Indian legislations – Key concepts and issues, Evidential issues arising in trafficking in persons cases, including the issue of consent – case study, Case study on substantive and evidential issues, Trafficking in persons for the purpose of forced labour – special issues, Presentation of methodology for the simulated trial, allocation of roles and distribution of documents, Victim protection in the legislation of India (respect of privacy/ confidentiality, hearings in camera compensation), Moderator's Introduction to Mock Trial, Preparation of Hearing of the Case, the Hearing (group work), The verdict, Final Debriefing. The multi-disciplinary mock trial concluded in the afternoon. The certificates were awarded. The training experts present in the mock trial were : Mr. Panagiotis Papadimitriou, Crime Prevention and Criminal Justice Officer, Ms. Rahel Gershuni, International Expert, Mr. Ravi Kant, Chairperson, Shakti Vahini, Ms. Swati Chauhan, Principal Judge, Family Court, Maharashtra, from UNODC, Dr.Nandita Kaushik and Mr. Pradeep Mehta, Faculty Members, CJA.

## FORTHCOMING EVENTS

**Refresher-cum-Orientation Course for Civil Judges** from the State of Punjab and Haryana is scheduled to be held on 11.01.2020.