JULY 2017

CJA e-NEWSLETTER

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

VOLUME : 02
ISSUE : 07

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FROM THE DESK OF CHIEF EDITOR

Once I was asked, what are the qualities of a Good Judge ? My response was simple. Be a good human being. My journey spread over 50 years has not proved me wrong. Harold Laski, the political thinker once wrote a letter to Justice Holmes. He said : *How much I wish, if people could realise that judges are human beings*. Justice Holmes responded by saying : *How much I wish if judges could realise that they are human beings*. Humanism and compassion are integral part of Judicial Fabric and Culture. Humanism and Compassion are the Constitutional Fundamental Duties of every citizen of the country. This is more in the case of Judicial brethren. We do not need computerised justice. Even in the computerised age. Judges divorced from humanism and compassion will not be able to render wholesome justice. It is only the well nurtured judicial human minds punctuated with compassion and humanism can make justice wholesome and complete as envisaged under Article 142 of the Constitution. Judicial Human Fabric must be weaved in compassion and humanism. This is my recipe.

Judges function in different situations. Difficult situations. To act with restrain and caution is part of their culture. This requires tuning and training of the judicial mind. This requires a lot of effort. Not easy. There are some principles of judging. Be bold. Be fair. Be polite. Be firm. Be human. Be patient. Probably, many more could be added. Each principle needs elaboration. The fact remains that it has effect and impact which makes the judge. These principles are not new. They are old. They need to be cultivated. Nurtured. Imbibed. They are integral to the personality of a judge. Each action and each utterance of a judge must reflect these principles. These principles provide durability and longevity to the Judicial Fabric. This would strengthen the Justice Delivery System. The level of legitimacy of the Institution of Judiciary would go up. It was Socrates who gave a four way test to judges. *Hear courteously. Consider Soberly, Answer wisely. Decide impartially*. The Judicial Human Fabric weaved into one common thread of these fundamentals would surely strengthen our Justice Delivery System.

Judicial Culture is like the rainbow. It is the same from Kanyakumari to Kashmir. From Goa to Gurugram. From India to United States. Even beyond. Across the globe. The basics of judicial culture remain the same. In all jurisdictions. All over the world. Fairness. Due Process. Principals of Natural Justice. They remain the same. Wherever you may go. They do not change. They are uniform. Uniformly applicable.

Be proud of the fact that you are an integral part of this Judicial Culture and this Judicial Human Fabric. You are not engines of power. You are engines of Service.

Balram K. Gupta

CASE COMMENT

Even with an order from Foreign Court, Indian Courts are under an obligation to ensure what is in the Best Interest of Child

Nithya Anand Raghavan vs. State of NCT of Delhi and Ors. : 2017 (7) SCALE 183 – **Child Welfare Paramount Consideration** – In a recent case, the SC has decided upon, how a judgment by foreign court should be construed while complying with the principle of comity of Courts and deciding upon the matter relating to returning of the child to the country from where he/she was removed. The present case came to the SC by the aggrieved mother who had appealed against the order of Delhi High Court allowing a writ of Habeas Corpus filed by the father of the girl child alleging that she is in illegal custody of her mother, as there was an order of UK Court to that effect. Following are the major aspects which can be carved out from the judgment:

1. Writ of Habeas Corpus cannot be used for mere enforcement of a foreign court order against a person within the jurisdiction of an Indian court and then convert that jurisdiction into that of an executing court.

2. Whether it is a case of a summary inquiry or an elaborate inquiry, the paramount consideration is the interest and welfare of the child. A pre-existing order of a foreign Court can be reckoned only as one of the factors to be taken into consideration.

3. In matters relating to Civil Aspects of International Child Abduction, because India is not yet a signatory to the Hague Convention, 1980, the court in the country where the child has been removed, should consider the question of placing the child back, on merits bearing the welfare of the child as of paramount importance and consider the order of the foreign court as only one of the factors to be taken into consideration.

4. Further, when the question arises about the custody of the minor (girl child) then only in an exceptional situation, an order can be made to take her away from the mother for being given to any other person, including the husband (father of the child), in exercise of the Writ Jurisdiction. Also, in case of a girl child, guardianship of the mother is of utmost significance. (Para-30)

5. If the Court is convinced under the wholesome principle of the duty of the Court having jurisdiction to consider the best interest and welfare of the child, which is of paramount importance, then in that regard, the fact that there is already an order passed by a foreign court in existence may not be of much significance as it must yield to the welfare of the child. That is only one of the factors to be taken into consideration.

6. For considering the factum of 'interests of the child', the court must take into account all the attending circumstances and totality of the situation which should be decided on case to case basis.

7. The Court in this present case relying on its previous judgment in **Dhanwanti Joshi vs. Madhav Unde, MANU/SC/0810/1998: (1998) 1 SCC 112,** has clarified that whenever a question comes up pertaining to the custody of a minor child, then legal rights of the parties should not be considered but the sole and predominant criterion should be the best interest of the minor. Further, if the child has been brought within India then the courts may conduct a summary inquiry or an elaborate inquiry on the question of custody. If a summary inquiry is being initiated, it is open to the Court to decline the relief of return of the child to the country from where he/she was removed irrespective of a pre-existing order of return of the child by a foreign Court, if such an act can harm the child. In case an elaborate inquiry is being initiated then the Court is obliged to examine the merits as to where the paramount interest and welfare of the child lay and reckon the fact of a pre-existing order of the foreign Court for return of the child as only one of the circumstances. (Para 25-26)

Divya Khurana
Mahima Sikka
Research Fellows, CJA

LATEST CASES : FAMILY LAW

"An inherent aspect of Article 21 of the Constitution would be the freedom of choice in marriage."

P.Sathasivam, C.J. in Gang-Rape Ordered by Village Kangaroo Court in W.B., in re, (2014) 4 SCC 786

Rajesh Sharma & Ors. vs. State of U.P. Anr.: 2017 SCC OnLine SC 821 : Criminal Appeal No. 1265 of 2017: DoD 27.07.2017 – The Summit Court has put an end to automatic arrest in dowry related cases u/s 498A of IPC. This provision was being misused to harass innocent family members of husbands named in complaints. The Apex Court has **directed** that in every district one or more Family Welfare Committees be constituted by the District Legal Service Authorities preferably comprising of three members. The complaints received u/s 498A be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication. Report of such committee be given to the authority by whom the complaint was referred to it latest within one month from the date of the receipt of the complaint. Till the report of the committee is received, no arrest should normally be effected. The report may be then considered by the Investigating Officer or the Magistrate on its own merit.

Manmohan Attavar vs. Neelam Manmohan Attavar : 2017 (7) SCALE 710 – ***'Domestic Relationship' Necessary to Permit a Party to Occupy 'Shared Household*** – Held – that to issue an order under the Domestic Violence Act permitting a party to occupy a household, it is necessary that the two parties had lived in a domestic relationship in the household. The "domestic relationship", as defined under Section 2 (f) of the DV Act, refers to two persons who have lived together in a "shared household" as defined under Section 2 (f) of the DV Act, refers to two persons who have lived together in a "shared household" as defined under Section 2(s) of the DV Act. "In order for the respondent to succeed, it was necessary that the two parties had lived in a domestic relationship in the household. However, the parties have never lived together in the property in question".

Paramjit Kaur vs. Hardev Singh: MANU/PH/0641/2017: FAO 3933 of 2017 (O&M): DoD 02.06.2017 – **Grounds of cruelty** – Held – Willful neglect by the appellant to accompany with the respondent, refusing to attend household chores and showing disrespect to the respondent-husband and his family members amounts to cruelty towards him. Thus, the irresistible conclusion would be that the appellant-wife had treated the husband-respondent with cruelty and thus divorce be granted.

Sukhpreet Kaur vs. Sukhdeep Singh: MANU/PH/0508/2017: TA No. 280 of 2017 : DoD 30.05.2017 – **Question as to grounds to be considered for transfer of the cases** – Held – The cardinal principle for exercise of power under Section 24 of the Civil Procedure Code is that the ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever the Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereto and

circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Generally, it is the wife's convenience which must be looked at by the Courts, while deciding a transfer application.

Sandhya Saini vs. Manpreet Singh: MANU/PH/0507/2017: TA No. 22 of 2017: DoD 31.05.2017 – **Jurisdiction falling under two or more courts** – Held – The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as dominus litis has a right to choose the Court and the defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of a fair trial. The Parliament has, therefore, invested this Court with the discretion to transfer the case from one Court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude- for the ends of justice- have been advisedly used to leave the matter to the discretion of the apex court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is done; if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touchstone.

Raju Narayana Swamy vs. Beena M.D.: 2017 (3) RCR (Crl.) 113 (Kerala High Court): Law Finder Doc Id# 836986 – **S.12&26** – **Domestic Violence Act** – Held – (i) Family Court has no jurisdiction to entertain an application u/s 12 of DV Act for grant of reliefs provided under the said Act. Application is to be filed before Magistrate by aggrieved person. (ii) However, the Family Court will have jurisdiction under DV Act to grant relief to the victim of domestic violence only if there is an existing legal proceeding and application u/s 26 of the Act seeking relief u/s 18 to 22 is filed in that proceeding.

Surjeet Singh vs. Ranjana Devi: MANU/UC/0252/2017: FAO 59 of 2014: DoD 10.07.2017 – **Endeavour to save marriage, where ever it appears to court to save it** – Held – The marriage cord when not broken and where there is possibility of their coming together (couple wanting to save their matrimonial life) the Court feels that there is no necessity, at this stage, to dissolve the marriage.

Kakali Das Nee Sil vs. Nilangshu Mohan Das: MANU/WB/0472/2017: FA 208 of 2013 & COT 08 of 2016 : DoD 07.07.2017 – **Dispute on trivial matters not to be ground of cruelty** – Held – The standard of proof applicable in a civil case is that of preponderance of probabilities. The court held that it is indeed difficult to find a married couple who have not faced any conflict in their nuptial life and could be regarded as an ideal couple. The simple trivialities which have emerged from the evidence on record can truly be described as the reasonable wear and tear of the nuptial life of the parties.

LATEST CASES: CIVIL

"Disobedience of orders of a court strikes at the very root of the rule of law on which the judicial system rests. Judicial orders are bound to be obeyed at all costs. Howsoever grave the effect may be, is no answer for non-compliance of a judicial order."

J.S. Khehar, J. in Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470

Allokam Peddabbayya vs. Allahabad Bank: 2017 (7) SCALE 83 – **If there remained no subsisting mortgage, it is difficult to fathom what was to be redeemed** – That if the right to redeem stood extinguished by operation of law under proviso to Section 60 of the Transfer of Property Act, 1882, prior to the period of limitation, it cannot be contended that the right could nonetheless be enforced any time before the expiry of limitation of 30 years. In the instant case, a suit for redemption of mortgage was decreed in favour of mortgagors. The high court upheld the appellate court reversal of the findings of trial court, holding that consequent to the auction sale and issuance of sale certificate along with possession delivered, the original mortgagors were no more the owners of the property and there stood no debt to be redeemed on the date of filing of the suit. Dismissing the appeals, the court held that the plaintiffs lost the right to sue for redemption of the mortgaged property by virtue of the proviso to Section 60 of the Act, no sooner that the mortgaged property was put to auction sale in a suit for foreclosure and sale certificate was issued in favour of the defendant (auction purchaser)."There remained no property mortgaged to be redeemed. The right to redemption could not be claimed in the abstract," the Supreme Court held.

Chairman and Managing Directors FCI vs. Jagdish Balram Bahira: 2017 SCC OnLine SC 715 : Civil Appeal No 8928 of 2015: DoD 06.07.2017 – **Benefit secured by an individual such as an appointment to a post or admission to an educational institution liable to be cancelled** – In a landmark judgment Supreme Court of India has held that an appointment to a post or admission to an educational institution on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered void or non-est.

"For one thing a person who is disentitled to the benefit of a welfare measure obtains the benefit. This constitutes an egregious constitutional fraud. It is a fraud on the statutes which implement the provisions of the Constitution. It is a fraud on state policy". The Court said that the selection of ineligible persons is a manifestation of a systemic failure and has a deleterious effect on good governance. The Court has agreed with the Judgments in ***R. Vishwanatha Pillai*** and in ***Dattatray Case*** which laid down the principle of law that where a benefit is secured by an individual such as an appointment to a post or admission to an educational institution on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered void or non est.

Ramesh Chand vs. M/s. Tanmay Developers Pvt. Ltd.: MANU/SC/0520/2017: Law Finder Doc Id # 851933: 2017 (3) RCR (Civil) 125 – **Reference court under *Land Acquisition Act, 1894* has no power to refund the earnest money** – It has been held by the Apex Court that the Reference Court held that the dispute under Section 30 of the Act arising out of the apportionment of the compensation or any part thereof involved the vexed question of title or the civil rights of the parties arising out of such transaction could not be adjudicated by substituting the judicial forum into the civil court. The Reference Court could not decide question of refund of earnest money by applying the provisions of Chapter 2 of Part II of the Specific Relief Act, 1963. Such powers can be exercised by the Civil Courts.

The application under Section 18 is required to be filed within stipulated time whereas no limitation is prescribed under Section 30 of the Act. It is discretionary upon the court to refer a dispute under Section 30 of the Act. The same is confined to the apportionment of the compensation or as to a person to whom the same is payable. The scope of Section 30 of the Act is narrow as compared to Section 18 as laid down in ***G.H. Grant v. State of Bihar AIR 1966 SC 237*** and in ***Sharda Devi v. State of Bihar (2003) 3 SCC 128.***

Uma Shankar vs. R. Hanumaiah through his L.Rs.: MANU/SC/0658/2017 : 2017 (3) RCR (Civil) 352 – ***Re-conveyance under Land Acquisition Act, 1894 could not be exercised after vesting of land with the State Government*** – It has been held by the Supreme Court that it was total misadventure and rather contempt of the present Court was committed by the State Government while issuing notification of de-acquisition of land in favour of person in question. It was not permissible exercise in view of the dictum binding on all the parties. Even the conduct of the then Chief Minister was adversely commented upon by the present Court. There was no scope left to de-acquire the property under the provisions of Section 48 of the Act. Thus, it was wholly impermissible exercise and notification issued was totally void, illegal and conferred no right to person in question. Thus, no hearing was required to be given to person in question in the matter and there was no scope left to issue such illegal notification which was in violation of the law laid down by the present Court in the same case. The notification was rightly issued cancelling the previous notification as there could not be any de-acquisition of the land. The High Court ought to have mentioned the decision of the present Court of 2005 which was relied upon by the Single Judge.

Madanuri Sri Rama Chandra Murthy vs. Syed Jalal : MANU/SC/0485/2017 : 2017 (3) RCR (Civil) 64: Law Finder Doc Id # 849674 – **Wakf Tribunal constituted under Section 83 of the Waqf Act, 1995 has taken away the jurisdiction of the Civil Court** – The plaint can be rejected Under Order VII Rule 11, if conditions enumerated in the said provision are fulfilled. The power Under Order VII Rule 11, Code of Civil Procedure can be exercised by the Court at any stage of the suit. There were concurrent findings of fact that property in question was not notified in Official Gazette as a Wakf property, as alleged by the Plaintiff / Respondent. The High Court though agreed with the finding of fact arrived at by the Tribunal that the property was not notified as Wakf property in the Official Gazette, raising some doubt about the non-inclusion/inclusion of the property in the Survey Commissioner's Report, erroneously proceeded to set aside the order of the Tribunal.

The provisions of Sections 5 and 6 of Wakf Act 1995 and Act of 1954 are peri materia to each other. However, the change brought in by the Parliament under 1995 Act is that, in the case of dispute regarding Wakfs, the aggrieved party needs to approach the Wakf Tribunal constituted Under Section 83 of the Wakf Act 1995 and consequently the jurisdiction of the Civil Court is taken away. The aggrieved person should have raised the dispute Under Section 6 within a period of one year from the date of publication of the Gazette notification in the matter. The Board had not exercised jurisdiction Under Section 27 of 1954 Act and Section 40 of 1995 Act, though 50 years elapsed from the date of the gazette notification. Therefore, the averments in the plaint did not disclose the cause of action for filing the suit. Reversing the order of the High Court it was held that he suit was manifestly meritless and vexatious and also barred by law.

Dixit Kumar and Ors. vs. Om Prakash Goel: MANU/SC/0688/2017: Law Finder Doc Id # 858517: 2017 (3) RCR (Civil) 64 – **50% permanent physical disability can be counted as 100% functional disability** – It was observed by the Apex Court that the finding of the Tribunal that the claimant had suffered 100% functional disability resulting from 50% permanent physical disability was based on evidence on record. In absence of any dispute that the claimant at the time of the accident did have a business for which he used to file income tax returns as well, the income as adopted by the Tribunal was on the lower side. However, the quantum of compensation as awarded by the Tribunal, on balancing all relevant factors, was just and reasonable. The Tribunal not only had appreciated the materials on record in the correct perspectives, it had been realistic in its approach and was informed as well of the practical realities of life to be encountered by the claimant. Its decision making process was informed with the avowed prescription of just compensation as mandated by law. The decision of the High Court was interfered and the compensation awarded by the Tribunal was restored.

Tinku Verma vs. M/s Indian Overseas Bank: CWP No. 12029 of 2017: DoD 30.05.2017 DB (P&H) – **Attornment of Tenant of Mortgagee particularly in SARFAESI Act** – The petitioner was alleged to be inducted as a tenant in a portion of the property vide rent deed dated 1.7.2011 under respondent No.3 i.e. the owner/landlord of the property. There exists a relationship of the landlord and the tenant between the petitioner and respondent No.3. The petitioner asserts that Respondent No.3 in connivance with respondent No. 1 and 2 want to evict him from the tenanted premises and is

trying to eject him forcibly by getting issued notice by the Bank under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "the SARFAESI Act"). Some persons alleging themselves from respondent No.1 Bank came to the tenanted premises and asked the petitioner to vacate the premises on the ground that the property was mortgaged by respondent No.3 with the respondent Bank. The petitioner requested respondent Nos. 1 and 2 that he is a tenant in the suit property since 1.7.2011 so they should not ask him to vacate the suit property since his rights are protected under the East Punjab Urban Rent Restriction Act, 1949. According to the petitioner, the property was mortgaged on 1.4.2012. The petitioner being a tenant filed a civil suit. The plaint was rejected by the civil court under Order 7 Rule 11 CPC. Thereafter, the petitioner filed Securitization Application before the DRT which was also dismissed. Still not satisfied, the petitioner filed an appeal before the Debts Recovery Appellate Tribunal which was also dismissed on the ground of being time barred. The petitioner-tenant filed the Civil Writ Petition and the Division Bench observed that the alleged tenant was required to establish by leading unimpeachable evidence that the tenancy in his favour was created prior to the mortgage of the property and is genuine which he had failed to do and Civil Writ Petition was dismissed.

B.S. Jattana vs. Group Captain Gurpreet Singh Sandhu: Civil Revision No. 3664 of 2017 : DoD 19.05.2017 (P&H) – **Landlord is the Best Judge of his Requirements** – The premises were required for his wife and for his daughter who had completed her BDS and wanted to start her dental practice and wanted to settle down in Chandigarh. The requirement was also for younger daughter, apart from his own need after his retirement. Keeping in view the settled principles, that the landlord is the best judge of his requirements, the present case is a classic case where a serviceman, who is serving the Armed Forces and requires the premises at the fag end of his career and wants to settle his children is being deprived of the said necessity and is forced to the litigate for a period of almost 7 years and the presumption of bonafide need as per the Apex Court is presumed to be correct in favour of the landlord. Also, there is no pleading in the written statement nor any fact has come forth in the form of cross-examination on the record to show that the landlord had another property in the urban area and, therefore, the arguments that the landlord owned sufficient accommodation, apart from the tenanted premises, and the said plea of tenant is without any basis. The eviction order passed by both the lower courts was upheld in Revision filed in High Court.

Kamaljit vs. Gurdial Singh (dead) through L.Rs.: MANU/PH/0637/2017 – The Court, while relying upon the definition of Section 2(a) of building, held that demised premises is an integrated building whereby, the tenants were inducted and, therefore, under Section 13-B of the Act, the landlord has a right to seek ejectment from one building which is in possession of the tenants. The Apex Court, in a string of judgments, has held that the controversy has to be decided with reference to the pleadings of the parties on the date of institution and on account of the litigation lingering on, subsequent developments are not necessary and relevant for the adjudication of the case.

Pirthi Singh vs. Chander Bhan: MANU/PH/0638/2017 – The plaint cannot be rejected on the basis of allegations made by the defendants in the written statements or the application for rejection of plaint. In view of the ratio of law laid down by the Hon'ble Apex Court in various cases that at the stage of deciding the application under Order 7 Rule 11 CPC the Court can only take into consideration the averments mentioned in the plaint as a whole. The plaint cannot be rejected on the basis of allegations made by the defendants in the written statements or the application for rejection of plaint.

Sham Lal (since deceased) through his LR vs. Vinod Kapoor : MANU/PH/0644/2017 – In the present case the additions and alterations made were stated to have been done without the consent of the landlord and other co-owners and as per the report, the construction of the office over the shop was much later in time than the other construction thus diminished the value and utility of the building, stand duly proved by the landlords. Held that alterations have been done which are material in nature and have changed the complete complexion of the building in question, to the detriment of the landlords and the Appellate Authority was well justified. The Rent Controller was not justified in holding that the landlords were also residing in the same vicinity and therefore, there was, as such, a consent accordingly, the revision petition was dismissed.

LATEST CASES: CRIMINAL

"While the murder is the tragedy, the discovery of the murderer beyond doubt is the judicial function."

Harshadsingh Pahelvansingh Thakore vs. The State of Gujarat : (1976) 4 SCC 640

Rajesh vs. State of Madhya Pradesh:2017(3) RCR (Crl.) 322 (SC): MANU/SC/1274/2016 - S.376 (2) (f) and 377 IPC – Accused took a girl child of 7 years in custody from a relative as accused was issueless. Medical evidence and DNA report establishing commission of rape and unnatural offences by accused. Accused convicted and sentenced to life imprisonment.

Unnikrishnan vs. State of Kerala: 2017 (3) RCR (Crl.) 269 (SC): Law Finder Doc Id#845817 – **S.320 Cr.P.C., 394 IPC** – Even if an offence is not compoundable within the scope of section 320 Cr.P.C., the court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction**.**

Baby vs. Union of India & others: 2017 (3) RCR (Crl.) 117 (SC): Law Finder Doc Id#826796 – S.112 Evidence Act – The DNA testing in a matter relating to paternity of a child should not be directed by the court as a matter of course in a routine manner whenever such a request is made. The court has to consider the diverse aspects including the presumption u/s 112 of the Act. Further Held – The DNA test to determine the paternity of a child can be ordered only in deserving cases where it is eminently required for the just conclusion of the case.

Madanayya vs. State of Maharashtra: 2017 (3) RCR (Crl.) 167 (SC): S.304 Part-II and 302 IPC – Accused inflicted number of injuries on the body of deceased. None of the injuries by itself was sufficient for causing death. The cumulative effect of the injuries is that the deceased died. Held – It cannot be held that accused had intention to kill. Conviction of the accused converted from one under S.302 to 304 Part II.

Satish Nirankari vs. State of Rajasthan : MANU/SC/0723/2017 : 2017 (7) SCALE 37 : S. 302 IPC – Accused and deceased madly in love and wanted to marry, but their parents opposed. The deceased was given merciless beatings by father. Both decided to commit suicide. Both consumed copper sulphate, but before that, they married before photo of God. Deceased was wearing bangles, bindi, and had also applied Sindoor. Garlands were also there. Accused however survived. The deceased thereafter hanged herself and left suicide note. Held – Where murder case based on circumstantial evidence, circumstantial evidence of the following character needs to be fully established:

(i) Circumstances should be fully proved
(ii) Circumstances should be conclusive in nature
(iii) All the facts established should be consistent only with the hypothesis of guilt.
(iv) The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused.
(v) What is required is not the quantitative, but qualitative, reliable and probable circumstances to complete the chain connecting the accused with the crime.
(vi) In the case of circumstantial evidence, the influence of guilt can be justified only when all the incriminating facts and circumstances are found to be not compatible with the innocence of the accused or the guilt of any other person.

Sonu @ Amar vs. State of Haryana: 2017 SCC OnLine SC 765: Criminal Appeal No. 1418 of 2013: DoD 18.07.2017 (SC) – **Electronic Evidence**–Held–While considering the question whether electronic records without Section 65B(4), Indian Evidence Act certificate admitted by the trial court without objection from the defence can be challenged at appellate stage, observed as follows: "The interpretation of Section 65B (4) by this Court by a judgment dated 04.08.2005 in Navjot Sandhu held the field till it was overruled on 18.09.2014 in Anvar's case. All the criminal courts in this country are bound to follow the law as interpreted by this Court. Because of the interpretation of Section 65B in Navjot Sandhu, there was no necessity of a certificate for proving electronic records. A large number of trials have been held during the period between

04.08.2005 and 18.09.2014. Electronic records without a certificate might have been adduced in evidence. There is no doubt that the judgment of this Court in Anvar's case has to be retrospective in operation unless the judicial tool of 'prospective overruling' is applied. However, retrospective application of the judgment is not in the interests of administration of justice as it would necessitate the reopening of a large number of criminal cases. Criminal cases decided on the basis of electronic records adduced in evidence without certification have to be revisited as and when objections are taken by the accused at the appellate stage. Attempts will be made to reopen cases which have become final."

P.N. Mohanan Nair vs. State of Kerala: MANU/SC/0803/2017: 2017 (7) SCALE 639 : Discretionary Jurisdiction must be Exercised on Fair and Just Principles In the Facts of a Case – Held – In the instant case, the appellant, P.N. Mohanan Nair, 68, who was a peon in the office of Sub Registrar, Vazhoor, Kerala, was convicted and sentenced under provisions of the Prevention of Corruption Act and Indian Penal Code for three different cases which were tried jointly and common evidence was recorded. The Apex Court held that the exercise of discretion under Section 427(1) Cr.P.C., in a given case, mandates that the substantive sentences imposed upon an accused in three separate prosecutions, are to run concurrently. This exempts the default sentence, if the fine by way of compensation as imposed has not been paid by the accused. Section 427(1) Cr.P.C. stipulates that where a person undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, it shall commence at the expiration of the imprisonment previously sentenced, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence.

Padmini Mahendrabhai Gadda vs. State of Gujarat: 2017 (8) SCALE 20 – **Split Judgment on the Guilt of Wife in Screening her Paramour in the Murder of her Husband** – Held – In the instant case, the appellant wife, who is now 60 years old, married the deceased husband, who was running two health clubs in Ahmedabad, in 1981 and two daughters were born from the wedlock. She developed an affair with her husband's employee. When her paramour came to her home, and killed her husband, she concealed the information of the crime from her brother, who is the complainant. Her brother, who came to know of the crime in her brief absence when she left the home to pick her daughter, and never returned, complained to the police. Meanwhile, she absconded with her paramour, and after a few days, the police apprehended both. The trial court found her paramour guilty of murder, and awarded him life sentence, but convicted her only under Section 201 IPC, and sentenced her to two years' imprisonment. The Gujarat High Court, however, enhanced her sentence suo motu to seven years' imprisonment, the maximum punishment prescribed under Section 201. She appealed against the High Court's enhancement of sentence and the trial court's conviction, in the Supreme Court. Although the bench has directed the Registry to place the matter before the Chief Justice of India to constitute an appropriate bench for disposal of the matter, since the remaining sentence of the appellant has been wiped out, due to Justice Pant's decision to reduce her sentence to two years which she has already completed, it is likely that she will be freed. However, her conviction would remain till a three Judge bench hears and decides her appeal afresh. A split judgment on the guilt of a wife in screening her paramour in the murder of her husband.

Jagat Ram vs. Central Bureau of Investigation : 2017 (3) RCR (Crl.) 244 (P&H) – S.7, 13 (1) (d), (2) PC Act – In the case of prosecution of Director of Postal Services for accepting bribe money, demand and acceptance of bribe money proved, but legal sanction to prosecute public servant not proved. Method to prove legal sanction explained – (1) In the instant case sanctioning authority was President of India. It was stated that entire papers were put to President who accorded the sanction. Prosecution did not examine the officer to whom powers were delegated and who had applied his mind before granting sanction under his signatures. Held – the prosecution has miserably failed to prove any legal sanction. Conviction set aside.

Subhash vs. State of Haryana: MANU/PH/0716/2017: RR No. 1135 of 2006 (O&M) : DoD 10.07.2017 – S.279 and 304-A IPC – Identification Parade – As per the FIR accused was stated to have fled away from the spot and was never identified by way of conducting any test identification report and that it was only in the Court at the time of recording of statement of the complainant that the accused was allegedly identified for the first time. Held – The accused was not identified at the spot and the prosecution has made desperate attempts to establish his identity in the Court by way of making improvements. In the present case there is no other circumstance to give credibility to the statement of Kishan Kumar (PW-4) regarding identity of the accused. Rather the aforesaid improvements regarding the accused having gone to the hospital shows that the prosecution had no clue about the identity of the accused. Further Held – wherein it has been found that the prosecution has failed to establish the identity of the accused, it is certainly not safe to record conviction solely on the statement of Kishan Kumar (PW-4) who identified the accused for the first time in the Court. Consequently, in the absence of identification of the accused, the accused cannot be held to have committed the offences in question.

Kuldip Singh and others vs. State of Punjab: CRR No. 2456 of 2006: DoD 06.07.2017 (P&H) : S.354 IPC – Outraging the modesty of a woman – The case of the prosecution was mainly assailed on the ground that the same is based on the solitary statement of the prosecutrix and that the same is not fully corroborated from the statement of the alleged witness PW-3. Held – It is well settled that in such like cases if the testimony of the victim inspires confidence the conviction can well be recorded on the solitary statement of the victim. Further Held – In the present case, there was no motive for the complainant to have falsely implicated the accused while staking her reputation. In these circumstances, I do not find any reason to disbelieve the prosecutrix and consequently her statement itself is sufficient to bring home the guilt of the accused.

Piara Ram vs. State of Punjab (P&H): Crl. Revision No. 2116 of 2016 (O&M): S.319 Cr.P.C.–Summoning of additional accused – Held – For the purpose of forming an opinion to summon a person as an additional accused, the Court must be satisfied that there exists an extra ordinary case for exercise of power. A perusal of the allegations in the FIR itself shows that there is nothing specific regarding demand of dowry or harassment in relation thereto by the present petitioners. There are general allegations in the FIR that the accused, including the present petitioners were not satisfied with the dowry given in the marriage and were harassing the deceased and he suspected that his daughter committed suicide due to harassment meted out on her by her in-laws and the present petitioners. It is necessary to mention here that no poisonous substance was detected and the cause of death was opined as asphyxia as a result of choking. There is no specific instance regarding harassment given by the present petitioners. Even the demand is not specific in the FIR. Leaving that aside, apart from general allegation, no overt act has been attributed to petitioner. Further Held – It is a well settled proposition of law that an order u/s 319 Cr.P.C. should not be passed only because the first informant wishes to implicate some persons other than the accused. The Courts are required to apply the stringent tests one of the tests is that the Court should come to the reasonable conclusion on the basis of evidence before it that the same is likely to lead to conviction. No finding in this regard has been returned by the Trial Court while summoning the petitioners. Even the trial Court overlooked the fact that there is a general tendency to rope in all the family members of the husband in such like cases and mere ipse dixit would not serve the purpose. On the basis of general allegations, the trial Court ought not to have exercised the powers u/s 319 Cr.P.C., which have to be exercised sparingly and only if compelling reasons exists for taking cognizance against the person other than the accused. In view of the above, impugned order summoning the petitioners as additional accused is set aside.

NOTIFICATION

GOVERNMENT OF PUNJAB DEPARTMENT OF LEGAL AND LEGISLATIVE AFFAIRS, PUNJAB NOTIFICATION, The 23rd June, 2017 No.9-Leg./2017 – The following Act of the Legislature of the State of Punjab received the assent of the Governor of Punjab on the 22nd day of June, 2017, is hereby published for general information: **THE PUNJAB GOODS AND SERVICES TAX ACT, 2017.**

Punjab Goods and Services Rules, 2017 under the Act were framed and deemed to have come into force with effect from 23rd June, 2017.

1. (1) This Act may be called the Punjab Goods and Services Tax Act, 2017.

(2) It extends to the whole of the State of Punjab.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint:

Jurisdiction of Criminal Court: The jurisdiction has been conferred upon the Criminal court for trying the offences incorporated in Section-132 and 133. The relevant provisions dealing with this are as follows:

Section-134. No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

Section-135. In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation – For the purposes of this section – (i) the expression "culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact; (ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Section-136. A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,–

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or (b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

Jurisdiction of civil court : Section-162. Save as provided in sections117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.

EVENTS OF THE MONTH

1. **Hon'ble Mr. Justice Dipak Misra, Judge, Supreme Court of India and Chairman, National Legal Services Authority** visited Chandigarh on 8-9 July, 2017. On July 09, the inauguration of the following took place:
i. New Building of Punjab Legal Services Authority, Sector 68, Mohali and Legal Assistance Establishment Centre (Kanooni Saarthi) within the same building; (ii) Legal Assistance Establishment Centre (Nayaya Sahyog Kendra) at HALSA Building, Sector 14, Panchkula; and (iii) Legal Assistance Establishment Centre (Nayaya Sahyog Kendra) at UT Legal Services Authority, Sector 9, Chandigarh. The main function regarding the Legal Assistance Establishment Centers took place in the Auditorium of CJA. The same was addressed by HMJ Surya Kant, HMJ A.K. Mittal, HMJ S.S. Saron, HMJ Shiavax Jal Vazifdar, Chief Justice, Punjab and Haryana High Court and Hon'ble Mr. Justice Dipak Misra, Judge, Supreme Court of India. There was healthy discussion wherein number of questions were fielded by the different stakeholders.
2. **Refresher-cum-Orientation Course** for Civil Judges of Haryana, Punjab was held on July 16, 2017. This one day programme covered different aspects regarding Execution and Mediation: Attachment and Sale of Property in Executions, Execution–Speedy and Expeditious Disposal, Mode of Execution of Various Decrees and Mediation–Sensitization of Referral Judges. These sessions were taken by the ADJs-cum-Faculty Members of CJA–Ms. Mandeep Pannu, Ms. Ranjana Aggarwal, Tejinderbir Singh, Dr.Gopal Arora. Besides this a visit to Paperless Court–A Guided Tour and Mock Demonstration of Working of Paperless Court was organized for the Civil Judges. This course was attended by 56 Civil Judges.

3. **Refresher-cum-Orientation Course** for Civil Judges from the States of Punjab and Haryana was held on July 22, 2017. This one day programme covered: Contours of Cyber Laws in the Indian Context, Mode of Execution of Various Decrees, Sentencing Law and Procedural Aspects-I and Sentencing–Law and Procedural Aspects–II. The different sessions were taken by the Faculty Members: Ms. Mandeep Pannu, Mr. H.S. Bhangoo and Prof. Shashi K. Sharma. Besides this a visit to Paperless Court – A Guided Tour and Mock Demonstration of Working of Paperless Court was organized for the Civil Judges. This course was attended by 63 Civil Judges.

4. The **third Workshop on Sensitization on Family Court matters** was organized at ADR Centre, Near Judicial Court Complex, Rohtak on July 22, 2017 covering different Districts of Haryana. The co-ordinator and co-coordinator were Ms. Ranjana Aggarwal and Mr. Tejinderbir Singh, ADJs-cum-Faculty Member, CJA. Different DJs of Family Courts as also District and Sessions Judges made presentations in different sessions specifically based upon their experiences covering different sessions of the Workshop. Prof. Virendra Kumar not only made the presentation in the first session but was also actively associated as panelist in all the different sessions of the Workshop. This Workshop became possible in view of the active support provided by Sh. Sant Parkash, DSJ, Rohtak. 57 District Judges and other Judges holding charge of Family Courts or exercising Jurisdiction regarding Family Court Matters participated in the Workshop.

5. **Refresher-cum-Orientation Course** for ADJs of Haryana and UT Chandigarh was held on 29.07.2017 through Video Conferencing from 2:00-4:00 p.m. Mr. Pradeep Mehta, Faculty Member, CJA took this Video Conferencing Session on "Sanction to Prosecute Public Servants".

FORTHCOMING EVENTS

1. Video Conferencing on the Basics of GST for Judicial Officers of Punjab, Haryana and UT Chandigarh is scheduled for August 05, 2017 between 3:00 p.m.-4:30 p.m.

2. Four Days Training Programme from August 08 to 11, 2017 for HCS and IAS Officers (Haryana Cadre) performing functions as Executive Magistrates in relation to different legislations.

3. Academic Programme for 33 Sri Lankan Judges is scheduled from August 19 to 24, 2017. This programme would be inaugurated by a Judge of the Supreme Court of Sri Lanka. This would be the third programme for Sri Lankan Judges. The first two programmes were held in December 2016 and April 2017 respectively.

4. One day Refresher Course for Civil Judges of Punjab and Haryana is scheduled on August 19, 2017.

5. Four Days Programme for Public Prosecutors has been scheduled from August 28 to 31, 2017.