



# CJA e-NEWSLETTER

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## FROM THE DESK OF CHIEF EDITOR

Humility is the hallmark of a judge. Humility is a virtue. It is in-built. It is the mirror of his strength. Never weakness. Humility is the most valuable quality that makes a person great. This quality is most inspiring. Influential too. An Irish writer Lewis has said : "Humility is not thinking less of yourself, it is thinking of yourself less". It is very rare for a great judge to be arrogant. Pride must die. Ego gives you a swollen head. Ego has no link with Truth. A Judge must find the Truth. Ego and Humility are the branches of the same tree. The difference is : Humility always wants to say sorry. Ego wants to hear it. In order to be good and great, be humble.

I wish to share some actual happenings in different Courts. If a judge accepts the mistake that was committed, it shows his greatness. Chief Justice M. Hidayatullah, in his early judicial career as a puisne judge was on the bench with Chief Justice Frederic Grille. A case was called. The counsel came a bit late, almost immediately. The Chief Justice dictated the order of dismissal for non-prosecution. The counsel apologized for being late. He urged that he be heard. The Chief Justice stuck to his order. Hidayatullah refused to sign the order. Grille left the court in a huff. Hidayatullah went to his chamber. Grille reflected back and realized his mistake. He came to Hidayatullah's chamber. They both went back to the court. Grille recalled his order. Adjourned the matter. Grille did not sit on false prestige. He realized his mistake. Accepted the same. This is humility. Another instance. Chief Justice M.N. Venkatachaliah is a living legend. A counsel appearing before him happened to raise his voice. He was rude also. The Chief Justice responded by saying something which was not complimentary. Rather avoidable. He retracted immediately and said, "I am afraid we both have lost our temper. Justice would be better served if this case is adjourned and heard next week." This was spontaneous exhibition of his humility.

One more example. The first Chief Justice of India, Kania died in office in November 1951. There was a proposal to appoint B.K. Mukherjea as the next Chief Justice superseding the claims of Patanjali Sastri and Mehar Chand Mahajan. The reason for this proposal was that Mukherjea would have a longer tenure. Both Sastri and Mahajan were not opposed to this idea. The reason being that a judge of the caliber of Mukherjea ought to be the Chief Justice of India. Mukherjea declined. He made it clear that he would resign if he were appointed as Chief Justice of India superseding the two senior judges. This example shows the humility and the greatness of the three together. Still one more example. Justice Vivian Bose while being the Chief Justice of Nagpur High Court was driving his car to go to the District Headquarters for inspection. While being on the highway, he noticed a Police jeep parked. He stopped his car. He enquired, if any help was needed. The Police Inspector was standing at some distance. He shouted, do if you know anything to set right the car. The Chief tried. He set right the problem. As the Chief started his car, the inspector asked him as to where he was going. The inspector opened the rear door and sat in the back seat. The Chief quietly drove. Reached the town. Dropped the inspector at the police station. Thereafter, the Chief proceeded to the Inspection Bungalow where he was to go. After a while, the Police Inspector reached the Inspection Bungalow. He, in fact, was to be on duty. Seeing the Chief Justice, he was surprised. Shocked also. The Inspector fainted. The Chief revived him. All others were watching. They did not know, what was happening. It was only when the Chief was leaving, officials were told as to what had happened. Strict instructions were given, not to take any action against the inspector. This was the measure of humility of Chief Justice Vivian Bose.

If you wish to be a good and great judge, be always humble.

Balram K. Gupta

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## MALICIOUS DESERTION

Malicious desertion is defined as the willful absenting of himself or herself, by one spouse, from the society of the other, against the desire of the latter, with the deliberate intention of abandoning conjugal (of marriage) rights. It is necessary that the deserter must actually and willfully bring to an end the existing state of cohabitation with the deliberate purpose of abandoning conjugal (of marriage) society (i. e. society between husband and the wife).

Malicious desertion can be divided into two categories, simple desertion and constructive desertion. In the former, the deserting spouse (either wife or husband) leaves the matrimonial home. In the latter, the innocent spouse (the one who is not at fault) is obliged or compelled to leave the matrimonial house as a direct result of the expulsive acts of the other. In both instances of malicious desertion, two important ingredients should be present, namely, the fact of desertion and the intention of putting an end to the marriage. These two ingredients should be established at the trial in order to grant a decree of divorce. Husband 'A' took his wife 'B' to her mother's house and left her there, accusing her of quarrelling with him. Subsequently he wrote a letter to the mother-in-law stating, "I do not want your adulterous daughter any longer."

In this instance 'A' the husband had shown a deliberate intention to put an end to the marriage and the fact of desertion too is well established. If 'B' the wife, sues her husband 'A', on the grounds of malicious desertion she can succeed. However mere separation of spouses is not enough, unless there is clear evidence of the fact of separation and the intention to put an end to the marriage.

In the case of **Rajeswaranee vs. Sunthararasa**<sup>1</sup> the husband and wife lived apart from one another, but the reason for this separation was the inability to find suitable accommodation, that is, a place acceptable for both parties. Although they were anxious to resume their conjugal life, each was unwilling to live with the other's relatives and consequently they had lived apart. The husband filed action in the District Court against his wife to get a decree of divorce on the ground of constructive malicious desertion on the part of his wife. The wife prayed for the dismissal of the husband's action. The District Judge after trial gave

judgment in favour of the plaintiff husband. The defendant wife appealed to the Supreme Court. It was held by the Supreme Court that malicious desertion on the part of the wife was not proved and the court set aside the judgment of the District Judge and dismissed the husband's case.

In the case of **Wickremasuriya vs. Samarasuriya**<sup>2</sup>, the wife sued the husband to get a divorce on the ground of constructive malicious desertion on the allegation of acts of cruelty by her husband which compelled her to leave the matrimonial home and to reside with her parents. The District Judge who heard the case gave judgment in favour of the wife, the plaintiff and granted a divorce. The husband appealed against this judgment to the Supreme Court. The said court dismissed his appeal. Then the defendant appealed to the Privy Council. It was held that continuous harassment over dowry and ill-treatment and neglect of the wife during her pregnancy and shortly after the child was born were sufficient grounds to hold that his wife was entitled to dissolution of marriage. The appeal of the defendant husband was dismissed.

Desertion is regarded as a continuing offence and as such the courts require the proof of the fact of the permanent state of the alleged desertion. Then only will the court grant a divorce on the ground of malicious desertion. The law permits parties to reconcile and to resume the marriage relationship. If reconciliation is not possible, the last resort left to the innocent spouse is to file an action to get dissolution of the marriage.

In the case of **Muthumarasamy vs. Parameshwary**<sup>3</sup> it was observed by Justice Sharvananda (later Chief Justice) that termination of desertion can take place by supervening intention to reconcile, along with the bona fide (honest) approach to the deserted spouse (wife or husband as the case may be) with a view to resumption of life together. There can be an instance where the wife due to acts of cruelty on the part of the husband, leaves the matrimonial home and voluntarily returns after sometime to the husband, and wants to resume the marital life, but the husband refuses to reconcile with her. She has no alternative, but to leave him. In such circumstances it is the

<sup>1</sup> 64 New Law Reports at page 366

<sup>2</sup> 68 New Law Reports at page 255

<sup>3</sup> 78 New Law Reports Page 488

husband who is guilty of malicious desertion and not the wife. There can be disagreement between the spouses and this may lead to verbal abuse by the husband of the wife. Unless in the case of abuse occasional heated arguments and even abuse between the two spouses could not justify one of them leaving the matrimonial home and thereafter filing an action for divorce.

Under **English Law** if a spouse who is charged with constructive malicious desertion is presumed to have intended the natural and probable consequences of his or her conduct or speech which made the other spouse leave the matrimonial home, even if he or she did not, in fact, intend to end the marriage. The natural and probable consequences of the impugned conduct or speech are to be judged on the standard of a reasonable spouse who is in the marital relationship which existed in that particular case and in the light of the facts, circumstances and relationships of that particular case.

The aforesaid approach formulated by Denning LJ in *Hopes vs. Hopes*<sup>4</sup>, which has been adopted in several subsequent decisions of the English Courts and constitutes strongly persuasive authority - ie: that, where the two spouses live under the same roof, malicious desertion can take place only where the two spouses have, in effect, ceased to share one household and have, in effect, set up two separate households.

A perusal of the evidence shows that, although it is apparent that the spouses did not talk to each other, the plaintiff stated, in her evidence-in-chief, that (i) she and the defendant live in the same house but occupy separate bed rooms, which suggests that the rest of the living areas of the house, the kitchen and other areas are used by both spouses and their children and that they all use the same entrance door; (ii) the defendant brings about 10 kilos of rice for the use of the house, each month; and (iii) the defendant pays half of the electricity bill. Further, in cross examination, the plaintiff admitted that: (i) she cooked the meals and the defendant had those meals; (ii) the defendant paid for the liquid petroleum gas used in the matrimonial home; and (iii) the defendant met some of the expenses of the children. Thereafter, when the defendant gave evidence, he maintained that he supplied the major part of the needs of the household by way of food and supplies.

The learned trial judge was of the view that, the totality of the aforesaid evidence established that, a degree of a marital relationship had continued between the plaintiff and the defendant while they lived under the same roof. It appears that, although the evidence does suggest that, the plaintiff and the defendant lived more or less "separate lives" under one roof, there was still a common home and an extent of cooperation between them in maintaining the marital establishment in which the plaintiff and the defendant lived with their children. The evidence does not suggest that there were separate households. In these circumstances, it is evident that a degree of a marital relationship had continued between the plaintiff and the defendant.

In **India**, in addition to the provisions of section 13 of the Hindu Marriage Act, 1955 and section 27 of the Special Marriage Act, 1954 which state that a non-consensual divorce may be obtained by an aggrieved spouse who establishes adultery, cruelty, desertion for not less than two years and some other limited and specific grounds, section 13B of the Hindu Marriage Act and section 28 of the Special Marriage Act provide for spouses to obtain a 'no-fault' consensual divorce by mutual consent if they have lived separately for one year or more and satisfy the Court that the two spouses "have not been able to live together and that they have mutually agreed that the marriage should be dissolved.." Although the statute law of India does not list 'irretrievable breakdown of the marriage' as a ground for granting a divorce, the Supreme Court of India has, on occasion, taken the view that the continuance of a marriage which has irretrievably broken down is tantamount to 'cruelty', which is a statutorily recognized ground for divorce in India. In *Jordan Diengdeh vs. S.S. Chopra*<sup>5</sup>, the Supreme Court of India stated, "It appears to be necessary to introduce irretrievable break down of marriage and mutual consent as grounds of divorce in all cases. The case before us is an illustration of a case where the parties are bound together by a marital tie which is better untied. There is no point or purpose to be served by the continuance of a marriage which has so completely and signally broken down."

Ms. Mahima Sikka  
Research Fellow

<sup>4</sup> 1948 2 AER 920

<sup>5</sup> AIR 1985 SC 935 at p.940-941

## LATEST CASES : CIVIL

“The interest of Consumer has to be kept in the fore front and the prime consideration that an essential commodity ought to be made available to the common man at a fair price must rank in priority over every other consideration.”

**United India Insurance Co. Ltd. vs. Indiro Devi : 2018 SCC OnLine 655 (SC) : Salary Certificate not the only basis for assessing income of the deceased for calculating compensation under Motor Accidents Claim – Held** – that salary certificate need not be the only basis to assess income of the deceased for arriving at a just and fair compensation to be paid to the claimants for the loss of life. The income from other sources is required to be taken into account along with the salary.

**Kalim Khan & Others vs. Fimidabee & Others : 2018 SCC OnLine SC 658 : 2018 (8) SCALE 484: Section 165 of Motor Vehicles Act uses the word 'use of motor vehicles' – Held** - In this case the deceased while returning towards his house after purchasing certain articles from the grocery shop sustained grievous injuries with a heavy stone due to blasting operation carried out for digging of well in the field of respondent No. 1 and the tractor involved was belonging to the 1st respondent and insured with the respondent No. 4 was in use for digging up well and resulted death of claimant. The tribunal, after appreciating the materials brought on record held that digging of the well with use of blasting machine was carried on in the field of the owner and further, it is held that the vehicle was used for commercial purpose and, there was a fundamental breach of the insurance policy. The Supreme Court has held that even a stationary vehicle can cause an accident, giving rise to claim under Section 165 of the Motor Vehicles Act. The issue before the Court was whether the accident caused by blasting operations powered by the battery of an immobile tractor could be termed as “arising out of use of vehicle” within the phraseology of Section 165 of MV Act. **It is held** that negligence in driving is regarded as a fact that the vehicle is in motion. But the definition of 'use' having been expanded in its broader canvas, it has to clothe in its sweep other categories of negligence. To elaborate, when a vehicle remains static, it cannot constitute that the driver is negligent because of his rash and negligent driving. On the contrary, it has to embody some other different types of

**Y.V. Chandrachud, J. in Prag Ice & Oil Mills vs. Union of India, (1978) 3 SCC 459**

negligence and that would depend upon the facts and circumstances of each case. There was a secondary issue whether the use of the tractor for such operations amounted to commercial operations leading to the fundamental breach of policy as the policy had forbidden commercial use of vehicle.

**Manoj Kumar vs. State of Haryana : 2018 (2) RCR (Civil) 815 (SC) : Previous Awards and Judgments are not binding – Held** – It has been held by the apex court that the awards and judgments in cases of others not being inter-parties are not binding as precedents. **It has been** also observed that the Supreme Court has deprecated the practice of the courts in following blindly under the misconception of equality and fair treatment and also held that the similarity of the land covered by previous judgment/award is required to be proved like any other comparative exemplar. Further, it is held that the earlier judgment or award can only be relied upon if it is a part of evidence and if it is not a part of evidence then an application under order 41 Rule 27 CPC is to be filed. If the application is allowed then the opposite party has to be given an opportunity to lead evidence in rebuttal.

**Shivaji Yallappa Patil vs. Sri Ranajeet Appasaheb Patil & Others : 2018 (2) RCR (Civil) 801 (SC): Remedy of specific performance of contract is discretionary – Held** – In this case the original suit for permanent injunction restraining the third party was filed by the plaintiff. The suit was decreed and it is an indicative of the fact that the plaintiffs were in possession. Since, the part performance of an agreement to sell has been established and by referring the provision of Section 53A of the Transfer of Property Act, 1882, the Supreme Court has **held** that in the given facts and circumstances of the case the plaintiffs are entitled for decree of specific performance subject to the payment of sale consideration as per the present prevailing market value.

**Prasadi Devi vs. Nagar Palika Sawai Madhopur : 2018 (2) RCR (Civil) 838 : Power of Attorney – Held** – The Trial Court had

rejected the request of old illiterate lady in her early 80s for producing her power of attorney in support of her case. The order was upheld by the High Court. The Supreme Court has allowed the request of the old lady to get herself examined in support of her case or to get herself examined on commission at her residence at her expenses. It is further directed that the court would appoint a lady lawyer as local commissioner for recording her statement.

**Ameet Lalchand Shah & Others vs. Rishabh Enterprises & Another : 2018 (2) RCR (Civil) 879 (SC) : Effect of non-mentioning of arbitration clause in one of the connected agreement – Held** – In this case, the question came before the apex court whether an agreement which is not containing the arbitration clause, is connected with the main agreement so that the parties can be referred to the arbitration. In this case, there were different agreements involving the several parties pertaining to the single commercial project. Out of these agreements the agreement in dispute was not containing the arbitration clause. It has been observed by the apex court that since the agreement is connected with the main agreement and all the agreements are interconnected, therefore, there is a presumption that the dispute between the parties is liable to be referred to the arbitrator. The apex court has observed that it is a choice of the parties to select an arbitrator and in case there is no consensus between the parties then they can approach to the appropriate high court for the appointment of an arbitrator.

**Canara Bank vs. N.G. Subbaraya Setty & Anr.: 2018 (2) RCR (Civil) 962 (SC) : Exceptions to the rule of res judicata are explained – Held** – The Supreme Court while dealing with the issue of res judicata and retreating its earlier decisions, **has observed** that the directly and substantially issues involved in a former suit/proceeding between the same parties are res judicata. It would also include the issue of fact, mixed questions of fact and law and issues of law. It is further observed that the exceptions are that if there is an issue of jurisdiction of the court and erroneous decision in the former suit/proceeding would not operate as res judicata. Further, if there is any statutory prohibition in the former suit/proceeding and it has not been taken into account in the former suit then the decision would not be res judicata. Also, if the issue of law is different in the previous suit

/proceeding then it would not act as a bar in a subsequent suit.

**Ashok Kumar vs. Piara Singh : 2018 SCC OnLine P&H 733 : A person can be a landlord even without having ownership rights – Held** – A Single Judge Bench, dismissed a revision petition filed assailing the order of the Appellate Authority which in turn upheld the order of Rent Controller, Ludhiana, whereby the petitioner was ejected from the property in question. The respondent filed an ejection petition before the Rent Controller on the grounds that the petitioner-tenant had defaulted in paying the rent since June 2008. The petitioner contended that the respondent was not the landlord as he had taken the premises on rent from one Narinder Singh. The Rent Controller found that a relationship between tenant and landlord existed between the parties. Since the petitioner defaulted in paying the rent, petitioner was ordered to be ejected from the property concerned. The Appellate Authority confirmed the findings and upheld the order passed by the Rent Controller. Feeling aggrieved, the petitioner approached the High Court. The High Court perused the record and found that the abovementioned Narinder Singh, in his examination, had stated that he had sold the property concerned to the petitioner. A power of attorney and a Will was also executed in favor of the petitioner. The Court did not find any registered sale deed proving the factum of sale; however, the above said documents showed that there was some arrangement between the petitioner and Narinder Singh whereby the petitioner exercised the rights of the landlord. The Court held the law to be well settled that *a person can be a landlord even without having ownership rights in the property*. The High Court did not find any infirmity in the impugned order and the revision petition was thereby dismissed.

**State Election Commissioner, Bihar Patna vs. Janakdhari Prasad : 2018 SCC OnLine SC 659 – Relationship between the state and the assistant government pleader is that of a lawyer and client and not of master and servant – Held** – The Supreme Court upheld a Patna High Court judgment that had held that the engagement of an advocate as an Assistant Government Pleader is a professional engagement and the relationship between the State and that of the Assistant Government Pleader is that of a lawyer and client and not of Master and Servant.

## LATEST CASES : CRIMINAL

“A woman’s body is not a man’s plaything and he cannot take advantage of it in order to satisfy his lust and desires by fooling a woman into consenting to sexual intercourse simply because he wants to indulge in it.”

**State of Gujarat vs. Navinbhai Chandrakant Joshi : 2018 SCC OnLine SC 699 : Court to Presume Offence of Accepting Bribe if no Explanation for Possessing Bribe Money is Given by the – Held –** The Trial Court in trap case convicted accused under Section 7 and 13(1)(d) Act. In appeal the High Court acquitted the accused on the ground that there was no recovery of money from accused No.1 and that accused No.2 had no idea for what purpose the money was given to accused No.1 On appeal **the SC observed** that to establish the offence under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, particularly those relating to the trap cases, the prosecution has to establish the existence of demand as well as acceptance by the public servant. The Apex Court further opined **that as** the accused was possessing the bribe money, it was for them to explain that how the bribe money had been received by them and if they fail to offer any satisfactory explanation, it will be presumed that they had accepted the bribe and he Supreme Court upheld the conviction of the accused.

**Motiram Padu Joshi vs. State of Maharashtra: 2018 SCC OnLine SC 67 : FIR is not an encyclopedia & the testimony of a witness not to be discarded on the ground that he did not react in any particular manner – Held –** The Appellant challenged the Bombay High Court’s order, whereby the Court while reversing the judgment of the acquittal of the appellants, convicted them under Sections 147, 148, 302 read with 149 IPC and sentenced them to undergo life imprisonment. The Appellants assailed the High Court’s order on the ground that the names of PW3 and PW4 (witnesses) were not mentioned in the FIR. The Apex Court noted that the FIR was not an encyclopedia which should contain all the details of the incident. Omission as to the names of the assailants or the witnesses may not all the times be fatal to the prosecution, if the FIR was lodged without delay. Regarding the argument that the eye witnesses did not go to the rescue of the deceased and it was unbelievable that on seeing the accused who were armed with weapons, both of witnesses went inside the house. It was opined by the Apex Court that everyone reacts in

V. Gopala Gowda, J. in State of U.P vs. Naushad, (2013) 16 SCC 651

his own special way. There was no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner was to appreciate evidence in a wholly unrealistic and unimaginative way. The court upheld the high court judgment and confirmed the sentence of life imprisonment imposed upon each of them.

**Delhi Administration vs. Vidya Gupta : 2018 (2) RCR (Criminal) 888 (SC) : Storing of adulterated food, even for the purpose of making some other food which is sold, is an offence – Held –** The Supreme Court was considering an appeal filed by the Delhi Administration against the acquittal of a vendor, accused of storing adulterated ghee. The acquittal by the Sessions court (that set aside conviction) was upheld by the high court on two grounds. One was that the sample of ghee that was taken was itself not meant for sale but it was meant to be used merely as an ingredient in the preparation of sweets which in turn were meant for sale, and therefore no offence was made out. The high court also noted that there was a discrepancy between the report of public analyst and that of the director with respect to the BR reading. The Supreme Court held that the court, while trying an offence under the Act, needs to consider the contents of the certificate of the director only and it need not refer to the variation between the report of the public analyst and the director. With regard to first reason, the Supreme Court observed that the explanation to the section 7 of the Food Adulteration Act clearly lays down that if a person stores any adulterated food for the purpose of manufacturing from it any article of food for sale, he shall be deemed to store adulterated food. With regard to other contentions based on variance of reports of public analyst and director, the bench said that the Act provides that the certificate of the director shall supersede the report of the public analyst and such certificate was final and conclusive evidence. The acquittal was set aside.

**Satpal vs. State of Haryana : 2018 (2) RCR (Criminal) 935 : Indian Penal Code, Section 302, Evidence Act, Sec. 3 and 106 – Held –**

The Supreme Court while dealing with appeal filed by the appellant assailing his conviction under Section 302 read with section 201 I.P.C. by the additional sessions judge, Hissar, affirmed by the High Court, based on the last seen theory observed that last seen theory as facet of circumstantial evidence is the kind of evidence to found conviction upon the same singularly but when it is coupled with other circumstances such as time went deceased was last seen with accused, and recovery of corpse being in very close proximity of time, accused owes explanation with regard to circumstances under which death may have taken place . If accused offers no explanation or furnishes wrong explanation, conviction can be based on same. This observation of the Supreme Court came in a case of murder of 13-year-old boy, whose dead body was found lying in a heap of dry fodder in the fields. The witnesses consistently stated having seen deceased going with accused on bicycle. The deceased did not return home at night. The accused was also not found at home. The corpse of deceased was recovered next morning from the fields. No evidence was led by the accused regarding his not being in the company of the deceased or that they had subsequently parted ways. The accused also did not lead any evidence why he did not return home at night or about his whereabouts. Bicycle was recovered on the confession of the accused and the same was identified by the witnesses as belonging to him. The Supreme Court observed that the appellant was absconding after occurrence till his arrest was additional incriminating factor which completed links in chain of circumstances. The conviction was upheld.

**Prabhu Dayal vs. The State of Rajasthan : 2018 SCC OnLine SC 662 : Failure To Determine Blood Group of Accused From Sample Collected From The Scene Not Enough To Acquit Him – Held** – that non-determination of origin of the blood does not necessarily prove fatal to the case of the prosecution. The bench said that, “The Forensic Science Laboratory report discloses that the samples collected from the scene of the offence had bloodstains of human origin. However, since the bloodstains were disintegrated by the time the bloodstains were examined by the Forensic Science Laboratory, the blood group could not be determined. For the same, the accused cannot be unpunished, more particularly when the bloodstains were found of human origin.”

The Supreme Court hence asserted that mere non-determination of blood group from the sample obtained from the scene of crime would not be sufficient to acquit an accused.

**X vs. State of Telangana : 2018 SCC OnLine SC 549 : Rape accused granted bail on finding the sexual relationship to be “consensual” – Held** – The Supreme Court while emphasizing on the essence of “consent” in a sexual relationship heard the present case where the accused was charged under Sections 376, 342, 493, 506 and 354 (C) of the Indian Penal Code for which he was granted anticipatory bail by the sessions judge which was further cancelled on the ground that the accused had hidden the fact of his involvement in the *2G Spectrum case* and the stated order was affirmed by the High Court. The High Court on receipt of the bail application filed by the accused had granted bail with a bond of Rs. 50,000. The Supreme Court agreed for bail to an accused and found “no fault” on the part of the High Court in granting anticipatory bail to the accused as the ground of the complainant in the issue was of rape, though it had been noted that the complainant had visited the accused on her own will which lead the Court towards the “consensual” relationship between the complainant and the accused. Therefore, the Supreme Court without making any further delay in the present case stated that bail once granted should not be cancelled unless or a cogent case based on a supervening event is being made out.

**Vajinath Kondiba Khandke vs. State of Maharashtra : 2018 SCC OnLine SC 545 : Assignment of work, by itself, is not a ground to make superior officer liable under Section 306 IPC – Held** – ‘workload’ or ‘work stress’, by itself, is not a ground to prove a charge of abetment to suicide against the employer / superior officer.

**Sonvir @ Somvir vs. The State of NCT Of Delhi : 2018 SCC OnLine P&H 650 : Bail rejected on ground of “waging war” against the Government through social media – Held** – a police officer need not obtain an order from a Magistrate for obtaining a specimen of fingerprints of the accused under Identification of Prisoners Act. It was also held that non-framing of any rules under Section 8 the Identification of Prisoner Act by the state government does not prohibit the exercise of these powers.

## LATEST CASES: FAMILY LAW

“Children are a “supremely important national asset” and the future well beings of the nation depends on how its children grow and develop.”

**Gumansinh Balubha Vadher & Others vs. The State of Gujarat & Another: MANU/SCOR/17216/2018: SLP (Cri.) No.4175/2018 : DoD 18.05.2018 – Can a minor child choose to stay with someone else against will of its guardian? – Held** – The Supreme Court has expressed its reservation about some observations made by the Gujarat High Court with regard to choice of a minor child to stay with someone else other than its guardian, though it did not interfere with the order. The order reads that “Since by the impugned order the custody of 07 years old child is directed to be handed over to his natural mother, we are not inclined to go into the legal issue(s) raised in this petition filed under Article 136 of the Constitution. This petition is accordingly dismissed. Although, we have some reservations in respect of the observations made by the High Court in the last portion of Para 9 of the impugned order”. The Supreme Court bench remarked that “Welfare of the child is the paramount consideration in such cases. So how can it be laid down that even the child cannot express his desire and that a guardian once appointed will have the custody for all times may whatever happens? We express our reservations to this principle.”

**Nagaiah and Ors. vs. Chowdamma (dead) by L.Rs. and Ors. : (2018) 2 SCC 504 – Whether first Appellant being elder brother of minor second Appellant filed suit on behalf of minor – Held** – The Appellants filed a suit that property in question is the joint property of the Appellants and that they are entitled to 2/3rd share in the said property. The sale deed executed by the father in favor of the first Respondent was not binding on their 2/3rd share in the suit Schedule property. A relief for permanent injunction was also sought. The trial Court dismissed the suit on merits. On appeal, the High Court allowed the appeal on grounds that the first Appellant being the elder brother could not act as the guardian of the second

P.N. Bhagwati,J. in Lakshmi Kant Pandey vs. Union of India, (1984) 2 SCC 244

Appellant during the life-time of the father of the Appellants. The court held while allowing the appeal that :

(i) The present Court noted that there was no dispute that the first Appellant did not come within the meaning of a "Guardian" as specified in the Hindu Guardianship Act. But the present case was not governed by the provisions of Hindu Guardianship Act; rather they were governed by Order XXXII of the Code of Civil Procedure. The Code makes it amply clear that every suit by a minor shall be instituted in his name by a person who in such suit shall be called the "next friend" of the minor.

(ii) There was no hurdle for a natural guardian or duly constituted guardian as defined under Hindu Guardianship Act to represent minor Plaintiff or Defendant in a law suit. But such guardian should not have adverse interest against minor. If the natural guardian or the duly constituted guardian has adverse interest against the minor in the law suit, then a next friend or guardian ad litem, as the case may be, would represent the minor in the civil litigation.

(iii) The guardian ad litem is appointed by Court and whereas the next friend is not. The next friend and the guardian ad litem possess similar powers and responsibilities. Both are subject to control by the Court and may be removed by the Court if the best interest of the minor so requires.

**Yogita vs. Sandeep Kumar: 2018 SCC OnLine P&H 726 : Divorce granted on ground of cruelty in absence of rebuttal evidence by the husband – Held** – A Division Bench allowed an appeal filed by the wife against the judgment of the family court, which declined her petition for divorce. The appellant claimed that her husband was addicted to the vice of drinking, gambling and taking medical intoxicants. He used to spend all his income on these addictions. He used to beat the appellant

and demanded her to bring money from her parent's home. He pressurized her to bring Rs. 8 lakhs, and when she showed her disability, the appellant was beaten after which she was forced to leave her matrimonial home. She filed a divorce petition on grounds of cruelty, which was dismissed by the family court. Feeling aggrieved, the petitioner approached the High Court. The High Court had found that no rebuttal evidence was produced by the respondent-husband against the pleadings of the appellant. Considering the statements of the appellant and other witnesses, and in absence of a rebuttal by the respondent, the Court held that the facts as alleged by the appellant in divorce petition were established. Furthermore, the Court was informed that the respondent was settled in Australia and had no intention to contest the matter. In such circumstances, holding the factum of cruelty as established against the respondent, the High Court allowed the appeal and granted divorce to the appellant.

**Preeti Kumari vs. Neelkanth Kumar:2018 SCC OnLine P&H 757- Acts of sodomy and forcible unnatural intercourse amount to cruelty and are grounds for a decree of divorce – Held** – A Division Bench has allowed the appeal against the decision of the family court wherein appellant's petition for a decree of divorce was dismissed. The appellant (wife) was married to the respondent (husband). She alleged that the respondent habitually used to drink and beat the appellant; forced her to consume alcohol; demanded dowry from her; and even committed forcible sexual acts against her wishes including sodomy and unnatural oral sex. She stated that because of such circumstances, she was forced to live at her parent's home since last 8 years. The respondent denied all the allegations and alleged that appellant's parents are not letting her come back to their matrimonial home. He had also filed a petition under Section 9 Hindu Marriage Act, the fact which weighed with the court below to dismiss appellant's divorce petition. The appellant was in appeal against the decision of the lower court. The High Court was of the opinion that the appeal ought to be allowed. While considering facts of the matter,

the Court observed, *acts of sodomy, forcible sexual intercourse, and adoption of unnatural means which are forced upon the other spouse resulting in unbearable pain to the extent that one is forced to stay away would certainly be a ground to seek separation or a decree of divorce.* The Court further observed that the burden of proving such allegations lied heavily on the appellant, and in the instant case, the allegations were corroborated with other material including testimonies of the appellant and her brother. In such circumstances, the Court held that merely because the respondent had filed a petition under Section 9 for restitution of conjugal rights, would not mean that he made a genuine effort for a reunion. The Court allowed the appeal dissolving the marriage between the appellant and the respondent by a decree of divorce.

**Jagdish Singh vs. Sarabjit Kaur : 2018 SCC OnLine P&H 881 – Estimation of husband's income is permissible while granting maintenance pendente lite under Section 24 Hindu Marriage Act, 1955 – Held** – A Division Bench has allowed an application filed by the respondent-wife for maintenance pendente lite.

The appellant-husband had preferred an appeal against the dismissal of his divorce petition. The respondent-wife had filed the application under Section 24 of Hindu Marriage Act claiming maintenance pendente lite at the rate of Rs 20,000 per month. The appellant submitted that he was dismissed from the Army and was unemployed. Further, he had no source of income except what he got from the selling of milk. The Court noted that there was no material to ascertain the income of the appellant and in such circumstances a bit of estimation was permissible. The appellant was an ex-army man and an able-bodied person. Even if he worked as an unskilled laborer, he was presumed to earn not less than Rs 15,000-20,000 per month. There was also one daughter born out of the wedlock. The Court held that the appellant cannot run away from his duty to maintain wife and daughter. In such circumstances, an amount of Rs. 8,000 per month was found reasonable while awarding the maintenance pendente lite under Section 24.

## NOTIFICATION

**IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018, notified :** The Insolvency and Bankruptcy Board of India (IBBI) has notified on 04-07-2018, the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018.**

**The following are salient amendments to the regulations:**

- a.** The regulations provide that wherever the corporate debtor has classes of creditors having at least ten creditors in the class, the interim resolution professional shall offer a choice of three insolvency professionals in the public announcement to act as the authorized representative of creditors in each class. A creditor in a class may indicate its choice of an insolvency professional, from amongst the three choices provided by the interim resolution professional, to act as its authorized representative. The insolvency professional, who is the choice of the highest number of creditors in the class, shall be appointed as the authorized representative of the creditors of the respective class.
- b.** An application for withdrawal of an application admitted under Section 7, 9 or 10 of the Code (for closure of corporate insolvency resolution process) may be submitted to the interim resolution professional or the resolution professional, as the case may be, before issue of invitation for expression of interest, along with a bank guarantee towards estimated cost incurred for certain purposes under the process. The committee of creditors (CoC) shall consider the application within seven days of its constitution or seven days of receipt of the application, whichever is later. If the application is approved by the CoC with 90% voting share, the resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of such approval.
- c.** Where rate of interest has not been agreed to between the parties in case of creditors in a class, the voting share of such a creditor shall be in proportion to the financial debt that includes an interest at the rate of eight per cent p.a.
- d.** Where the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed.
- e.** A meeting of the CoC shall be called by giving not less than five days' notice in writing to every participant. The CoC may, however, reduce the notice period from five days to such other period of not less than forty-eight hours where there is any authorized representative and to twenty-four hours in all other cases. The authorized representative shall circulate the agenda to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.
- f.** The resolution professional shall form an opinion whether the corporate debtor has been subjected to certain transactions (preferential transactions, undervalued transactions, extortionate transactions or fraudulent transactions) by 75<sup>th</sup> day and make a determination of the same by 115<sup>th</sup> day of the insolvency commencement date. Where the resolution professional makes such a determination, he shall apply to the Adjudicating Authority for appropriate relief before 135<sup>th</sup> day of the insolvency commencement date.
- g.** The resolution professional shall publish an invitation for expression of interest (EoI) by the 75<sup>th</sup> day from the insolvency commencement date. The invitation shall specify the criteria, ineligibility, the last date for submission of EoI and other details and shall not require payment of non-refundable deposit. Any EoI received after the specified time shall be rejected. The resolution professional shall conduct due diligence based on material on record and issue a provisional list of prospective resolution applicants within 10 days of the last date of submission of EoI. On considering objections to the provisional list, the resolution professional shall issue the final list of prospective resolution applicants, within 10 days of the last date for receipt of objections.
- h.** The resolution professional shall issue the information memorandum, the evaluation matrix and the request for resolution plans (RFRP), within 5 days of issue of the provisional list to the prospective resolution applicants and allow at least 30 days for submission of resolution plans. The RFRP shall detail each step in the process, and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines. The resolution plan needs to demonstrate that (a) it addresses the cause of default; (b) it is feasible and viable; (c) it has provisions for its effective implementation; (d) it has provisions for approvals required and the timeline for the same; and (e) the resolution applicant has the capability to implement the resolution plan. The CoC shall evaluate the resolution plan strictly as per the evaluation matrix to identify the best resolution plan and may approve it with the required majority. If approved by the CoC, the resolution professional shall endeavour to submit the resolution plan approved by the CoC to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process, along with a compliance certificate in the specified Form.

## EVENTS OF THE MONTH

1. **Training Programme on ‘Execution of Decrees’** for officers dealing with Executions pending since the year 2010 or prior thereto from the State of Punjab was organized on **July 07, 2018**. The Programme covered: Execution of Decrees vis-à-vis Concept, Jurisdiction, Transfer, Percept and Arrest Proceedings, Execution of Decrees – Legal aspects of attachment and sale and How to Handle Objections and Resistance in Execution, e-Courts – Step Towards Modernization. The sessions were taken by Justice A.N. Jindal (Retd.), Justice Dr. B.B. Parsoo (Retd.) and officer from the High Court. 67 participants attended the programme.

2. **One Day Conference for Police Officers on ‘Human Rights Issues and Juvenile Justice’** organized by Haryana Human Rights Commission in collaboration with Haryana Police on **14<sup>th</sup> July, 2018** at HPA Madhuban. On this occasion Dr. Balram K. Gupta, Director (Academics), CJA delivered lecture on the topic “Human Rights – A Conceptual Understanding”.

3. **Third Batch of 30 Public Prosecutors (DA & DDA) from the State of Punjab and three from UT Chandigarh underwent 10 days training from July 16 to 26, 2018** at Chandigarh Judicial Academy. The training included four sessions of 1.15 hours each day. Total 39 sessions and the valedictory session covering different aspects relevant for Public Prosecutors regarding Criminal and Civil Matters in order to enhance their capacity to perform their duties effectively and efficiently.

The Public Prosecutors were sensitized on topics: Relevancy of Constitution in District Judiciary, General Aspect of Service Law, Law on Bails – Regular and Anticipatory, Delays in Criminal Trials-Causes & Remedial Measures, Protection against self Incrimination–Dimensions and Applicability, Sentencing Policy & Restitutive Justice-Legal and Procedural Aspects–I & II, Suits against and by the Government–Legal implications, Criminal Appeals & Revisions–Law and Procedure, Process of Trial in Civil Cases-Best Practices & Law on Amendments of Pleadings, Important Aspects in Checking of Challans by the Prosecutors-I, Role of Post-mortem in Aid of Justice, Determination of Compensation under Land Acquisition Act, Law of Admissions and Confessions, Prosecution Sanction for Public Servants, Examination of Witnesses – Principles and Procedures, Jurisprudence of Circumstantial Evidence, Cyber Crime Parameters of Investigation – Challenge, Law on Constructive & Joint Criminal Liability, Medical Evidence – Legal Aspects, Recent Changes in Law – Substantive and Procedural, Child in Conflict with Law – Legal Rights and Protection, Mens-Rea Presumptions under NDPS Act & its constitutionality, Executions-Speedy & Expeditious Disposals, Ramifications of Personal Search under NDPS Act, Interpretation of Revenue Records & their Applicability in Cases-I&II, Legal Facets of Human Trafficking, Law of Custody during Investigation and Special Legislations, Compensation under MACT Act, Electronic Evidence Admissibility & Appreciation, E-

Courts – Steps towards Modernization, Law Relating to Under Trials, Parole, Furlough & Pre-Mature Release of Prisoners, Cordiality amongst Prosecutors, Police, Judiciary & District Administration, Forensic Evidence – Legal Scenario, DNA Profiling & Evidence, Miscellaneous Applications under Civil Procedure Code, Awards under Arbitration & Reconciliation Act – Legal Issues, Summoning of Additional Accused and Evidence – Legal Parameters. The different sessions were taken by Dr. Balram K. Gupta, Director (Academics), Dr. K.P. Singh, IPS, DGP, Human Rights, Haryana, Dr. J.S. Dalal, Prof. & Head Department of Forensic Medicine CMC, Ludhiana, Faculty from CJA and CFSL, Chandigarh. In the valedictory function on 26.07.2018, Dr. Balram K. Gupta, Director (Academics), CJA addressed the participants and awarded the certificates.

4. **Sh. Davinder Singh, PCS (JB), Trainee Judicial Officer continued One Year Institutional Training** at Chandigarh Judicial

Academy from **July 17, 2018** after undergoing Police Training (from May 25 to June 9, 2018) with the group of Delhi Judicial Officers at the Police Academy, Madhuban, Haryana and Court attachment at Jalandhar.

5. **Training Programme on ‘Execution of Decrees’** for officers dealing with Executions pending since the year 2010 or prior thereto from the State of Haryana and Chandigarh was organized on **July 21, 2018**. 84 participants attended the programme. The programme covered: Execution of Decrees vis-à-vis Concept, Jurisdiction, Transfer, Percept and Arrest Proceedings, Execution of Decrees – Legal aspects of attachment and sale, e-Courts – Step Towards Modernization and How to Handle Objections and Resistance in Execution. Out of four sessions, two sessions were taken individually by HMJ Surinder Gupta and Justice Dr. B.B. Parsoon (Retd.), the third session was taken jointly by the two Hon’ble Judges. The last session relating to e-Courts was taken by the officer from the High Court.

## **FORTHCOMING EVENTS**

1. **Refresher-cum-Orientation Course for Civil Judges from the States of Punjab and Haryana** will be organized on **04.08.2018** to sensitize them on some important aspects of civil and criminal law.

2. **Academic Programme for Fifth Delegation of 35 Sri Lankan Judges of High Court and Senior District Judges** is scheduled from **August 11–16, 2018**. The **Sixth Delegation of 35 Sri Lankan Judges** will be arriving on August 13 and departing on August 20, 2018. Hon’ble the Chief Justice of

Sri Lanka, Justice Priyasath Dep, PC will be coming to Chandigarh Judicial Academy on August 11 and will be departing on August 17, 2018 during the course of two Academic Programmes. In fact, Hon’ble the Chief Justice of Sri Lanka will be the Guest of Honour on the occasion of 71<sup>st</sup> Independence Day celebrations at the High Court of Punjab and Haryana on August 15, 2018. The other 70 Sri Lankan Judges will also be participating in the Independence Day celebrations at the High Court as also Punjab Raj Bhawan.