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FROM THE DESK OF CHIEF EDITOR

Judicial Impartiality and Neutrality are the foundation of Judicial Culture. It has been beautifully said : Lady Justice does not only need blindfold in front of her eyes **but sometimes also in front of her mouth**. This speaks of **Judicial Communication**. I have written earlier also on this aspect. I intend examining this from a different perspective. There are Talkative Judges. There are Silent Judges. There is still a third category – the Participative Judges. Judges who extract the maximum from the lawyers and yet they do not belong to either of the two extreme categories. Let me examine, why do I say this?

I confess that talkative and very talkative Judges are not comfortable Judges. H.M.Seervai describes them as 'over-speaking' Judges. Lord Denning in his Book: **The Due Process of Law** has dealt with this situation with the help of an interesting case. The case was *Jones v National Coal Board of the year 1957*. The roof of a coal mine had fallen. A miner was buried. He died. The widow filed a case for damages. The case came up before Hallett J. He conducted the Trial. The claim of the widow was rejected. She came in appeal. The ground among others was: the judge made too many interruptions. Her counsel failed to put her case properly. This deprived her of her right to fair trial. The Board also put in a cross-appeal. The grievance of the Board was also that it was deprived of a fair trial. The judge made too many interventions and interruptions. In fact, since the claim of the widow had been rejected, still the Board had come in cross appeal. This was rather interesting. Both sides felt that the claim was not rejected by way of a Fair Trial. This means that the trial should be fair to both sides. Not only to the losing side. This, indeed, was an important component of a trial. The appeal came up before Lord Denning. The appeal was argued by the best of counsel on both sides. The judgment was reserved. It was felt that it might lead to the end of his judicial career. It did.

Lord Denning explains that the Judge may make only wise interventions.

The idea being that the Judge should understand the points being made by the Advocates. The Judge should be able to make up his mind, where the truth lies. He summed up beautifully:

> 'If he goes beyond this, he drops the mantle of a judge and assumes the robe of an advocate; and the change does not become him well'

Denning quotes Lord Chancellor Bacon:

> 'Patience and gravity of hearing is an essential part of Justice; and an over-speaking Judge is no well-tuned cymbal'

He supports this with reference to Lord Greene MR:

> 'Justice is best done by a Judge who holds the balance between the contending parties without himself taking part in their disputations.

This all leaves nothing to doubt. It was held that the interventions taken together were far more than they should have been. This impacted the Trial adversely. Moreover, the Trial must be fair to the parties and not to either of the party. Accordingly, the widow was granted a right to a 'New Trial'. Lord Kilmuir was Lord Chancellor. He sent for the Judge. It was so arranged that he would continue for some more time. He resigned at the end of the summer term. He was an able and intelligent Judge. But the fact remains, he asked too many questions. This resulted in denial of Fair Trial.

This Recipe of Lord Denning holds good in different Jurisdictions. India is no exception. Some situations should always be avoided. One such situation, I would like to share. The case was called. Before the advocate opened his case, the Bench countered: Counsel, there is nothing in your case. You will not waste the time of the court. We have already gone through the file. This is not good Judicial Communication. Even a good case can be killed in this manner. Even if the Judge feels so, the Advocate must be allowed to open the case. The Judge must also keep his mind open. May be the advocate is able to make a point. Anything is possible through advocacy skills. What you can orally argue, you may not be able to convey in writing. There is no substitute for oral arguments. Many legal battles have been won because of skillful advocacy in courts.

My experience at the Bar. I argued a matter. I was not able to persuade the Bench. I was still making my serious effort. Slowly and gradually. Suddenly, I was told, we have suffered you for more than an hour. The mood of the Bench was aggressive. I felt that the matter was going to be dismissed. I told, my Lords, I did not get even 10 minutes. I have been listening patiently. Wanting to make my submissions for my Lords consideration. Please permit me in

the interest of justice. I was lucky. I was heard. The other side was told by the Bench that the Bench had already argued on their behalf. Do you have anything more to add? No, my Lords. The order was dictated in the open court. My submissions were upheld. This is called destiny. Of course of the client.

Sometimes, there are sharp reactions from the Bench. The pandemic time has thrown certain challenging situations. It was April 24, 2021, the Division Bench of the Delhi High Court observed**:** it will **'**hang any person**'** who would try to obstruct oxygen supplies to hospitals. A Division Bench of Madras High Court on April 27 said that the Election Commission is singularly responsible for the 2nd wave and should probably be tried on murder charges for its failure to ensure Covid-19 protocols. Once again, the Delhi High Court on June 1 observed that the young are the **'**future of the country**'** and need to be saved while elderly have **'**lived their life**'**. Our courts are open houses. Whatever the court observes, it reaches out to the public through social, print and electronic media in no time. There is heavy responsibility on our Judges. They have to speak in measured language. Many a time, the situation is provocative. Yet, the restraint and the control are to be exercised. This is true at all levels. This is part of Judicial Culture.

The category of silent Judge is even more difficult. The advocate would just not know, what was going through the mind of the judge. The 'Reading' of the mind of the Judge is very important. A good advocate is one who can read the mind. It is important for the Judge to make up his mind. But only after he has heard the counsel. Not by remaining 'silent'. A patient hearing does not mean a 'silent' hearing. No interventions. No questions. No doubts. No responses. When an advocate argues, he keenly looks forward to **'**responses**'** and **'**counter questions**'** from the Judge. The advocate responds. He tailors his arguments to meet the responses of the judge. He makes his effort to persuade and convince the Judge. If the Judge remains 'silent', the Advocate will not know, what was going through his mind. Therefore, we need 'Participative' Judges. Judges who participate. It has to be a two-way traffic. No head on collision. No traffic jams. The smooth flow of arguments. An advocate makes an argument. The Judge responds. Healthy discussion takes place. The responsibility of the advocate is to argue his case. Equally, the responsibility of the Judge is to extract the maximum from the advocate by balanced participation. The two extremes are not good. The recipe of middle path is the solution to find out the **'**Truth**'**. Ultimately, it is an exercise in reading and meeting of minds

Balram K. Gupta

PERSONAL LIBERTY AND LIVE IN RELATIONSHIP

Personal liberty of an individual is the precious and priced right guaranteed under the constitution of India. The concept of individual liberty is comparatively modern. According to John Stuart Mill, the individual will be answerable to society for his actions only when they concern the interests of others.

Article 21 as enshrined in the Constitution of India provides for its citizen a right to life and personal liberty, with a stipulation that they shall not be deprived of it except according to a procedure established by law. Liberty is defined by the dictionary as "The state of being exempt from the domination of others or from restricting circumstance." Article 21 came up for interpretation before the Hon'ble Supreme Court in case titled **A.K. Gopalam vs. State of Madras, AIR 1950 SC 27,** and it was held, interalia, that the expression 'personal liberty' means liberty relating to or concerning the person or the body of the individual. The said decision was instrumental in transforming judicial view on Article 21.

While there is no doubt that in India, marriage is an important social institution but the concept of a "live in relationship" is fast emerging, as more and more people are shying away from the institution of marriage. No doubt the concept of live-in-relationship is not acceptable to all, but at the same time such a relationship cannot be said to be an illegal one or that living together without the sanctity of marriage constitutes an offence. It is interesting to note that the word *'wife'* has not been used under the Protection of Women and Domestic Violence Act, 2005. Thus the female live in partner and the children of live-in-couples have been accorded adequate protection by the Parliament. Even under the said Act, a woman who is in a 'domestic relationship' has been provided protection, maintenance etc.

'Domestic relationship' has been defined under section 2(f) of Protection of Women From Domestic Violence Act, 2005 as a relationship between two persons who live or have lived at any point of time in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

'Relationship in the nature of marriage' is akin to a common law marriage which interalia requires that the parties must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. The parties must also have a *"shared household*" as defined in Section 2(s) of the Act. It has to be taken into consideration that merely spending weekends or one night together does not constitute a "Domestic

relationship" under Section 2(f) and not all live in relationships form a relationship "in the nature of marriage" because several parameters have to be satisfied in order to constitute a relationship in the nature of marriage.

The personal liberty of an adult woman has been protected by the courts since long and in case titled as **Gian Devi vs. The Superintendent, Nari Niketan, Delhi, (1976) 3 SCC 234**, the Hon'ble Apex Court held that a woman who had crossed eighteen years of age is *sui juris* and no fetters could be placed upon her choice of the person with whom she wanted to stay nor any restriction could be imposed regarding the place where she should stay.

In the case titled **Shakti Vahini vs. Union of India, (2018) 5 RCR (Cri) 981**, Hon'ble Supreme Court has held that the right to exercise Assertion of choice is an insegregable facet of liberty and dignity. In another case titled **S. Khushboo vs. Kanniammal, (2010) 5 SCC 600**, it was held that live-in-relationship was permissible and the act of two **adults** living together could not be considered illegal or unlawful, while further holding that the issue of morality and criminality were not co-extensive.

The concepts of 'freedom of choice' and 'live in relationship' were again discussed in detail by the Hon'ble Apex Court in case titled **NandaKumar and Anr. vs. State of Kerala and Ors., (2018) 16 SCC 602,** and it was observed that 'live in relationship' was recognised by the legislature itself under the provisions of the Protection of Women from Domestic Violence Act, 2005.

Thus, once an individual, who is a major, has chosen his /her partner, it is not for any other person, be it a family member, to object and cause a hindrance to their peaceful existence. No doubt the social values and morals have their space but they are not above the constitutionally guaranteed freedom. The principle that '*no one shall be deprived of his life or liberty without the authority of law'* is rooted in the consideration that 'life and liberty are priceless possessions' which cannot be meddled with on individual whims and caprices and that any act which tampers with life and liberty must rest on sanction of the law of the land.

It is for the State at this juncture, to ensure their protection and their personal liberty. It would be a travesty of justice in case protection is denied to persons who have opted to reside together without the sanctity of marriage, and such persons have to face dire consequences at the hands of persons from whom protection is sought. In case such a course is adopted and protection denied, the courts would also be failing in their duty to provide its citizens a

right to their life and liberty as enshrined under Article 21 of the Constitution of India and uphold the Rule of law.

The concept of providing protection to runaway couples living in a “live-in-relationship” was discussed in detail by Hon’ble Punjab and Haryana High Court in the case titled **Soniya and Anr. vs. State of Haryana and Others, 2021 SCC Online P&H 987.** It was held that when the parties who were **major** and had taken a decision to reside together without the sanctity of marriage, it was not for the courts to judge them on their decision. Accordingly, necessary directions were issued to the concerned authority for providing protection from any threat to their life and liberty. It was, however, made clear that the order did not provide protection to the parties from the legal action for violation of law, if any, committed by them.

In another case titled **Kulbir Kaur and Anr. vs. State of Punjab and Ors. bearing No. CRWP-5949 of 2021,** decided on **01.07.2021** the Hon’ble Punjab and Haryana High Court while providing protection to the life and liberty of the runaway couple, directed the minor petitioner to be kept in a safe house and also gave liberty to respondents no.2 and 3 to initiate appropriate action against petitioner no.2, who was major, in accordance with law.

In the case titled **Salamat Anasri and Ors. vs. State of U.P. and Ors. decided on 11.11.2020** and reported as **MANU/UP/2029/2020**, Hon’ble Allahabad High Court quashed the FIR primarily on the ground that no offences were made out as two grown up individuals were living together for over a year of their own free will and choice.

It needs no special emphasis to state that attaining the age of majority in an individual’s life has its own significance and the individual is entitled to make his / her choice. In case titled **Shafin Jahan vs. Asokan K.M., (2018) 16 SCC 368,** it was observed that the expression of choice is a fundamental right under Articles 19 and 21 of the Constitution, if the said choice does not transgress any valid legal framework. It was further observed that once that aspect is clear, the enquiry and determination have come to an end.

From the above it is abundantly clear that when a person has attained the age of majority, the said person is entitled to enjoy freedom as the law permits, including the freedom to choose a partner and the manner to live with him.

Madhu Khanna Lalli
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LATEST CASES: CIVIL

"*The legislature does not always say everything on the subject. When it enacts a law, every conceivable eventuality which may arise in the future may not be present to the mind of the lawmaker. Legislative silences create spaces for creativity. Between interstices of legislative spaces and silences, the law is shaped by the robust application of common sense*."

- *Dr D.Y. Chandrachud, J. in Union of India v. G.S. Chatha Rice Mills, (2021) 2 SCC 209, para 57*

Ripudaman Singh vs. Tikka Maheshwar Chand: 2021 SCC OnLine SC 457: Compromise Decree In Respect Of Land Which Is Not Subject-matter Of Suit But Is Part Of Family Settlement Does Not Require Compulsory Registration- HELD- In this case, the High Court dismissed a suit on the ground that the land even though being subject-matter of compromise, was not the subject-matter of the suit and therefore the decree required registration under Section 17(2)(vi) of the Registration Act. So the issue in appeal before the Apex Court was whether a compromise decree in respect of land which is not the subject-matter of suit but is part of the settlement between the family members requires compulsory registration in terms of Section 17(2)(vi) of the Registration Act. Section 17(1) provides the list of documents of which registration is compulsory. Section 17(2) (vi) clarifies that this compulsory registration is not applicable to any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding.

The Supreme Court observed that a compromise decree in respect of land which is not the subject-matter of suit but is part of the settlement between the family members does not require compulsory registration.

The Supreme Court bench observed that a compromise decree entered into between the parties in respect of land which was not the subject matter of the suit is valid and a legal settlement.

M/s. Silpi Industries vs. Kerala State Road Transport Corporation :2021 SCC OnLine SC 439: Limitation Act Provisions Will Apply To Arbitration Proceedings Initiated Under Section 18(3) MSMED Act: Supreme Court- HELD- The Supreme Court held that the provisions of Limitation Act will apply to arbitration proceedings initiated under Section 18(3) of Micro, Small and Medium Enterprises Development Act, 2006.

The Supreme Court bench observed that counter-claim is maintainable before the statutory authorities under MSMED Act. "*Thus, we are of the view that no further elaboration is necessary on this issue and we hold that the provisions of Limitation Act, 1963 will apply to the arbitrations covered by Section 18(3) of the 2006 Act. We make it clear that as the judgment of the High Court is an order of remand, we need not enter into the controversy whether the claims/counter claims are within time or not. We keep it open to the primary authority to go into such issues and record its own findings on merits"* the bench held.

R. Janakiammal vs. SK Kumarasamy (Deceased) :2021 SCC OnLine SC 444: Bar Under Order XXIII Rule 3A Attracted If Compromise On The Basis Of Which Decree Was Passed Was Void Or Voidable-HELD- In this case, the plaintiffs filed a suit challenging a compromise decree contending that it was obtained by fraud and misrepresentation. It was contended that the consent which he gave for compromise by signing the compromise was not free consent and thus it became voidable at the instance of the plaintiff. The Trial Court, and the High Court, held that suit is barred under Order XXIII Rule 3A of the Code of Civil Procedure.

Rule 3A provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The issue considered by the Apex court bench was whether the bar under Rule 3A of Order XXIII shall be attracted in the facts of the present case? Referring to Rule 3 and 3A and Sections 10, 13 and 14 of the Indian Contract Act, the bench noted thus:

***"41.** Determination of disputes between persons and bodies is regulated by law. The*

legislative policy of all legislatures is to provide a mechanism for determination of dispute so that dispute may come to an end and peace in society be restored. Legislative policy also aims for giving finality of the litigation, simultaneously providing higher forum of appeal/revision to vend the grievances of an aggrieved party. Rule 3A which has been added by above amendment provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. At the same time, by adding the proviso in Rule 3, it is provided that when there is a dispute as to whether an adjustment or satisfaction has been arrived at, the same shall be decided by the Court which recorded the compromise. Rule 3 of Order XXIII provided that where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, the Court shall order such agreement or compromise to be recorded and pass a decree in accordance therewith. Rule 3 uses the expression "lawful agreement or compromise". The explanation added by amendment provided that an agreement or a compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful."

The Bench held that, "Bar under Rule 3A shall be attracted if compromise on the basis of which decree was passed was void or voidable".

The bench further observed that only remedy available to a party to a consent decree to avoid such consent decree is to approach the court which recorded the compromise and separate suit is not maintainable.

R. Janakiammal vs. SK Kumarasamy (Deceased) :2021 SCC OnLine SC 444: Hindu Joint Family Even If Partitioned Can Revert Back And Reunite To Continue Joint Family Status-HELD- Hindu Joint Family even if partitioned can revert back and reunite to continue the status of joint family, the Supreme Court observed.

The Supreme Court bench further observed that the acts of the parties may lead to the inference that parties reunited after previous partition. Taking note of the facts in this case, the bench found that, in the year 1979 when residential property of Tatabad was obtained in the name of one brother, all three branches were part of the joint Hindu family and the house property purchased in the name of one member of joint Hindu family was for the benefit of all. The court also observed that an individual member of joint Hindu Family can very well file his separate Returns both under the Income Tax Act as well as Wealth Tax Act and filing of such Returns was not conclusive of status of the family.

State of Uttar Pradesh and Others vs.Dr. Manoj Kumar Sharma: 2021 SCC OnLine SC 460: Judges must not behave like Emperors, Supreme Court strongly condemns High Courts' practice of summoning of Public officers unnecessarily-HELD- The Supreme Court bench held that, " it is time to reiterate that public officers should not be called to court unnecessarily. The dignity and majesty of the Court is not enhanced when an officer is called to court. Respect to the court has to be commanded and not demanded and the same is not enhanced by calling public officers. The presence of public officer comes at the cost of other official engagement demanding their attention. Sometimes, the officers even have to travel long distance. Therefore, summoning of the officer is against the public interest as many important tasks entrusted to him gets delayed, creating extra burden on the officer or delaying the decisions awaiting his opinion. The Court proceedings also take time, as there is no mechanism of fixed time hearing in Courts as of now. The Courts have the power of pen which is more effective than the presence of an officer in Court. If any particular issue arises for consideration before the Court and the Advocate representing the State is not able to answer, it is advised to write such doubt in the order and give time to the State or its officers to respond.

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LATEST CASES: CRIMINAL

"*Society is emerging through a crucial transformational period. Intimacies of marriage lie within a core zone of privacy, which is inviolable and even matters of faith would have the least effect on them. The right to marry a person of choice is integral to Article 21 of the Constitution. Autonomy of an individual inter alia in relation to family and marriage is integral to the dignity of the individual*."

- *Sanjay Kishan Kaul, J., Laxmibai Chandaragi B. v. State of Karnataka, (2021) 3 SCC 360,para 12*

Rakesh vs. State of UP: 2021 SCC OnLine SC 451: Recovery Of Weapon Used In Commission Of Offence Is Not A Sine Qua Non For Conviction - HELD- In this case, the accused were convicted under Section 302 r/w 34 of the IPC for having killed one Bhishampal Singh in an incident which happened on 28.01.2006. In appeal, one of the contention raised on behalf of the accused was that as per the ballistic report the bullet found does not match with the fire arm/gun recovered and therefore the use of gun as alleged is doubtful and therefore benefit of doubt must be given to the accused is concerned.

The SC bench observed that at the most, it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non. Reliable and trustworthy eyewitnesses to the incident corroborated from injury by the gun established and proved from the medical evidence is sufficient. Therefore, merely because the ballistic report shows that the bullet recovered does not match with the gun recovered, it is not possible to reject the credible and reliable deposition of witnesses.

Dharmesh @ Dharmendra @ Dhamo Jagdishbhai @ Jagabhai Bhagubhai Ratadia vs. State Of Gujarat: 2021 SCC OnLine SC 458 - Bail Condition To Compensate Victims Cannot Be Imposed - HELD- In this case, the accused were granted bail by the High Court with a condition requiring them to deposit Rupees 2.00 lakh each as compensation to the victims. The Supreme Court observed that a condition for payment of compensation to victims cannot be imposed at the stage of bail.

The Supreme Court held that "*In our view the objective is clear that in cases of offences against body, compensation to the victim should be a methodology for redemption. Similarly, to prevent unnecessary harassment, compensation has been provided where meaningless criminal proceedings had been started. Such a compensation can hardly be determined at the stage of grant of bail*."

Shaik Ahmed v State of Telangana: 2021 SCC OnLine SC 436 - Kidnapping For Ransom - Necessary To Prove Threat To Cause Death Or Harm For Conviction Under Section 364A IPC - HELD- The Supreme Court bench was considering a criminal appeal filed against the conviction of a person under Section 364A IPC. The appellant, an auto-rickshaw driver, was convicted for kidnapping a school boy who had taken ride in the auto and for demanding a ransom of Rupees 2 lakhs from his father.

After noticing the statutory provision of Section 364A and the law laid down by the Supreme Court in various cases, the essential ingredients to convict an accused under Section 364A which are required to be proved by prosecution are as follows:—

(i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and

(ii) threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or;

(iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental

organization or any other person to do or abstain from doing any act or to pay a ransom.

The Supreme Court further clarified that merely proving the kidnap of a person is not sufficient for conviction for the offence of 'kidnapping for ransom' under Section 364A of the Indian Penal Code. It must also be proved that there was threat to cause death or harm to the kidnapped person or the kidnapper, by his conduct, gave rise to a reasonable apprehension that such person may be put to death.

Vinod Kumar IAS vs. Union of India: WP(s)(Cr) No(s). 255/2021 dt. 29-06-2021 - Dismissal Of An Earlier Section 482 CrPC Petition Does Not Bar Filing Of Subsequent Petition, If Facts So Justify- HELD- IAS Officer, Vinod Kumar, had approached the Apex Court by filing a writ petition under Article 32 of the Constitution seeking quashing of about 28 cases against him.

The bench headed by Justice UU Lalit said that it sees no reason to entertain this petition under Article 32. The petitioner, if so advised, can always file appropriate applications under the Code of Criminal Procedure seeking quashing of the individual criminal cases or complaints, the bench observed.

Addressing the submission that he had approached the High Court on earlier occasions filing applications under Section 482 of the Code which were later withdrawn, the bench observed:

The law on point as held by this Court in "Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh & Ors." reported in SCC (1975) 3 706 is clear that dismissal of an earlier 482 petition does not bar filing of subsequent petition under Section 482, in case the facts so justify. Needless to say that as and when any appropriate application under the Code is preferred by the petitioner, the same shall be dealt with purely on its own merits without being influenced by the dismissal of the instant writ petition.

Achhar Singh vs State of Himachal Pradesh: 2021 SCC OnLine SC 368: IPC- Sec. 302 & Evidence Act - Appreciation of evidence - HELD- Cambridge Dictionary defines “exaggeration” as “the fact of making something larger, more important, better or worse than it really is”. Merriam-Webster defines the term “exaggerate” as to “enlarge beyond bounds or the truth”. The Concise Oxford Dictionary defines it as “enlarged or altered beyond normal proportions”. These expressions unambiguously suggest that the genesis of an ‘exaggerated statement’ lies in a true fact, to which fictitious additions are made so as to make it more penetrative. Every exaggeration, therefore, has the ingredients of ‘truth’. No exaggerated statement is possible without an element of truth. On the other hand, Advance Law Lexicon defines “false” as “erroneous, untrue; opposite of correct, or true”. Oxford Concise Dictionary states that “false” is “wrong; not correct or true”. Similar is the explanation in other dictionaries as well. There is, thus, a marked differentia between an ‘exaggerated version’ and a ‘false version’. An exaggerated statement contains both truth and falsity, whereas a false statement has no grain of truth in it (being the ‘opposite’ of ‘true’). It is well said that to make a mountain out of a molehill, the molehill shall have to exist primarily. A Court of law, being mindful of such distinction is duty bound to disseminate ‘truth’ from ‘falsehood’ and sift the grain from the chaff in case of exaggerations. It is only in a case where the grain and the chaff are so inextricably intertwined that in their separation no real evidence survives, that the whole evidence can be discarded.

There is no gainsaid that homicidal deaths cannot be left to judicium dei. The Court in their quest to reach the truth ought to make earnest efforts to extract gold out of the heap of black sand. The solemn duty is to dig out the authenticity. It is only when the Court, despite its best efforts, fails to reach a firm conclusion that the benefit of doubt is extended.

Amrinder Singh Shergill
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LATEST CASES: LABOUR COURT

"*Society is emerging through a crucial transformational period. Intimacies of marriage lie within a core zone of privacy, which is inviolable and even matters of faith would have the least effect on them. The right to marry a person of choice is integral to Article 21 of the Constitution. Autonomy of an individual inter alia in relation to family and marriage is integral to the dignity of the individual."*

— Sanjay Kishan Kaul, J., Laxmibai Chandaragi B. v. State of Karnataka, (2021) 3 SCC 360, para 12."

State of Uttarakhand v. Sureshwati : 2021 SCC OnLine SC 34 - Failure to make an enquiry before dismissal or discharge of a workman can be justified by leading evidence before the Labour Court: SC clarifies-HELD- The Supreme Court has set aside the impugned judgment of Uttaranchal High Court, whereby the High Court had set aside the award passed by the Labour Court on the ground that no disciplinary enquiry was held by the School regarding alleged abandonment of service by the respondent.

The Bench cited *Workmen of the Motipur Sugar Factory Private Ltd. v. Motipur Sugar Factory*, (1965) 3 SCC 588, wherein, it had been held that, *"A defective enquiry stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper."*

Reliance was also placed on *Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. v. Management of Firestone Tyre & Rubber Co. of India (P) Ltd.*, (1973) 1 SCC 813, wherein the Court had made following observations:

- *Even if no enquiry had been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order; had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.*
- *The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. A case of defective enquiry stands on the same footing as no enquiry.*
- *It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.*
- *It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. Section 11-A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points.*

The Court observed that full opportunity was given to the parties to lead evidence to substantiate their respective case and the High Court had not even adverted to the said evidence, and had disposed of the case on the sole ground that the School had not conducted a disciplinary enquiry before discharging the respondent from service. The School had led sufficient evidence before the Labour Court to prove that the respondent had abandoned her service from 01-07-1997 when she got married, and moved to another District, which was not denied by her in her evidence. The record of the School also revealed that she was not in employment of

the School since July 1997. The Bench stated,

"Only because some documents had not been produced by the management, an adverse inference could not be drawn against it."

In the light of above, it was held that initial employment of the respondent as a teacher from July 1993 to 21-05-1994 was itself invalid, since she was only inter-mediate, and did not have B.Ed. degree, which was the minimum qualification to be appointed as a teacher. Therefore, the impugned judgment of the High Court was set aside and the award passed by the Labour Court was restored.

Management of Motors Ltd. v. State of Jharkhand: 2021 SCC OnLine Jhar 413, -

Employees of Telco Recreation Club cannot claim parity in pay with employees of Telco Ltd.; Jharkhad HC quashes Labour Court's order-**HELD**- that the employees of Telco Recreation Club cannot claim parity in pay and other benefits at par with the regular employees of Telco Ltd. The Bench held that,

"When the initial appointment letter of the workmen has not been issued by the petitioner-Management, the question of parity in pay etc. with the employees of the petitioner-Management does not arise."

Considering the rival submission of the parties and on perusal of Judgments brought on record, the Bench reached the conclusion that the impugned Award suffered from patent illegalities and was based upon errors of law. Admittedly, there was no relationship of employer-employee between the petitioner-Management and the concerned workman. The Bench clarified,

"Neither in the appointment of workmen nor in the process of their engagement, the petitioner-Management has played any role, therefore, the industrial disputes against the petitioner-Management is wholly illegal and uncalled for."

The concerned workmen were being governed by the rules, regulations and bye-laws of the Club and not the petitioner-Management. Even the disciplinary control was of the Club and not of the Management. Hence, the findings of the Tribunal were totally perverse and error of law. Finding force in the arguments of the petitioner-company that the Club was incorporated as a separate body and concerned workmen were admittedly appointed by the Club and not by the petitioner-Management, the Bench opined that the claim of the concerned workmen was not sustainable.

Reliance was placed by the Court upon the decision of *Supreme Court in Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635,* wherein it had held that *two of the well-recognized tests to find out whether the contract labourers are the direct employees of the principal employer are-*

- *Whether the principal employer pays salary instead of the contractor?*
- *Whether the principal employer control and supervises the work of the employees?*

Accordingly, the Bench held that in the instant case on both these counts, the workmen had failed to establish their case as they could not establish that they were working directly under control and supervision of the management, hence, the question of the employer-employee relationship did not arise at all.

Placing reliance on Bhuwanesh Kumar Dwivedi v. Hindalco Industries, (2014) 11 SCC 85,wherein, the Supreme Court had held that, "*where Labour Court commits patent mistake in law in arriving at a conclusion contrary to law, the same can be corrected by the High Court. In the instant case, the Tribunal has committed a patent error of law to hold that the employer-employee relationship exists between the petitioner-Management and the concerned workman";* the Bench opined that

"In the instant case, the concerned workmen have sought for parity in pay and other benefits at par with the regular employees of TELCO Ltd. whereas the fact is that the petitioner-Management has never issued appointment letters to them rather these workmen were appointed by the Club, which is a separate entity. When the initial appointment letter of the workmen

has not been issued by the petitioner-Management, the question of parity in pay etc. with the employees of the petitioner-Management does not arise and as such the impugned Award suffers from patent illegalities and is fit to be interfered." In the backdrop of above, the impugned Award was quashed.

Tularam Manikrao Hadge v. Sudarshan Paper Converting: 2020 SCC OnLine Bom 965 - 1. Whether the Labour Court, possesses jurisdiction under Section 33-C(2)of the Act, 1947, to grant arrears of wages due under the Minimum Wages Act, particularly where there is no dispute regarding the rates of wages and it is admitted by the parties that minimum rates of wages were fixed by the Government?

2. Whether the strict rule pleading is applicable to the Industrial disputes? - HELD- The Bombay High Court clarified that the purpose of enacting the ID Act, 1947 was to make provisions for the Investigation and settlement of Industrial Dispute and for certain other purposes.

Court also referred to Section 33-C (2) of the Act, 1947, which read as follows:

"33C. Recovery of money due from an employer

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the Appropriate Government."

Language of the said Section makes it clear that:

"…if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by Labour Court."

Further to add to the above, if there is no dispute as to rates between the employer and the employee and the only question is *whether a particular payment at the agreed rate is due or not, then Section 20(1) of the Minimum Wages Act would not be attracted at all, and the appropriate remedy would only be either under Section 15(1) of the Payment of Wages Act, 1936, or under Section 33-C(2) of the Industrial Disputes Act.*

Court in view of Section 33-C(2) of the Act, 1947 and the facts laid, held that the Labour Court committed error in not exercising jurisdiction under Section 33-C (2) of the I.D. Act and further applicant also failed to prove that he was having the pre-existing right.

Bench referred to the decision of the Supreme Court in, *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai*, (1976) 3 SCC 832 and observed that I.D. Act, 1947 being beneficial legislation protects labour, promotes their contentment and regulates situations of crisis.

Mechanism of the Act is geared to conferment of regulated benefits to workmen and resolution, according to a sympathetic rule of law, of the conflicts, actual or potential, between managements and workmen.

Moreover an industrial dispute where the process of conflict resolution is informal, rough-and-ready and invites a liberal approach. Procedural prescriptions are hand-maids, not mistresses of justice and failure of fair play is the spirit in which courts must view processual deviances.

Hence, in light of the ID Act, 1947 being a beneficial legislation and strict rule of pleadings not made applicable, as applicable to the suits filed under the provisions of the Civil Procedure Code, Court stated that it is erroneous that the application was rejected under Section 33-C (2) on the ground of not sufficient pleadings being made.

Therefore, the impugned judgment and order passed by the Labour Court needs to be set aside and sent back to the Labour Court to decide the same afresh.

Mahima Tuli
Research Fellow

NOTIFICATION

Government notifies Courts for trial of cases under PMLA in Haryana, Punjab & UT of Chandigarh: Government notifies Court of Session designated as Special Court under the Prevention of Money-Laundering Act, 2002 for trial of cases under PMLA in Haryana, Punjab & UT of Chandigarh on 19th January,2021[1].

S.O. 473(E).—In exercise of the powers conferred by sub-section (1) of section 43 of the Prevention of Money Laundering Act, 2002 (15 of 2003) and in consultation with the Chief Justice and Judges, Punjab and Haryana High Court, Chandigarh, the Central Government hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section(ii), vide **number S.O.372(E), dated 5th February, 2016**, namely:-

In the said notification in the table, for serial numbers 8, 21 and 31 and the entries relating thereto, the following serial numbers and entries shall respectively be substituted, namely:-

(1)	(2)	(3)	(4)
"8.	Haryana	Sessions Judge, Ambala.	Revenue Districts of Ambala, Kaithal,kurukshetra, Panchkula and Yamunanagar.
		Sessions Judge, Gurgaon.	Revenue Districts of Faridabad, Gurgaon, Mewat, Narnaul and Rewari.
		Special Judge, Central Bureau of Investigation, Haryana, Panchkula.	Whole State of Haryana.
		Court of Additional Session Judge-I, Panchkula.	Panchkula, Bhiwani, Fatehabad, Hisar, Jhajjar, Jind Palwal, Karnal, Charkhi Dadri Mahendragarh, Panipat, Rohtak, Sonipat and Sirsa.
21.	Punjab	Court of Sessions Judge, Jalandhar.	Revenue Districts of Gurdaspur, Amritsar, Hoshiarpur, Jalandhar, Kapurthala, Nawanshahr and Tarn Taran.
		Court of Special Judge-I and II, CBI, Punjab, Mohali.	Whole state of Punjab.
		Court of Additional Sessions Judge-I, Jalandhar.	Ferozepur, Moga, Pathankot and Ludhiana.
		Court of Additional Sessions Judge-I, Mohali.	Mohali, Patiala, Rupnagar, Fatehgarh Sahib, Sangrur, Barnala, Mansa, Bathinda, Muktsar, Fazilka and Faridkot.
31.	Union Territory of Chandigarh	Sessions Judge, Chandigarh.	Revenue District of Chandigarh.
		Special Judge (Central Bureau of Investigation), Chandigarh.	Revenue District of Chandigarh.

[1] https://taxguru.in/corporate-law/govt-notifies-courts-trial-cases-pmla-haryana-punjab-ut-chandigarh.html

EVENTS

- The Online Induction Training Programme (Condensed) for Sh.Vikas Verma, HCS (JB) was started from July 1, 2021 and concluded on July 15, 2021. The valedictory function was organized in the afternoon of July 15, 2021 itself. The different sessions were taken by Faculty Members, CJA.
- Sh.B.M.Lal, Faculty Member, CJA gave a Webinar on “Limitation for filing complaint under Section 138 of Negotiable Instrument Act, 1881 : A Perspective” on July 10, 2021 to the District Judiciary of Punjab, Haryana and UT Chandigarh.
- Induction Training Programme (Online) for newly recruited Ministerial Staff was conducted in the Academy from July 13 to August 5, 2021. Ms.Madhu Khanna Lalli, Sh.Amrinder Singh Shergill, Ms.Sonia Kinra, Ms.Harshali Chowdhary and Ms.Karuna Sharma, Faculty Members, CJA took the different sessions in this programme spread over three weeks.
- Sh.B.M.Lal, Faculty Member, CJA gave a Webinar on “Applicability of the old and new Rent Acts to Tenancies in the State of Punjab and Oral and Unregistered Tenancies after coming into force of Punjab Rent Act, 1995” on July 17, 2021 to the District Judiciary of Punjab state.
- The CJA in association with Direct Taxes Regional Training Institute, Chandigarh conducted an online two sessions Webinar with regard to the “Provisions related to Tax Deducted at Source (TDS) and Personal Tax Planning” on July 24, 2021 for the awareness of District Judges, Additional District Judges I, Civil Judges (Sr. Division) and nominated Ministerial Staff from the establishment of the District Judge and Civil Judge (Sr. Division). This programme was introduced by Dr.Balram K Gupta, Director, (Academics), CJA. The two sessions were taken by Mr.Ajay Kumar Arora, Joint Commissioner, Income Tax.
- 40 hours Mediation Training Programme organized by State Legal Services Authority, UT Chandigarh was inaugurated by HMJ Jaswant Singh, Judge, Punjab & Haryana High Court on July 26, 2021.
- 6th Meeting of the National Judicial Academic Council (NJAC) was held on July 31, 2021 at 11.00 A.M. through video conferencing. In this meeting, HMJ G.S.Sandhawalia, Judge, Punjab & Haryana High Court and President, BoG, CJA participated.
- Webinar on Judgment Writing Skills (Criminal & Civil Cases) was organized by CJA in collaboration with SCC on July 31, 2021. This Webinar was spread over two sessions. The first session on Judgment Writing (Criminal Cases) was taken by HMJ Arvind Singh Sangwan, Judge, Punjab & Haryana High Court and the second session on Judgment Writing (Civil Cases) was taken by HMJ Anil Kshetarpal, Judge, Punjab & Haryana High Court. This webinar was open to all the judicial officers of the states of Punjab, Haryana and UT Chandigarh.

FORTHCOMING EVENTS

- One year Induction Online Training Programme for 23 PCS (JB) (M – 06, F – 17) will commence w.e.f. August 2, 2021. The inaugural address will be delivered by HMJ G.S.Sandhawalia, Judge, Punjab & Haryana High Court and President, BoG, CJA.