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FROM THE DESK OF CHIEF EDITOR

Why No Distinguished Jurist Judge

Indian Constitution is as old as 1950 (72 years). Article 124 (3) (c) provides for appointment of a **distinguished jurist** as Judge Supreme Court of India. The Constitution is silent about who is a distinguished jurist. One of the options which the Constitution envisages for appointment to the Supreme Court is of a distinguished jurist. The Mount Everest was scaled in the year 1953. In 72 years, no jurist has been able to reach the summit court. This does not mean that India has not produced any distinguished jurist. Who can miss the rich contributions of Professors Upendra Baxi, N.R. Madhava Menon and P.K.Tripathi? It is interesting to share Prof. Baxi's story. He was at Duke University (1985-86). He received an invitation from Buffalo University for a seminar. He was addressed as Judge Baxi. He inquired, why judge Baxi ? Prof. Baxi was told that Justice P.N.Bhagwati (CJI) had said that Prof. Baxi would soon be a judge of the Supreme Court. Justices Chinnapa Reddy and D.A.Desai used to call him as brother Baxi. Prof. Baxi has produced many judges of the Supreme Court and High Courts. He is a judge of judges. But he could not be a judge himself.

Originally, the draft Constitution did not contain the category of a distinguished jurist. It was added to the draft Constitution through an amendment proposed by late H.V.Kamath. The choice for the Supreme Court judges was limited to the Judges of the High Courts and the lawyers of the High Courts/Supreme Court. The reasoning offered by Kamath was that the object of this little amendment was to open a wider field of choice for the President in the matter of appointment of judges to the Supreme Court. He reasoned that the Constituent Assembly (CA) will realize that it was desirable to have men/women who are possessed of outstanding legal and juristic learning. He made it clear that this amendment was based on the

provision relating to the qualifications for Judges of the International Court of Justice at the Hague. In the CA Debates, a reference was made to the appointment of Felix Frankfurter, a Professor at Harvard Law School by President Roosevelt as an Associate Judge of the American Supreme Court in 1939. In the recorded history, Frankfurter's judgments/opinions made him one of the most respected and the greatest judge of all times. The clause relating to the distinguished jurist became the part of the original Constitution of India. It is meaningful to refer to the suggestion made by M.A.Ayyangar that in the first composition of the Indian Supreme Court, out of seven judges, one must be a jurist of great reputation. The strength of the Supreme Court judges has risen to 34. No jurist has so far found a berth in the top court. It would not be correct to say that they have no role to play. Sound academic minds are the backbone of constitutional jurisprudence. Equally, academic lawyers have richly contributed to the growth of criminal jurisprudence as also in other domains of law. The fact is that every field of law has been filtered by academic minds. The law journals nationally and internationally will bear testimony to this.

The general feeling is that academic minds are not practical minds. They are theoretical. Speaking personally, after having spent 21 years in the academic field (including the exposure in the best of global institutions), I switched over to the legal profession at the age of 45-46 years. My fields were Constitutional and Administrative Law. Each case involved the application of law to different factual canvases. Duly supported by the law laid down by the apex court and the High Courts by way of precedents. I had the added advantage of academic depth and the comparative position in different jurisdictions. After having been at the Bar for 10 years, I came to be designated as Senior Advocate by the Punjab & Haryana High Court. Having been at the Bar for equal number of years (21), I was appointed in early 2013 by the Chief Justice of India as Director, National Judicial Academy, India. I was told that I was a blend of Academics and Legal Professional. Even otherwise, in 1969, when I started my academic career, I was given to teach Administrative Law. There was no book exclusively on administrative law. I worked, wrote research papers and taught. I did my doctoral thesis on Ombudsman. I participated and contributed research papers in national and international seminars and conferences. Administrative law has basically grown as judge made law. Over the decades, it has grown and matured. In fact, administrative law is integral to every branch of law. I have enjoyed growing with a growing subject. From early 1991, I have practiced administrative law. We have matured together. The period from 1969 to 2022 belongs to administrative law. It has been a satisfying innings to have contributed to administrative law. Therefore, I was tipped for this position. After completing my term at NJA, I wanted to return to the Bar. I was asked to take over as Director (Academics), Chandigarh

Judicial Academy in late 2015. I have been looking after CJA ever since. My last almost a decade has been dedicated to judicial education. I have the satisfaction of being both, Professor Emeritus and Senior Advocate. Dr.Rajeev Dhavan, Senior Advocate was born in 1946. He had a hugely contributory academic career for two decades. He taught, authored a good number of books and published extensively in national and international journals. He was honorary professor at Indian Law Institute. He had a penetrating academic mind. He joined the Bar later and was designated as senior advocate in 1994 at the Supreme Court. He has made colossal contribution. Late Sh.P.P.Rao was lecturer at the Faculty of Law, Delhi University from 1961 to 1967. It was in July, 1967 that he joined the Bar. He had joined the Chamber of late Sh.N.C.Chatterjee, Senior Advocate and a Parliamentarian. He was designated as Senior Advocate by the Supreme Court in 1976. He made rich contribution particularly to the growth of Constitutional Jurisprudence. He was included as a jurist on the panel for selection of Lokpal. He was no more on September 13, 2017. These are some examples who branched off to the legal profession after having been in the academic field for good long time. The Panjab University Law Faculty had a good long standing tradition. Some practicing lawyers used to be invited as visiting/part-time faculty. They would continue to teach for good number of years while practicing at the same time. In due course of time, most of them were elevated as judges of the High Court. Some even reached the Supreme Court. Ultimately, they became Chief Justice of India, Dr.A.S.Anand, M.M.Punchhi and Jagdish Singh Khehar. Justices Kuldip Singh and H.S.Bedi retired as judges of the Supreme Court.

Article 217 (2) deals with, who are qualified to be appointed as judges of High Courts. Sub-Clause (c) was added by the 42nd Constitutional Amendment (1976). It specifically made provision for appointment of a distinguished jurist to the High Courts. It was a meaningful addition. It was deemed appropriate to add this clause so that jurists could be appointed to different High Courts. They could be picked up between the age of 45-50 years. By this age, good fertile academic minds are able to make contribution to the development of jurisprudence. Critical and analytical minds grow. After having been appointed as judge of the High Court in the category of jurist, one could spend 8 to 10 years before he could be considered to be appointed as judge of the Supreme Court under this category. The academic experience as also experience as a judge of the High Court would blend this jurist to play a wholesome role in the top court. I firmly believe that it was a welcome addition. Unfortunately and for reasons not known, this addition was omitted in the 44th Amendment (1978). Its constitutional life was short lived. It does not seem that the Parliamentarians applied their mind while omitting the addition. The framers of the Constitution had foresight. The same foresight was expected of the Parliamentarians. In CA, it was argued if we are

making a provision for the Supreme Court, why no such provision for the High Court judges. This gap was filled after 26 years. In any case, it deserved to be given a fair trial. I have no reasons to believe, if the provision had been used constructively, some jurists would have reached the summit court through the route of High Courts. The experience shows that if one decides to move from the academic to the professional arena before reaching the age of 45-48, one could look forward to a contributory role at the High Court level as a jurist.

It was before the advent of Indian Constitution, we had judges in the High Court belonging to Indian Civil Service (ICS). They belonged to Civil Service. They were imparted strenuous training before they were deputed for different postings. Each one of them had to study different branches of law. They all used to serve on the executive side for some years before some being deputed to the judicial side. The Government of India Act, 1935 laid down the qualifications for High Court Judges. One of the sources was those who belonged to ICS. But they must have a minimum 3 years experience as District & Sessions Judges. After the Constitution, ICS High Court Judges continued till their superannuation. The first four Chief Justice of Punjab High Court were ICS Judges: Eric Weston, A.N.Bhandari, G.D.Khosla and Donald Falshaw. Two ICS judges were elevated to Punjab High Court S.S.Dulat and S.B.Capoor. There was stiff opposition against ICS High Court Judges being elevated as judges of the Supreme Court. In spite of their brilliance, they could not make it to the apex court. There is one exception, Justice K.N.Wanchoo from Rajasthan High Court. He was elevated on August 11, 1958. He became Chief Justice of India on April 11, 1967. He retired as CJI on February 24, 1968. It is strange. ICS judges could be Chief Justices and Justices of good long standing of High Courts. Yet, they were not to be elevated to the Supreme Court. It is historical fact that they were eminent people. No one ever complained against ICS Judges about their integrity, fairness and sense of justice. Their judgments were precise and concise. They were men of law and letters.

May I say, it is never too late. The provision regarding jurist needs to be added at the High Court level. It must be given a trial. It would prove to be enriching the constitutional jurisprudence. Jurists will find their place in different High Courts. Gradually, we would also have a jurist judge of the Supreme Court. It is not healthy to kill a constitutional provision like this. If academic minds (even when they join the Bar late in years) can prove to be eminent senior advocates, why not good and great judges? I pause for an answer.

Balram K. Gupta

LATEST CASES: CIVIL

" *A person aggrieved is an expression which has expanded with the larger urgencies and felt necessities of our times*."

- *V.R. Krishna Iyer, J. in Maharaj Singh Vs. State of U.P., (1977)1 SCC 155, para 19*

Kattukandi Edathil Krishnan & Anr. Vs. Kattukandi Edathil Valsan & Ors.: 2022 SCC OnLine SC 737 -Section 114 of the Evidence Act: A Man And A Woman Living Together For Long Years As Husband And Wife, There Would Be A Presumption In Favour Of Wedlock.-Hearing a Civil Appeal arising out of the judgment and decree setting aside the decree for partition passed by the Trial Court, The Hon'ble Apex Court reversed the impugned Judgment and restored the judgment and decree passed by the Trial Court. **HELD:** It is well settled that if a man and a woman live together for long years as husband and wife, there would be a presumption in favour of wedlock. Such a presumption could be drawn under Section 114 of the Evidence Act. Although, the presumption is rebuttable, a heavy burden lies on him who seek to deprive the relationship of legal origin to prove that no marriage took place. In the present case, the defendants failed to rebut the presumption in favour of a marriage between the father and mother of Plaintiff, on account of their long cohabitation.

Rule 18 of Order XX of the Code of Civil Procedure, 1908 : The Concerning trend of delay in drawing up the final decrees.

Held: Relying on **Shub Karan Bubna v. Sita Saran Bubna**, (2009) 9 SCC 689, it was held: "*Once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.*"

Levaku Pedda Reddamma vs Gottumukkala Venkata Subbamma : Civil Appeal No.4096 Of 2022 (@ Slp(C) No. 7452/2022) dt 17.05.2022-Order VIII Rule 1A(3) : Refusing To Permit Production Of Additional Documents Even If There Is Some Delay Will Be Denial Of Justice-HELD- "We find that the trial Court as well as the High Court have gravely erred in law in not permitting the defendants to produce documents, the relevance of which can be examined by the trial Court on the basis of the evidence to be led, but to deprive a party to the suit not to file documents even if there is some delay will lead to denial of justice. It is well settled that rules of procedure are hand-maid of justice and, therefore, even if there is some delay, the trial Court should have imposed some costs rather than to decline the production of the documents itself."

Faizabad-Ayodhya Development Authority v. Dr. Rajesh Kumar Pandey : 2022 SCC OnLine SC 679- Compensation under 2013 Act cannot be claimed if award under 1894 Act couldn't be passed due to pendency of proceedings or interim stay-HELD- held that in a case where on the date of commencement of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, no award has been declared under Section 11 of the Act, 1894, due to the pendency of any proceedings and/or the interim stay granted by the Court, such landowners shall not be entitled to the compensation under Section 24(1) of the Act, 2013 and they shall be entitled to the compensation only under the Act, 1894. Furthermore, the Court held that the principle of restitution is a statutory recognition of the rule of justice, equity and fair play. The court has inherent jurisdiction to order restitution so as to do complete justice. This is also on the principle that an unsuccessful litigant who had the benefit of an interim order in his favour

cannot encash or take advantage of the same on the enforcement of the Act, 2013 by initially stalling the acquisition process and later seeking a higher compensation under the provisions of Act, 2013.

Kotak Mahindra Bank Ltd. v. A. Balakrishnan: 2022 SCC OnLine SC 706- Liability in respect of a claim arising out of a Recovery Certificate is a "financial debt" under Section 5(8) of the IBC-HELD- that a liability in respect of a claim arising out of a Recovery Certificate would be a "financial debt" within the meaning of clause (8) of Section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate. The Court explained that the words "means a debt along with interest, if any, which is disbursed against the consideration for the time value of money" are followed by the words "and includes". By employing the words "and includes", the Legislature has only given instances, which could be included in the term "financial debt". However, the list is not exhaustive but inclusive. Observing that the trigger point for initiation of CIRP is default of claim, the Court further explained that "default" is non-payment of debt by the debtor or the Corporate Debtor, which has become due and payable, as the case may be, a "debt" is a liability or obligation in respect of a claim which is due from any person, and a "claim" means a right to payment, whether such a right is reduced to judgment or not. It could thus be seen that unless there is a "claim", which may or may not be reduced to any judgment, there would be no "debt" and consequently no "default" on non-payment of such a "debt". Hence, taking into consideration the object and purpose of the IBC, the legislature could never have intended to keep a debt, which is crystallized in the form of a decree, outside the ambit of clause (8) of Section 5 of the IBC.

Somakka (Dead) By Lrs. v. K.P. Basavaraj (Dead) By Lrs. : 2022 SCC OnLine SC 736- Order 41 Rule 31 CPC | First Appellate Court Ought To Consider Evidence On Record, In Particular Those Relied Upon By Trial Court-Held- that, non-consideration of the evidence on record, in particular those relied upon by the Trial Court and not stating the points for determination, by the First Appellant Court would lead to infirmity in its judgment.

The Apex Court reiterated that it is the duty of the First Appellate Court to decide the appeal keeping in view the scope and powers conferred to it under Section 96 read with Order 41 Rule 31 of the Code of Civil Procedure, 1908 ("CPC"). **The Apex Court was concerned that the High Court's judgment was not in consonance with the requirement of Order 41 Rule 31 of the CPC, which contemplates that the judgment of the Appellate Court should be in writing; include the points for determination; the decision; the reasons; and where decree is varied or reversed, the relief to which the appellant is entitled.**

Citing the decision of the Kerala High Court in ***Kurian Chacko v. Varkey Ouseph***; the decisions of the Apex Court in ***Santosh Hazari v. Purushottam Tiwari***, ***H.K.N. Swami v. Irshad Basith***, ***Vinod Kumar v. Gangadhar***; and its recent judgment in ***Manjual And Ors. v. Shyamsundar And Ors.*** The Court held -*"From the above settled legal principles on the duty, scope and powers of the First Appellate Court, we are of the firm view and fully convinced that the High Court committed a serious error in neither forming the points for determination nor considering the evidence on record, in particular which had been relied upon by the Trial Court. The impugned judgment of the High Court is thus unsustainable in law and liable to be set aside."*

Considering that the suit was instituted by the appellant way back in 1991 and the evidence is not disputed or demolished by the brother, instead of remanding the matter to the High Court, the Apex Court thought it fit to decide the matter on merits.

Karuna Sharma
Faculty Member

LATEST CASES: CRIMINAL

"*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*

Swaminathan Kunchu Acharya Vs. State of Gujarat & Ors:2022 SCC OnLine SC 733-Custody of minor child having lost his parents?-HELD-Hearing a Criminal Appeal preferred by paternal grandfather of the corpus aggrieved and dissatisfied with the impugned judgment and order passed by the High Court directing to give custody of the corpus to maternal aunt, the Hon'ble Supreme Court has held that there cannot be any presumption that the maternal aunt being unmarried having an independent income; younger than the paternal grandparents and having a bigger family would take better care than the paternal grandparents.

The Hon'ble Court has further held that in our society still the paternal grandparents would always take better care of their grandson. One should not doubt the capacity and/or ability of the paternal grandparents to take care of their grandson.

Mahendra Singh and Ors. Vs. State of Madhya Pradesh: 2022 SCC OnLine SC 715-Types of witnesses?-HELD-Hearing a Criminal Appeals preferred against the judgment dismissing the appeal filed by the present appellants and upholding their conviction under Sections 148 and 302 read with Section 149 IPC and imposing the sentence of one year rigorous imprisonment under Section 148 IPC; and life imprisonment and a fine of Rupees 5,000/each under Section 302 read with Section 149 IPC and, in default of payment of fine, sentence of rigorous imprisonment for a period of two years, the Hon'ble Supreme Court has held that witnesses are of three types, viz., (a) wholly reliable; (b) wholly unreliable; and (c) neither wholly reliable nor wholly unreliable. When the witness is "wholly reliable", the Court should not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness. Equally, if the Court finds that the witness is "wholly unreliable", there would be no difficulty inasmuch as neither conviction nor acquittal can be based on the testimony of such witness. It is only in the third category of witnesses that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

Chandrapal Vs. State of Chhattisgarh (Earlier M.P.):2022 SCC OnLine SC 705-Appreciation of Circumstantial Evidence/ Extra Judicial Confession/ Last-seen Theory?-HELD-Hearing a Criminal Appeal preferred against the judgment and order of conviction and sentence passed for the offence under section 201 read with section 34 of IPC, the Hon'ble Supreme Court has held that the law on the appreciation of circumstantial evidence is well settled. The circumstances concerned "must or should be" established and not "may be" established, as held in Shivaji Sahabrao Bobade & Anr. Vs. State of Maharashtra, (1973) 2 SCC 793. The accused "must be" and not merely "may be" guilty before a court can convict him. The conclusions of guilt arrived at must be sure conclusions and must not be based on vague conjectures. The entire chain of circumstances on which the conclusion of guilt is to be drawn, should be fully established and should not leave any reasonable ground for the conclusion

consistent with the innocence of the accused.

The Hon'ble Court further referred to the five golden principles enumerated in case of Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116.

The Hon'ble Court further referred to State of M.P. Through CBI & Ors. Vs. Paltan Mallah & Ors., (2005) 3 SCC 169, Sahadevan & Anr. Vs. State of Tamil Nadu, (2012) 6 SCC 403, Jagroop Singh Vs. State of Punjab, (2012) 11 SCC 768, S.K. Yusuf Vs. State of West Bengal, (2011) 11 SCC 754 and Pancho Vs. State of Haryana, (2011) 10 SCC 165 wherein it has been specifically laid down that the extra judicial confession is a weak evidence by itself and it has to be examined by the court with greater care and caution. It should be truthful and should inspire confidence. An extra judicial confession attains greater credibility and evidentiary value if it is supported by chain of cogent circumstances and is further corroborated by other prosecution evidence.

The Hon'ble Court further referred to Bodhraj & Ors. Vs. State of Jammu and Kashmir, (2002) 8 SCC 45 wherein it has been laid down that last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

The Hon'ble Court further referred to Jaswant Gir Vs. State of Punjab, (2005) 12 SCC 438 wherein it has been laid down that in absence of any other links in the chain of circumstantial evidence, the accused cannot be convicted solely on the basis of "Last seen together", even if version of the prosecution witness in this regard is believed.

Mamta & Anr. Vs. State (NCT of Delhi) & Anr.: 2022 SCC OnLine SC 701- Important circumstances which should have been taken into consideration while granting bail under Section 439 of CrPC ?-HELD-Hearing a Criminal Appeal preferred against an order in Bail Application for alleged offences punishable under Sections 363, 364A, 302 and 201 read with Section 34 of the Indian Penal Code 1860, the Hon'ble Supreme Court has held that while granting bail under Section 439 of CrPC important circumstances which should have been taken into consideration is the nature and gravity of the offence, the role which has been attributed to the respondent and the crucial witnesses which remain to be examined.

P R Adikesavan Vs. The Registrar General, High Court of Madras and Anr.:2022 SCC OnLine SC 700- Contempt of Courts?-HELD-Hearing a Criminal Appeal preferred against the judgment convicting appellant under Section 2(c)(iii) read with Section 12(1) of the Contempt of Courts Act 1971 and sentencing him two weeks of simple imprisonment, the Hon'ble Supreme Court upholding debarment from practicing for a period of one year in accordance with the judgment of this Court in *R.K. Anand* v. *Registrar, Delhi High Court*, (2009) 8 SCC 106 has held that the behaviour and conduct of the appellant, who is a member of the Bar has been thoroughly contemptuous. There was a clear attempt to obstruct the process of justice when the non-bailable warrant was sought to be served on him by the competent police officials, which has been recorded in the video footage. The appellant is complicit in the obstruction of justice.

Amrinder Singh Shergill
Additional District & Sessions Judge
-cum-Faculty Member, CJA

LATEST CASES: MAINTENANCE

"Parliament has not thought it appropriate to curtail the power or discretion of the courts, in granting pre-arrest or anticipatory bail, especially regarding the duration, or till charge-sheet is filed, or in serious crimes. Therefore, it would not be in the larger interests of society if the Court, by judicial interpretation, limits the exercise of that power: the danger of such an exercise would be that in fractions, little by little, the discretion, advisedly kept wide, would shrink to a very narrow and unrecognisably tiny portion, thus frustrating the objective behind the provision, which has stood the test of time, these 46 years."

— S. Ravindra Bhat, J. in Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1, para 87

Nikhat Fatima v. Syed Razi Ahmed: 2022 SCC OnLine TS 911- If wife is earning, can it operate as a bar from awarding maintenance to suit lifestyle of her husband in matrimonial home? -HELD- while addressing a maintenance case, expressed that, the wife's earning capacity cannot be a bar from awarding her maintenance. High Court stated that the Supreme Court decision in *Rajnesh v. Neha,* (2021) 2 SCC 324, made it amply clear that,**"If wife is earning, it cannot operate as a bar from awarding maintenance to suit the lifestyle of her husband in the matrimonial home."**

In the present matter, Family Court had only dismissed the interim application filed by the first petitioner on the ground that she herself had mentioned that she was earning Rs 20,000/- per month. In Court's opinion, Family Court had passed a well-reasoned order which required no interference.

Neha Mathur v. Arvind Kishore: 2022 SCC OnLine Raj 943-Neither the mere potential to earn, nor actual earning of wife, howsoever meagre, is sufficient to deny claim of maintenance-HELD-The Court relied on Supreme Court judgment in *Rajnesh v. Neha*, (2021) 2 SCC 324, even if the wife is earning, then also she is entitled to the determination of maintenance, in accordance with the lifestyle of her husband in the matrimonial home.This Court finds that the husband is earning about Rs.12,00,000/- per month and the wife is earning Rs.85,000/- per month, and therefore, a very reasonable capacity of the husband to pay the maintenance should be 1/12th of his income, which shall take care of the husband's claim for the high cost of living in the USA.

The Court thus held *"the amount of monthly maintenance as awarded by the learned court below, vide the impugned order dated 30.08.2018, to the wife and the son, is enhanced to Rs.75000/- (for wife) and Rs. 25000/- (for son).*

Bulbuli Saikia v. Jadav Saikia: 2022 SCC OnLine Gau 820-Can a husband escape from his liability to pay maintenance to his wife by signing an agreement to the contrary? -HELD-High Court noted that the uncorroborated testimony of the 1st party and her witnesses established the fact that the 1st party was subjected to torture in her matrimonial house which gave her sufficient ground to live separately from the 2nd party. The Bench noted that the respondent/husband in his cryptic written objection had not narrated any detail as to under what circumstances, the petitioner began to reside in the parental house and as to why the FIR was also against him and imply it was stated that the matter had been settled between the parties.

In Court's view, such evasive denial on the part of the husband indicated that he had not taken proper care of his wife, while she was in her parental house.

Since after filing of the FIR, she began to reside in her parental house and that does not itself absolve the respondent/husband to provide maintenance to his wife, even though her parent might have maintained her.

On perusal of the facts and circumstances of the case, it was found that the petitioner had entered into marriage at her tender age, while she was a college-going student and due to some household conflict, the relation between the parties turned sour, as a result of which she returned to her parental house and also filed an FIR. High Court expressed that,**"…the statutory right of a wife of a maintenance cannot be bartered, done away with or negatived by the husband**

by setting up an agreement to the contrary. Such an agreement in addition to it being against public policy would also be against the clear intendment of this provision. Therefore, giving effect to an agreement, which overrides this provision of law, that is, Section 125 of Cr.P.C. would tantamount to not only giving recognition to something, which is opposed to public policy, but would also amount to negation of it."

In the present matter, the respondent / husband could not prove that he had no sufficient means to discharge his obligation and that he did not neglect or refused to maintain his wife, whereas the petitioner had been able to prove that there was neglect on the part of the respondent.

Jagmohan Kashyap v. Govt. of NCT of Delhi: 2022 SCC OnLine Del 1609: Whether right to claim maintenance under Domestic Violence Act and S. 125 CrPC are mutually exclusive? -HELD- High Court observed that the present case appeared to be a case where different avenues for relief caused enough confusion, which both, the Family Court as well as the ASJ, tried to sort out.

"The D.V. Act is, without doubt a piece of welfare legislation, to protect the interests of women in a domestic relationship and shared household, against not just physical abuse but also emotional and financial abuse."

Hence, the ASJ was right in dealing with the condonation of application in that perspective and not choosing to dismiss the appeal on procedural technicalities.

Law of Limitation and DV Act, both have to be balanced out. Further, the Bench expressed that, **"No doubt, inordinate delay would vest certain rights in the opposite party but when it comes to the question of maintenance and welfare of family members protected by the D.V. Act, there can be no vesting of such rights that would result in the divesting of rights assured by a special piece of legislation."**

Elaborating further, the Court stated that the facts, as brought as the explanation for the delay, and the intent of the party seeking condonation as evidenced by the circumstances, would guide the court in the exercise of its discretion to condone the delay in family matters. Under Section 482 CrPC, this Court will not act as a Court of appeal and only if perversity or non-application of mind is disclosed in the impugned order or the impugned order results in a grave miscarriage of justice, that the court would interfere with it in the exercise of these powers.

Ankita Dikshit v. State of U.P.: Criminal Revision No. 398 of 2016, decided on 13-5-2022-Duty of father to maintain child, daughter entitled to seek maintenance from father-HELD- Allahabad High Court took note of the settled law enunciated by the Supreme Court in *Rajnesh v. Neha,* (2021) 2 SCC 324, that both, the working mother and working father have to take the liability of the child and if the mother is working, it does not mean that the father will be absolved from taking responsibility of his child. The father is legally bound to maintain his child according to the status and lifestyle. **It is the duty of the father to maintain her child and the revisionist being daughter is entitled to seek maintenance from her father.** Further, this court opined that the lower Court committed an error while making an observation that the mother was working in H.A.L, therefore, she must maintain the revisionist. The finding was further incorrect, wherein, it was observed that the mother was maintaining her daughter since 1991 and thus it was presumed that all the needs of the child were being fulfilled.

It was also noted that OP 2 indicated that his total salary was Rs 78, 825 out of which he had deposited Rs 45,000 in PF just to show that he was getting a lesser income of Rs 23,025 per month. He deposited the heavy amount in the PF so that the revisionist may not claim the appropriate maintenance amount.

Mahima Tuli
Research Fellow

NOTIFICATION

Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022' : The Central Consumer Protection Authority (CCPA) have been notified on 9 June 2022 about the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements. The Guidelines are fairly detailed, and seek to curb misleading advertisements and protect unsuspecting consumers from falling prey to unfair trade practices. The Guidelines would be applicable to all advertisements regardless of form, format or medium and all manufacturers, service providers or traders whose goods, products or services are the subject of an advertisement. They would also be applicable to advertising agencies or endorsers whose services are availed for the advertisements of the said goods, products, or services. Given that advertisements play an enormous role in facilitating sale of products or services across all ages and diverse backgrounds, there has been concern around advertisements that make untruthful or false or deceptive claims or seek to influence the consumers through misleading claims. Whilst the Consumer Protection Act, 2019 (Act) has general provisions in place for prevention of misleading advertisements, the CCPA, has now exercised its powers conferred under section 18 of Act and issued these Guidelines containing several principles and parameters to identify what is permissible and what is prohibited. The Guidelines also give teeth to the enforcement of several parameters contained in the 'Code for Self-Regulation in Advertising' (ASCI Code) issued by the self regulating bogy Advertising Standards Council of India, to the extent the provisions of the Guidelines overlap with the ASCI Code.

The Guidelines deal with the following issues:

1.	General principles to ascertain what is a misleading advertisement
2.	Conditions for bait advertisements
3.	Prohibition of surrogate advertising
4.	Guidelines for free claim advertisements
5.	Conditions for advertisements targeting children or featuring children
6.	Rules on disclaimers in advertisements
7.	Due diligence and disclosure of material connection by an endorser
8.	Responsibilities of manufacturers, service providers, advertisers and advertising agencies

The Guidelines which stem from the Act will most likely have the effect of tightening the noose and could reduce the room that an advertiser usually had to play around in the grey areas whilst creating and publishing an advertisement. They constitute an important milestone in the regulatory regime for advertisements which till now was predominantly self-regulated through the ASCI Code. Restrictions imposed may also affect the commercial viability of advertisements for certain products/services. For example, 'junk food' advertisements which predominantly target children, may require substantial modifications to comply with the Guidelines.[1]

[1] https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/CCPA%20Notification.pdf