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FROM THE DESK OF CHIEF EDITOR

A Division Bench of High Court of Uttarakhand vide its judgment dated March 20, 2017 in the matter of **Mohd. Salim versus State of Uttrakhand and others** has declared:

> "…the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic / legal persons / living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna."

It is for the first time in India that two rivers have been recognized as "living entities". The two rivers have rights and values. Normally, behind a juristic / corporate person, there are human minds who manage the legal entity. In the case of two rivers, the court has declared that the Director NAMAMI–Ganga, the Chief Secretary of the State of Uttrakhand and Advocate General of the State of Uttrakhand have been declared persons in *loco parentis* as the human face to protect, conserve and preserve Rivers Ganga and Yamuna and their tributaries. The court has ordered that these officers are bound to uphold the status of Rivers Ganga and Yamuna and also to promote the health and well being of these rivers.

River Whanganui in the North Ireland of New Zealand was given the status of legal entity by the Parliament of New Zealand. In India, there is no such legislation. In declaring of the two rivers as legal entities, the Court extensively examined the issue jurisprudentially and the Judge-made-law as to which artificial entities can be considered and treated as living entities. This forward looking view is sound. It was most necessary particularly for the conservation and preservation of Rivers Ganga and Yamuna. The Court has defined 'person' for the purpose of jurisprudence as an entity (not necessarily a human being) to which rights and duties may be attributed. The entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. An idol, was recognized as a juristic person. It was known, it could not act by itself. In the case of a minor a guardian is appointed. In the case of idol, a Shebait or manager is appointed to act on its behalf. Accordingly, the Court has declared the human face to protect Rivers Ganga and Yamuna. It is submitted that this view is sound. It would go a long way in maintaining the proper management by preserving and conserving the two Rivers. Moreover, for the health of the two rivers, the necessary steps could be taken. We wait to see its impact and effect. This view is a tribute to Judicial minds. Innovative. Constructive. Futuristic.

Balram K. Gupta

Important Guidelines have been issued by two Judge Bench of Supreme Court regarding Inadequacies and Deficiencies in criminal trials vide order dated March 30, 2017. This is for immediate consideration.

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
SUO MOTU WRIT (CRL.) NO.1 OF 2017
IN RE: TO ISSUE CERTAIN GUIDELINES REGARDING INADEQUACIES AND DEFICIENCIES IN CRIMINAL TRIALS

ORDER

During the course of hearing of Criminal Appeal No.400/2006 and connected matters, Mr.R.Basant, learned Senior Counsel appearing for the appellants-complainant, pointed out certain common inadequacies and deficiencies in the course of trial adopted by the trial court while disposing of criminal cases. In particular, it was pointed out that though there are beneficial provisions in the Rules of some of the High Courts which ensure that certain documents such as list of witnesses and the list of exhibits/material objects referred to, are annexed to the judgment and order itself of the trial court, these features do not exist in Rules of some other High Courts. Undoubtedly, the judgments and orders of the trial court which have such lists annexed, can be appreciated much better by the appellate courts.

Certain other matters were also pointed out by Mr. Basant, learned Senior Counsel for the appellants complainant, during the course of arguments. He made the following submissions:

A. In the course of discussions at the Bar while considering this case, this Court had generally adverted to certain common inadequacies and imperfections that occur in the criminal trials in our country. I venture to suggest that in the interests of better administration of criminal justice and to usher in a certain amount of uniformity, and acceptance of best practices prevailing over various parts of India, this Court may consider issue of certain general guidelines to be followed across the board by all Criminal Courts in the country.

B. The following areas may be considered specifically:

1. The pernicious practice of the Trial Judge leaving the recording of deposition to the clerk concerned and recording of evidence going on in more than one case in the same Court room, at the same time, under the presence and general supervision of the presiding officer has to be disapproved strongly and discontinued forthwith. A visit to Delhi Trial Courts any day will reveal this sad state of affairs, I am given to understand.

2. The depositions of witnesses must be recorded, in typed format, using computers, in Court, to the dictation of the presiding officers (in English wherever possible) so that readable true copies will be available straightaway and can be issued to both sides on the date of examination itself.

3. The deposition of each witness must be recorded dividing it into separate paragraphs assigning para numbers to facilitate easy reference to specific portions later in the course of arguments and in Judgments.

4. Witnesses/documents/material objects be assigned specific nomenclature and numbers like PWs/DWs/CWs (1 onwards); Ext. P/Ext. D/Ext. C (1 onwards); MOs (1 onwards) etc., so that reference later becomes easy and less time-consuming. Kindly see the Relevant Rules Kerala Criminal Rules of Practice 1982

“Rule 62 – Marking of exhibits.-

(1) Exhibits admitted in evidence shall be marked as follows:

(i) If filed by the prosecution, with capital letter P followed by a numeral P1, P2, P3 Etc

(ii) If filed by defence, with capital letter D followed by a numeral D1, D2, D3 etc

(iii) If Court exhibits, with capital letter C followed by a numeral C1, C2, C3 etc.

(2) All exhibits marked by several accused shall be marked consecutively.

(3) All material objects shall be marked in Arabic numbers in continuous series, whether exhibited for the prosecution or the defence or the Court as M.O.1, M.O.2, M.O.3, etc"

Andhra Pradesh Criminal rules of Practice and Circular Orders, 1990

> "Rule 66 – How witness shall be referred to Witnesses shall be referred by their names or ranks as P.W.s., or D.Ws., and if the witnesses are not examined, but cited in the chargesheet, they should be referred by their names and not by numbers allotted to them in the charge-sheet."

5. Every judgment must mandatorily have a preface showing the name of the parties and an appendix showing the list of Prosecutions Witnesses, Prosecution Exhibits, Defence Witnesses, Defence Exhibits, Court witnesses, Court Exhibits and Material Objects. Kindly see inter alia the Relevant rules in the Kerala Criminal Rules of Practice, 1982.

> "Rule 132 – Judgment to contain certain particulars.- The Judgment in original decision shall, apart from the particulars prescribed by Section 354 of the Code also contain a statement in Tabular Form giving the following particulars, namely:

1. Serial Number
2. Name of the Police Station and the Crime No. of the offence
3. Name
4. Father's name Description of the Accused
5. Occupation
6. Residence
7. Age
8. Occurrence
9. Complaint Date of
10. Apprehension
11. Release on bail
12. Commitment
13. Commencement of trial
14. Close of trial
15. Sentence or order
16. Service of copy of judgment or finding on accused
17. Explanation of delay

Note.- (1) Date of complaint in column 9 shall be the date of the filing of the charge-sheet in respect of case instituted on police report and the date of filing of the complaint in respect of other case.

(2) Date of apprehension in column 10 shall be the date of arrest.

(3) Date of commencement of trial in column 13 shall be:

> (a) In summons cases, the date on which the particulars of the offence are stated to the accused under section 251 of the Code.
>
> (b) In warrant cases instituted on police report, the date on which the documents under section 207 of the Code are furnished to the accused and the Magistrate satisfied himself of the same under section 238 of the Code.
>
> (c) In other warrant cases, when the recording of evidence is commenced under section 244 of the Code.
>
> (d) In Sessions trials, when the charge is read out and explained to the accused under section 228 of the Code.

"Rule 134–List of witnesses etc. to be Appended to Judgement.

> There shall be appended to every judgment a list of the witnesses examined by the prosecution and for the defence and by the Court and also a list of exhibits and material objects marked."

6. Once numbers are assigned to the accused, witnesses and exhibits, they be referred to, subsequently in the proceedings and in the judgments with the help of such numbers only. The practice of referring to the names of the accused/witnesses and documents descriptively in the proceedings paper and judgments creates a lot of confusion. Whenever there is need to refer to them by name their rank as Accused/Witness must be shown in brackets.

7. Repetition of pleadings, evidence, and arguments in the judgments and orders of the Trial Court, Appellate and Revisional Courts be avoided. Repetition of facts, evidence, and contentions before lower Courts make the judgments cumbersome, and takes away the precious time of the Court unnecessarily. The Appellate/Revisional Court judgment/order is the continuation of the lower court judgment and

must ideally start with “in this appeal/revision, the impugned judgment is assailed on the following grounds” or “the points that arise for consideration in this appeal/revision are”. This does not of course, take away the option/jurisdiction of the Appellate/Revisional Courts to re-narrate facts and contentions if they be inadequately or insufficiently narrated in the judgment. Mechanical re narration to be avoided at any rate.

8. In every case file, a judgment folder to be maintained, and the first para in the appellate/revisional judgment to be numbered as the next paragraph after the last para in the impugned judgment. This would cater to a better culture of judgment writing saving precious court time.

9. The healthy practice in some states of the Investigating Officer obtaining and producing (or the wound certificate/ post mortem certificate showing) the front and rear sketch of the human torso showing the injuries listed in the medical documents specifically, may be uniformly insisted. This would help the judges to have a clearer and surer understanding of the situs of the injuries.

10. Marking of contradictions–A healthy practice of marking the contradictions/Omissions properly does not appear to exist in several States. Ideally the relevant portions of case diary statement used for contradicting a witness must be extracted fully in the deposition. If the same is cumbersome at least the opening and closing words of the contradiction in the case diary statement must be referred to in the deposition and marked separately as a Prosecution/Defence exhibit.

11. The practice of omnibus marking of S. 164 statement of witness deserves to be deprecated. The relevant portion of such prior statements of living persons used for contradiction or corroboration U/s. 145/157 of the Evidence Act deserves to be marked separately and specifically.

12. The practice of whole sale marking of confession statement of accused persons for introduction of the relevant statement admissible under S. 27 of Evidence Act deserves to be deprecated. Ideally the admissible portion and that portion alone, must be extracted in the recovery memos (Mahazar or Panch – different nomenclature used in different parts of the land) within inverted commas. Otherwise the relevant portion alone written separately must be proved by the Investigating Officer. Back door access to inadmissible evidence by marking the entire confession statement in the attempt to prove the admissible portion under S. 27 of Evidence Act should be strictly avoided.

13. The Trial Courts must be mandatorily obliged to specify in the Judgment the period of set off under Section 428 Cr.P.C specifying date and not leave it to be resolved later by jail authorities or successor presiding officers. The Judgements and the consequent warrant of committal must specify the period of set off clearly.

In the circumstances, we direct that notices be issued to the Registrars General of all the High Courts, and the Chief Secretaries/the Administrators and the Advocates-General/Senior Standing Counsel of all the States/Union Territories, so that general consensus can be arrived at on the need to amend the relevant Rules of Practice/ Criminal Manuals to bring about uniform best practices across the country. This Court may also consider issuance of directions under Article 142 of the Constitution. They can be given the option to give suggestions also on other areas of concern.

.....J
[S. A. BOBDE]
.....J
[L. NAGESWARA RAO]

New Delhi;
MARCH 30, 2017.

International Women's Day Special
Landmark judgments of Supreme Court on Women Empowerment

Suman Singh vs. Sanjay Singh: MANU/SC/0251/2017 – 'Cruelty' as a ground of divorce – **Held** – The word "cruelty" used in Section 13(1)(ia) of the Act is not defined under the Act. However, this expression was the subject matter of interpretation in several cases of the apex Court. What amounts to "mental cruelty" was succinctly explained by the Court (three Judge Bench) in *Samar Ghosh vs. Jaya Ghosh [(2007) 4 SCC 511].* The Summit Court observed that no uniform standard can ever be laid down for guidance. It is appropriate to enumerate some instances of human behavior which may be considered relevant in dealing with the cases of "mental cruelty". **Held** – A petition seeking divorce on some isolated incidents alleged to have occurred 8-10 years prior to filing of the date of petition cannot furnish a subsisting cause of action to seek divorce after 10 years or so of occurrence of such incidents. The incidents alleged should be of recurring nature or continuing one and they should be in near proximity with the filing of the petition. Few isolated incidents of long past and that too found to have been condoned due to compromising behavior of the parties cannot constitute an act of cruelty within the meaning of Section 13(1)(ia)of the Act.

Bindu Philips vs. Sunil Jacob: Civil Appeal No.2913 of 2013:DoD 10.03.2017 (SC) – Upholding the fact that the mother's role towards her child was more pivotal because she gives birth to the child and hence capable of giving more love and affection, the court cautioned the husband not to tutor the children something adverse about their mother. The father was advised to take positive initiative in telling the children about their mother, especially coming to India to meet them and that the children should welcome her and spent good time with her.

Laxmi vs. Union of India: (2014) 4 SCC 427 – On account of increase in number of acid attacks on women in the past few years, Supreme Court, in order to curb these, gave directions to Home Secretary, Ministry of Home Affairs associating the Secretary, Ministry of Chemical & Fertilizers to convene a meeting of the Chief Secretaries/concerned Secretaries of the State Governments and the Administrators of the Union Territories to curb and restrict the sale of acid throughout the country. Holding that acid attack on a woman was equal to taking away her identity from her and such rampant increase in this heinous crime was leading to terror amongst women and Supreme Court took a vital step in the direction of rehabilitating the victims and penalizing the guilty.

Lillu @ Rajesh and Anr. vs. State of Haryana: (2013) 14 SCC 643 – The Supreme Court realizing the agony and trauma of a rape victim subjected to two finger test, held that this test was in violation of her right to privacy and dignity. It was held that this test, even if the report was affirmative, cannot ipso facto, give rise to presumption of consent.

Budhadev Karmaskar vs. State of West Bengal: 2011 (11) SCC 538 – The Hon'ble Supreme Court while dealing with the case of a brutally murdered sex worker, issued directions that the central and state governments through social welfare boards should prepare schemes for rehabilitation of physically and sexually abused women commonly known as prostitute holding that they also had a right to live with dignity guaranteed under Article 21 of the Constitution.

D.Velusamy vs. D.Patchaiammal : (2010) 10 SCC 469 – The Supreme Court held that live-in relationship of the category of relationships in the nature of marriage would be covered under the benefit of the Protection of Woman from Domestic Violence Act, 2005. A woman living in such a relationship with a man would be entitled to the reliefs provided under the Act. However, not all live in relationships would be benefitted. Only those relationships which are in the 'nature of marriage', as explained in the judgment would fall under the preview of the Act. This judgment for the first time recognized relationship between a man and woman who were not otherwise married in the eyes of law.

Seema vs. Ashwani Kumar: AIR 2006 SC 1158 – The Supreme Court issued direction to state governments and central government that marriage of all persons who were citizens of India belonging to different religious denominations should be made compulsorily registerable in their respective state where such marriages were solemnized and issued directions that the central government should enact a comprehensive statute in this regard. This prompted the government to amend the Registration of Births and Deaths Act, 1969.

Lata Singh vs. State of U.P.: 2006 (6) SCALE 583 – Noting that there was no bar to inter-caste marriages under the Hindu Marriage Act, the court issued directions to the administration and police authorities throughout the country to ensure that if any boy or girl who is a major enters into inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed or subjected to threats and violence. The police was directed to institute criminal proceeding against such persons who threatened, harassed, committed or instigated acts of violence on such couples.

Sakshi vs. Union of India: AIR 2004 SC 3566 – The Supreme Court issued following directions to be adhered to while conducting trial of a victim of child sexual abuse or rape : Special arrangements such as a screen must be made so as to ensure that the victim or witness does not see the body or face of the accused. The questions for cross-examination must be framed and given to the Presiding Officer of the Court who must then put them to the victim or witness in a language that is clear and not embarrassing. Adequate breaks must be given to the victim of child abuse or rape while they give their testimony in court.

Shamim Ara vs. State of UP: 2002 (7) SCC 518 – The Supreme Court in this case declared arbitrary triple talaq as invalid. It meant that even if the husband said triple talaq orally, over phone, email or fax, it would not dissolve the marriage. The woman continues to be his wife and can claim her right of maintenance or residence under the Domestic Violence Act (DVA), the same way women from other communities who face desertion do. Further held that - the requirements of a valid talaq are: (i) That the talaq must be for a reasonable cause; and (ii) It must be preceded by attempts of reconciliation between the husband and the wife by two arbiters – one chosen by the wife from her family and the other by the husband from his family. If their attempts fail, talaq can be affected.

Daniel Latifi vs. Union of India: 2001 (7) SCC 740 – Constitutional Bench of the Supreme Court in this case, while upholding the Constitutional validity of The Muslim Women (Protection of Rights on Divorce) Act, 1986, held that liability of Muslim husband to his divorced wife arising under Section 3(1) (a) of the Act to pay maintenance is not confined to iddat period. The Court held that a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1) (a) of the Act. According to the Court, a divorced Muslim woman who has not remarried and who is not able to maintain herself after iddat period can proceed against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance.

Vishaka & Ors. vs. State of Rajasthan and Ors.: (1997) 6 SCC 241 – The court issued guidelines to prevent Sexual Harassment of Women at Workplace, holding that all complaints made by harassed women at workplace would be addressed by the Internal Complaints Committee which would advice the victim on further course of action and the employer on the course of action to be taken against the perpetrator of the crime. The verdict put in place the sexual Harassment of the Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Mrs. Mary Roy Etc. vs. State of Kerala and Ors: 1986 AIR SC 1011 – The Supreme Court held that Christian Women are entitled to equal share in their father's property. Prior to this judgment, Christian woman in Kerala, governed under the 1916 Travancore – Kochi Christian Succession Act could inherent only one fourth of the share of the sons in her father's property. This judgment brought Christian women in Kerala within the ambit of Indian Succession Act, 1921 bringing them on equal footing as their male counterparts.

Vaddeboyina Tulasamma vs. Vaddeboyina Shesha Reddi: 1977 SCR (3) 261 – The Supreme Court highlighted the Hindu Woman's Right to Maintenance as a tangable right against property flowing from the sacred relationship between husband and wife. It was held that Section 14 (1) of the Hindu Succession Act, 1956 must be liberally construed in favour of women so as to advance the object of the legislation.

LATEST CASES: CIVIL

"It is intellectual truancy to avoid the precedents and issue directions which are not in consonance with law. It is the duty of a Judge to sustain the judicial balance and not to think of an order which can cause trauma to the process of adjudication"

Dipak Misra, J. in State of Telangana v. Habin Abdullah Jeelani, (2007) 2 SCC 779

IMAX Corporation vs. M/s. E-City Entertainment India Pvt. Ltd.: MANU/SC/0263/2017 – while dealing with the objection as to the maintainability of the petition u/s 34 of the Arbitration and Reconciliation Act, 1996 on the ground that the arbitration clause excluded the applicability of Part-I which contains the said section. Hon'ble Apex court held that the law of the country where arbitration is held that will govern the arbitration and matters related thereto, such as a challenge to the award. The place or seat of the arbitration is not merely a matter of geography. It is the territorial link between the arbitration itself and the law of the place in which that arbitration is legally situated. Thus, it is clear that the place of arbitration determines the law that will apply to the arbitration and related matters like challenges to the award etc. The seat of arbitration itself is not a decisive factor to exclude Part-I of the Arbitration Act and held that provisions of Part-I of the Arbitration Act would apply to all arbitrations and all proceedings relating thereto.

Pratibha Pratisthan & Ors. vs. The Manager, Canara Bank & Ors.: MANU/SC/0238/2017 – Deciding an issue as to whether a complaint can be filed by a Trust under the provisions of the Consumer Protection Act, 1986, the apex Court agreeing with the opinion of the National Consumer Disputes Redressal Commission which answered this question in the negative, held that the words 'complaint', 'complainant' 'consumer' and 'person' make it clear that a Trust cannot invoke the provisions of the Act in respect of any allegation on the basis of which a complaint could be made.

Mohan Kumar vs. State of Madhya Pradesh and Ors.: MANU/SC/0237/2017 – The apex court while remanding the case to the trial court also brought into pointed notice the provision under order 27 Rule 5B CPC that it is the duty of the Court to make, in the first instance, every endeavor to assist the parties to settle in respect of subject matter of the suit and, if for any reason, settlement is not arrived at, then proceed to decide the suit on merits in accordance with law.

Dnyandeo Sabaji Naik and Anr. vs. Mrs. Pradnya Prakash Khadekar and Ors.: MANU/SC/0233/2017 – The apex court observed that the court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. **Exemplary costs** are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth. Further, it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner.

The Management of State Bank of India vs. Smita Sharad Deshmukh and Anr.: 2017 (3) SCALE 291 – The Hon'ble Supreme Court while referring with authority to the law laid down in ***Union of India vs. H.C.Goel, (1964) 4 SCR 718*** held that strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity

could have arrived at that finding. The court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

JSW Infrastructure Ltd. and Anr. vs. Kakinada Seaports Ltd. and Ors.: 2017 (3) SCALE 216 – The Hon'ble Supreme Court held that the words used in documents cannot be treated to be surplusage or superfluous or redundant and must be given some meaning and weightage. To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary rule based on common sense that no author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning.

Jayantilal Chimanlal Patel vs. Vadilal Purushottamdas Patel: 2017 (3) SCALE 171 – Apex Court held that the bar under Order 2 Rule 2 CPC is a technical bar and it has to be established satisfactorily and cannot be presumed merely on the basis of inferential reasoning. A plea of a bar under Order 2 Rule 2 of the CPC can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits. As such, filing of the plaint of earlier suit and proving it as per law is imperative to sustain the plea of Order 2 Rule 2 CPC. Unless that is done, the stand would not be entertained.

Swami Shivshankargiri Chella Swami & Anr. vs. Satya Gyan Niketan and Anr.: 2017 (3) SCALE 152 – It was held by the Supreme Court that the suit u/s 92 is a suit of a special nature which presupposes the existence of a public Trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the Court is necessary for the administration of the Trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. The Supreme Court further clarified that if the allegation of breach of Trust is not substantiated or that the plaintiff had not made out a case for any direction by the Court for proper administration of the Trust, the very foundation of a suit under the section would fail; and, even if all the other ingredients of a suit u/s 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their own individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of Section 92. The court further expounded a rule of caution that the court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave u/s 92 to institute a suit. The defendants could bring to the notice of the court for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave u/s 92 are doing so merely with a view to harass the Trust or have such antecedents that it would be undesirable to grant leave to such persons. However, the Hon'ble Court observed that if a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or non- maintainable. Further going through the entire gamut of case law on Section 92 CPC the apex court observed that after the amendment was brought to the Code of Civil Procedure in 1976, duty was cast upon the Court, instead of Advocate General, to take into account these considerations for granting leave under this section. Prior to the 1976 amendment, all these considerations were to be kept in mind by the Advocate General before granting consent to institute a suit against a public Trust.

Jayakantham & Others vs. Abaykumar: 2017 (3) SCALE 61–While deciding a case of specific performance of contract based on registered agreement to sell, Hon'ble Apex Court observed that ordinarily the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. While balancing the equities, one of the considerations to be kept in view is, as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other, as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.

LATEST CASES: CRIMINAL

"… the concept of fair trial cannot be allowed to such an extent, so that the systemic order of conducting a trial in accordance with Cr.P.C. or other enactments get mortgaged to the whims and fancies of the defence or the prosecution. The command of Cr.P.C. cannot be thrown to winds. In such situation, as has been laid down in many an authority, the courts have significantly an eminent role"

Dipak Misra, J. in State of Haryana v. Ram Mehar, (2006) 8 SCC 762

Hussain vs. U.O.I.:MANU/SC/0274/2017– **Bail**– While there can be no doubt that under trial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations, these are matters which have to be dealt with on case-to-case basis keeping in mind the guidelines laid down by this Court in the orders passed in this writ petition and in subsequent cases from time to time. Sympathy for the under trials who are in jail for long terms on account of the pendency of cases has to be balanced having regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact-situations in pending cases. **Further held**-Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. This Court has held that while a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases.

Ravada Sasikala vs. State of Andhra Pradesh: MANU/SC/0270/2017–**Question–Imposition of sentence, its proportionality to the crime–Held**–the court in fixing the punishment for any particular crime should take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender. The measure of punishment should be proportionate to the gravity of the offence. **Further held** – primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him has not only created a dent in the life of the victim but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. The Court further observed that on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. It has to be borne in mind that while carrying out this complex exercise, it is obligatory on the part of the court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim. **Further held** – The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice dispensation system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. **Further held** – Punishment should not be so lenient that it would shock the conscience of the society. It is solemn duty of the court to strike a proper balance while awarding sentence as imposition of lesser sentence encourages a criminal and resultantly the society suffers.

Pawan @ Rajinder Singh vs. State of Haryana: MANU/SC/0253/2017 – Motive of crime–Held – though the motive of crime is not necessarily required to be proved, but in cases where the accused are named in FIR on the basis of suspicion by informant, the motive appears to be relevant fact and has to be proved on the record by prosecution by cogent evidence.

Himanshu Mohan Rai vs. State of Uttar Pradesh:MANU/SC/0252/2017–**Non recovery of weapon of offence, its effect on success of criminal trial–Held–**It is possible that the prosecution may not recover the actual weapon in some cases. However, this cannot have the effect of discrediting reliable ocular testimony

where on trial the ocular testimony has been assessed by the court as creditable and trustworthy evidence. **Further held**–The judgment of the Trial Court which had the advantage of watching the demeanor of the witnesses should not be lightly set aside. In such cases where the evidence of the eye witness has been found to be truthful and as in this case corroborated by the fact that the bullets were recovered from the body of the deceased, it is obvious that cannot have the effect of an acquittal. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical systems of justice will then break down and lose credibility with the community.

The evil of acquitting a guilty person light heartedly as a learned Author has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent.

Rajagopal vs. Muthupandi @ Thavakkalai: MANU/SC/0232/2017–Relevance of motive in criminal trial – Held – It is well established that motive does not have to be established where there is direct evidence given the fact that such evidence has stood the test of cross-examination. Given the brutal assault made on victim by criminals, the fact that witnesses have turned hostile can also cut both ways, as is well known in criminal jurisprudence.

Parasa Koteswararao vs. Eede Sree Hari: MANU/SC/0231/2017 – **Last seen theory – Held –** In the case of last seen, the prosecution is exempted from proving the exact happening of the incident as the accused himself would have special knowledge of such incident. However, this rule would not apply to a case where last seen itself has not been proved.

M.G. Eshwarappa vs. State of Karnataka: 2017 (3) SCALE 296 –Appeal against acquittal –Held–while dealing with an appeal against acquittal, if the criminal appellate court feels that two views are possible, the principle of law is that the view taken by the trial court should not be disturbed, but in a case where the view taken by the trial court was perverse and rightly held so by the High Court, this rule is not applicable. **Further held**–not recording of Dying Declaration of the deceased victim is not a material fact for believing the version and evidence of prosecution where it was proved that deceased was not in a conscious condition when he was admitted in the hospital. As such, there is no question of recording of dying declaration of the patient in such a critical condition.

Chhanga @ Manoj vs. State of M.P.: MANU/SC/0224/2017 – For the purpose of conviction u/s 307 IPC, the prosecution has to establish–(i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. **Further held** – to justify a conviction u/s 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc. **Further held** – to judge the intention of the accused, the nature of the weapon used pre- dominates.

Sheikh Juman vs. State of Bihar:2017(3) SCALE 161–Appreciation of evidence of eye witnesses in criminal trial–Held–Evidence of any witness cannot be rejected merely on the ground that interested witnesses admittedly had enmity with the persons implicated in the case. The purpose of recoding of the evidence, in any case, shall always be to unearth the truth of the case. Conviction can even be based on the testimony of a sole eye-witness, if the same inspires confidence.

NOTIFICATIONS

- Notification/Circular dated 06.03.2017 issued by Pension Fund Regulatory & Development Authority (PFRDA):
  - Vide this notification, the authority has complied with the announcement made by the government in the budget session of 2016-17 that subscriber from recognized provident funds and superannuation funds would be able to transfer their corpus from these funds to National Pension System (NPS) with no tax implication.
  - Vide this notification the PFRDA has clarified the procedure.
  - Accordingly, in case the subscriber is interested to get his recognized Provident Fund/Superannuation Fund transferred to NPS, he would be required to follow the procedure.

    For details click on **Link.**
- The National Pharmaceutical Pricing Authority (NPPA) under Ministry of Chemical & Fertilizers, vide gazette notification dated 13.02.2017, has directed all hospitals to issue detailed bills to patients, specifically and separately mentioning the cost of coronary stents, alongwith brand name of the manufacturer and importer, batch number and other details to keep a check on over pricing and smooth production and supply of coronary stents of all brands which were available in the country before price cap.
  - The NPPA has notified the ceiling price of coronary stents on 13.02.2017. This price regulation has brought the prices of stents of BMS by 74% and of DES by 85%. For details click on **Link.**
- Maternity Benefit (Amendment) Act, 2016

  The Amendment Act received the assent of President of India on 27th March, 2017. Government of India has notified the Maternity Benefit (Amendment) Act, 2016 on 28th March, 2017.

  Salient Features of the Act:

  (i) Maternity leave available to the working women to be increased from 12 weeks to 26 weeks for the first two children.

  (ii) Maternity leave for children beyond the first two will continue to be 12 weeks.

  (iii) Maternity leave of 12 weeks to be available to mothers adopting a child below the age of three months as well as to the “commissioning mothers”. The commissioning mother has been defined as biological mother who uses her egg to create an embryo planted in any other woman.

  (iv) Every establishment with more than 50 employees to provide for crèche facilities for working mothers and such mothers will be permitted to make four visits during working hours to look after and feed the child in the crèche.

  (v) The employer may permit a woman to work from home if it is possible to do so.

  (vi) Every establishment will be required to make these benefits available to the women from the time of her appointment.

  For details click on **Link.**

EVENTS OF THE MONTH

1.On March 08, 2017, the Direct Taxes Regional Training Institute, Chandigarh in collaboration with Chandigarh Judicial Academy organized one day Workshop on 'Gender Sensitization' for Income Tax Department Officers and Judicial Officers undergoing Institutional Training at Chandigarh Judicial Academy to mark International Women Day at Chandigarh Judicial Academy. HMJ Rajesh Bindal delivered Keynote address. HMJ Daya Chaudhary discussed views on "Legal Framework on Sexual Harassment at Workplace". Sh. Shiv Khera, Motivational Speaker, author and educator took a session on "Winners don't do different things, they do things differently". Sh. K.C. Jain, Principal Chief Commissioner of Income Tax, NWR, Chandigarh took a working session on "Power of Mind". Ms. Jahanzeb Akhtar, Commissioner of Income Tax spoke on "Gender Sensitization".

2.Justice G. Raghuram, Director, National Judicial Academy, Bhopal addressed the Trainee Judicial Officers of both Punjab and Haryana states on March 17, 2017 in the Convention Hall of CJA on 'Building up of Judicial Attitudes'. The address was found by TJOs both interested and digestive. This address was besides the lecture on "Interpretation of Statutes" which was mailed to all the Trainee Judicial Officers.

3. HMJ Anil R. Dave, Former Judge, Supreme Court of India, a mix of a lawyer for almost 20 years and a judge, Chief Justice of High Courts and Judge, Supreme Court for 21 years. He retired towards the end of 2016. Justice Dave shared his experiences both as a lawyer and as a judge with young Judicial Officers at Chandigarh Judicial Academy on March 22, 2017. This was inspiring and motivating to the trainee young Judicial Officers.

4.On March 23 to 25, 2017, three days 20 hours Capsule Course was conducted by Mediation and Conciliation Project Committee (MCPC), Supreme Court of India at Chandigarh Judicial Academy. It was attended by Mediators from the States of Punjab, Haryana, Chhattisgarh, Himachal Pradesh, Madhya Pradesh apart from Union Territory Chandigarh. They were sensitized with regard to conducting of Mediation Training by Dr. Sudhir Kumar Jain (Judge Trainer) and Ms. Shalini Jain (Advocate Trainer), Trainers of MCPC at Chandigarh Judicial Academy.

5.On March 25-26, 2017, Chandigarh Judicial Academy organized two day Regional Conference on applicability of the Forensic Science in the Administration of Criminal Justice System and Technical Issues. Judicial Officers of the rank of ADJ-I, Senior Doctors and Police Officers, District Attorneys and Scientists from States of Punjab, Haryana and Union Territory participated in the same. They were sensitized on issues like Importance of Crime Scene, DNA Analysis, Procedure for Collection of Forensic Evidence, Maintaining the Custody of Chain of the samples and the technicalities involved. The different sessions were addressed by HMJ Rajesh Bindal, HMJ M.M.S. Bedi, HMJ Darshan Singh, Judges of High Court of Punjab and Haryana, Dr. K.P. Singh, DGP, Haryana, Dr. S.K. Jain, Director, CFSL, Chandigarh and Dr. Sanjeev, Deputy Director and HOD–DNA, CFSL, Chandigarh. Besides this, Presentations were made by Sh. Pradeep Mehta, Faculty Member, CJA, Sh. Rajinder Aggarwal, ADJ, Moga, Dr. J.S. Dalal, Director, DRME, Punjab (Retd.), Sh. S.S. Basowa and Dr. Vimukti Chauhan, Senior Scientists, CFSL, Chandigarh, Dr. Neelam Arya and Sh. Rajiv Kawatra, Senior Scientific Officers and Sh. Sidharth Kaushik, Assistant Director, FSL, Madhuban.

FORTHCOMING EVENTS

1. On completion of one year Institutional Training of Judicial Officers from the States of Punjab and Haryana, the Valedictory Function has been scheduled for April 08, 2017. HMJ A.K. Sikri, Judge, Supreme Court of India will deliver the Valedictory Address. HMJ Sanjay Kishan Kaul, Judge, Supreme Court of India will deliver the Founder's Day lecture on completion of eleven years of Chandigarh Judicial Academy.

2. Based upon the successful academic programme organized for Sri Lankan Judges in December 2016, the next programme has been scheduled from April 21-25, 2017. Two more programmes have also been scheduled in the months of August and December 2017.

3. A Conference will be organized on April 30, 2017 on the Juvenile Justice (Care and Protection) of Children Act, 2015 and Juvenile Justice (Care and Protection) of Children, Model Rules 2016 wherein Principal Magistrates, JJ Boards and Chairperson of Child Welfare Committees from the States of Punjab, Haryana and UT Chandigarh will be participating.