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CJA e-NEWSLETTER

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For circulation among the stakeholders in Judicial Education

FROM THE DESK OF CHIEF EDITOR

My journey in the domain of Judicial Education beginning with 2013 has been meaningful. The main cause of concern has been that the District Judiciary feels and believes that the Constitution of India is not relevant. I recall one of the programmes in the year 2014 for District Judges at the National Judicial Academy. I took a session on "Relevance of Indian Constitution to the District Judiciary". At the end of the session, one of the District Judge said that I consider that the Constitution is relevant to the District Judiciary because I had never been a District Judge. I do confess that I have never been a District Judge. At the same time, I do not accept the second part of this statement. My firm response was that in spite of the fact you have been a District Judge, still you think that the Constitution is not relevant, this is demonstrative of complete closure of mind. Ever since, I have made it a point to share my concern in different programmes about the relevance of the Constitution to the District Judiciary.

Chandigarh Judicial Academy had the opportunity of hosting North Zone Regional Conference organized by the National Judicial Academy during March 17-18, 2018. I am happy to share that the main focus of this Regional Conference was on the Constitutional Vision of Justice and the Relevance of the Constitution to the District Judiciary. The myth that the Constitution is not relevant was totally demolished. The thinking that the District Judiciary is only concerned with Civil Procedure Code, Criminal Procedure Code, Indian Penal Code and Indian Evidence Act is not correct. This belief is based upon the fact that the District Judiciary does not have the jurisdiction to issue writs in various Constitutional matters. Moreover, the District Courts are precluded from dealing with substantial Questions of Law as to the interpretation of the Constitution under Article 228. Indian Constitution is now almost seven decades old. During this period, the Supreme Court has determined and interpreted many significant provisions of the Indian Constitution and other legislations. Healthy Constitutional Jurisprudence has been built. It continues to be built duly supported by contribution of the High courts across the country. The law laid down by the apex Court is binding on all including the District Judiciary / Courts. The field of Criminal Jurisdiction has been developed based upon the Constitution Provisions. There is no field which is devoid or divorced from the Constitution. Each executive action is to be tested by the District Judiciary based upon the law laid down by the Supreme Court and the High Courts. It is a continuous process. It is only the area involving a substantial question of law as to the interpretation of the Constitution (which has already not been determined) is outside of the ambit of the District Judiciary. This limitation alone cannot lead us to the conclusion that the Constitution is not relevant to the District Judiciary. I have always urged the Judges at the District level to keep a copy of the Constitution on their table both in court and at home. Refer to it as also to the decisions of the Constitutional courts in applying the different laws in different situations. The vision of justice as given in the Constitution and interpreted by the apex Court and the High Courts cannot be ignored. The vision of justice and the Constitutional values are contained in the Preamble. This vision is a running thread. The recipe of the Constitution is contained in Fundamental Rights, Directive Principles and Fundamental Duties as enshrined in the Indian Constitution. These three elements have been blended harmoniously in different judgments of the Supreme Court. Article 142 mandates the Supreme Court to do 'complete justice'. The Supreme Court has exercised this jurisdiction on different occasions in a highly meaningful and wholesome manner. The same is reflective of the vision of justice under the Indian Constitution.

Indian Constitution is not only relevant but, in fact, indispensable for the District Judiciary. Sooner it is realized, the District Judiciary will be able to contribute far more effectively and meaningfully. Please rise to the occasion. Use the Constitution. The Constitution is 'the Basic Structure' of the District Judiciary.

Balram K. Gupta

CASE COMMENT

“Life sans dignity is an unacceptable defeat and life that meets death with dignity is a value to be aspired for and a moment for celebration”

Since the commencement of time, individual have lived their sometimes majestic and sometimes ordinary lives, and finally adorned the path of being laid to rest in myriad graves and tombs. Death is something that, in an uncharacteristic way, unites human races everywhere, not considering their social status, race, beliefs, or residence. However there comes a phase in life when the spring of life is frozen, the rain of circulation becomes dry, the movement of body becomes motionless, the rainbow of life becomes colourless and the word life which one calls a dance in space and time, becomes still and blurred and the inevitable death comes near to hold it as an octopus gripping firmly with its tentacles so that the person shall rise up never.

From this, the question that emerges is whether a person should be allowed to remain in a stage of incurable passivity suffering from pain and anguish in the name of Hippocratic oath or, for that matter, regarding the suffering as only a state of mind and a relative perception or treating the utterance of death as a word infinitely terrible to be a rhetoric without any meaning. In contradistinction to the same, the question that arises is should he not be allowed to cross the doors of life and enter, painlessly and with dignity, into the dark tunnel of death where-after it is said that there is splendence.

This curious question of life and death has always baffled not only the intellects of literature but also the system of administration of a State to ponder upon the important question in law that whether a person with incurable illness be given such treatment which has come into existence with the passage of time and progress of medical technology so that he/she exists possibly not realizing what happens around him/her or should his/her individual dignity be sustained with concern by smoothening the process of dying.

The delineation of such an issue was recently taken up elaborative by the Summit Court of India in a recent case of **Common Cause (A Regd. Society) vs. Union of India: 2018 SCC OnLine SC 208: Writ Petition (Civil) No. 215 of 2005 decided on March 09, 2018 (Euthanasia)**. In the said erudite judgment two important questions were looked into in detail;

(a) to declare 'right to die with dignity' as a fundamental right within the fold of Right to Live with dignity guaranteed under Article 21 of the Constitution of India;

(b) comprehensive safeguards and guidelines which are required to be adopted for suitable procedures to ensure that persons of deteriorated health or terminally ill should be able to execute a document which can be presented to hospital for appropriate action in event of the executant being admitted to the hospital with serious illness which may threaten termination of life of the executants.

These legal questions do not singularly remain in the set framework of law or, for that matter, morality or dilemma of the doctors but also encapsulate social values and the family mindset to make a resolute decision which ultimately is a cause of concern for all. There is also another perspective to it. A family may not desire to go ahead with the process of treatment but is compelled to do so under social pressure especially in a different milieu since there remain a fear of being branded that he/she, in spite of being able to provide the necessary treatment to the patient, has chosen not to do so. The social psyche constantly makes them feel guilty. The collective puts such a person at the crossroads between socially carved out meaningful guilt and his constant sense of rationality and individual responsibility. Another important concern while deciding the said questions was to consider the method to control the abuse by the beneficiaries who desire that the patient's heart should stop so that his property is inherited in promptitude.

Taking into deliberation enormous judgments and also having dealt with the norms in vogue across the globe, the Court has laid down the principles relating to the procedure for execution of Advance medical Directive ideal for our country which will strengthen the mind of the treating doctors as to ensure them that that they are acting in a lawful manner. However, it was observed that the said Directive cannot operate in abstraction. Thus the court has further provided the guidelines to give effect to passive **euthanasia** in both circumstances, namely, where there are advance directives and where there are none, in exercise of the power under Article 142 of the Constitution and the law stated in Vishaka and Others vs. State of Rajasthan and Others.

While enforcing the said safeguards, the court has bestowed some obligations upon the Judicial Magistrate of First Class (JMFC) in respect of preserving and recording the Advanced Medical Directive. In the event where the executor or the guardian nominated by the executor in the

Advance Directive, consent regarding refusal or withdrawal of medical treatment to the executor to the extent of and consistent with the clear instructions given in the Advance Directive, the Chairman of the Medical Board nominated by the Collector, that is, the Chief District Medical Officer, shall convey the decision of the Board to the jurisdictional JMFC before giving effect to the decision to withdraw the medical treatment administered to the executor. **The JMFC shall visit the patient at the earliest and, after examining all aspects, authorise the implementation of the decision of the Board.** However, it will be open to the executor to revoke the document at any stage before it is acted upon and implemented. The essentials to be considered by JMFC while preserving and recording the Advanced Medical Directives are as below;

- (i) **The said document should be signed** by the executor in the presence of two attesting witnesses, preferably independent, and **countersigned by the jurisdictional Judicial Magistrate of First Class (JMFC)** so designated by the concerned District Judge.
- (ii) The witnesses and the jurisdictional **JMFC shall thereupon record their satisfaction that the document has been executed voluntarily** and without any coercion or inducement or compulsion and with full understanding of all the relevant information and consequences.
- (iii) **The JMFC shall preserve one copy of the document in his office**, in addition to keeping it in digital format.
- (iv) **The JMFC shall forward one copy of the document to the Registry of the jurisdictional District Court for being preserved.** Additionally, the Registry of the District Judge shall retain the document in digital format.
- (v) The JMFC **shall cause to inform the immediate family members of the executor**, if not present at the time of execution, and **make them aware about the execution** of the document.
- (vi) A copy shall be handed over to the competent officer of the local Government or the Municipal Corporation or Municipality or Panchayat, as the case may be. The aforesaid authorities shall nominate a competent official in that regard who shall be the custodian of the said document.
- (vii) **The JMFC shall cause to handover copy of the Advance Directive to the family physician**, if any.
- (viii) In the event the executor becomes terminally ill and is undergoing prolonged medical treatment with no hope of recovery and cure of the ailment, the treating physician, when made aware about the Advance Directive, **shall ascertain the genuineness and authenticity thereof from the jurisdictional JMFC before acting upon the same.**

In case where there is no Advance Directive and the patient is terminally ill and undergoing prolonged treatment in respect of ailment which is incurable or where there is no hope of being cured, the physician may inform the hospital which, in turn, shall constitute a Hospital Medical Board, which shall discuss with the family physician and the family members and record the minutes of the discussion in writing appraising the pros and cons of withdrawal or refusal of further medical treatment to the patient and if they give consent in writing, then the Hospital Medical Board may certify the course of action and immediately inform the jurisdictional Collector. The jurisdictional Collector shall then constitute a Medical Board. The said Medical Board shall visit the hospital for physical examination of the patient and, after studying the medical papers, may concur with the opinion of the Hospital Medical Board. In that event, intimation shall be given by the Chairman of the Collector nominated Medical Board to the JMFC and the family members of the patient. Thereupon the **JMFC shall visit the patient at the earliest and verify the medical reports, examine the condition of the patient, discuss with the family members of the patient and, if satisfied in all respects, may endorse the decision of the Collector nominated Medical Board to withdraw or refuse further medical treatment to the terminally ill patient.**

Thus a distinction has been drawn between cases in which physician decides not to provide or continue to provide for treatment and care, which could or might prolong his life and those in which he decides to administer a lethal drug even though with object of relieving the patient from pain and suffering. The later is held not to be covered under any right flowing from Article 21. A decision to withdraw life saving treatment by a patient who is competent to take decision as well as with regard to a patient who is not competent to take decision can be termed as passive **euthanasia**, which is lawful and legally permissible in this country.

LATEST CASES: CIVIL

“The jurisprudence of compensation for motor accidents must develop in the direction of no fault liability and the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.”

V. R. Krishna Iyer, J. in *Concord of India Insurance Co. Ltd. vs. Nirmala Devi*, (1979) 4 SCC 365

Jagdish vs. Mohan : 2018 SCC OnLine SC 184: MANU/SC/0209/2018 : Future prospects should be awarded in disability case also –

In this case, the claimant due to the injuries has suffered 90% permanent disability. The Tribunal considering that the claimant was a carpenter and was earning Rs. 6,000/- per month therefore, the monthly income of the claimant was computed as Rs. 4,050/- for 90 per cent disability, the loss of the future monthly income was computed as Rs. 3645/-. Consequently, the Tribunal had calculated compensation for loss of future income as Rs. 7,87,320/- (Rs. 3645 X 12 X 18) and awarded an amount of Rs. 1.80 lakhs on account of mental and physical hardship and agony, Rs. 90,000/- for loss of comfort, Rs. 25,000/- for expenses and Rs. 95,908/- on account of medical expenses. An amount of Rs. 1 lakh was awarded for attendant charges. An amount of Rs. 12,81,228/- was awarded as compensation on which interest was allowed at the rate of 7.5 per cent per annum from the date of the filing of the claim petition. No amount was awarded towards expenses for future treatment. The High Court had awarded an additional amount of Rs. 2,19,000/- in appeal. The apex court on the appeal of the claimant after relying upon Constitution Bench in *Pranay Sethi's* case has held that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals and in the case of a self-employed person, an addition of 40 per cent of the established income should be made where the age of the victim at the time of the accident was below 40 years and awarded an enhancement of Rs. 2400/- p.m. towards loss of future prospects.

Jagdish Kumar Sood vs. United India Insurance Company : 2018 SCC OnLine SC 182 : MANU/SC/0208/2018: "Light motor vehicle" as defined in Section 2(21) of the MV Act would include a transport vehicle as per the weight prescribed in S. 2(21) read with Ss. 2(15) and 2(48) – In this case, the Tribunal had absolved the insurer on the ground that the vehicle involved in the accident was a Light Goods Vehicle. The driver had a licence to drive the Light Motor Vehicle. Therefore, the

Tribunal held that in the absence of a specific authorization to drive a transport vehicle, the liability could not be fastened on the insurer. The Tribunal directed the insurer to pay the compensation in the first instance and allowed the insurance company to recover the said compensation from the driver and the owner. The High Court, while enhancing the compensation did not interfere with the order of the Tribunal absolving the insurer. On appeal filed by the owner before the apex court, it has been observed after relying upon *Mukund Dewangan's* case, that Light motor vehicle as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994 and order of Tribunal was set aside absolving the insurer.

Union of India vs. Raghuwar Pal Singh : 2018 SCC OnLine SC 213 : MANU/SC/0240/2018 :

An appointment without approval of the Competent Authority is nullity and services could be disrupted without giving an opportunity of hearing – In the present case, the letter of appointment was to be issued by the designated director and only after grant of prior approval from the competent authority (the superior authority in the hierarchy of administrative set up). The then Director In charge without such approval, had issued the letter of appointment, and an action was without the authority of law and was declared as a nullity. It was observed by the Apex court that in the given situation of the present case, giving opportunity of hearing to the respondent before issuance of the termination order was not an essential requirement and it would be an exercise in futility. It is further observed that the view taken, in *D.K. Yadav's* case, has no application to the present case as in this case the appointment was void ab initio and nullity.

Bar Council of India vs. A.K. Balaji: 2018 SCC OnLine SC : MANU/SC/0239/2018 :

Appearance of foreign lawyers in courts and arbitration proceedings – It has been held by the Apex Court that the expressions “fly in and fly out” will only cover a casual visit not

amounting to "practice". In case of a dispute whether a foreign lawyer was limiting himself to "fly in and fly out" on casual basis for the purpose of giving legal advice to their clients in India regarding foreign law or their own system of law and on diverse international legal issues or whether in substance he was doing practice which is prohibited can be determined by the Bar Council of India. Further, the Bar Council of India or Union of India will be at liberty to make appropriate Rules in this regard including extending Code of Ethics being applicable even to such cases. Also, the foreign lawyers cannot be debarred from coming to India to conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration. There is no absolute right of the foreign lawyer to conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration. If the Rules of Institutional Arbitration apply or the matter is covered by the provisions of the Arbitration Act, foreign lawyers may not be debarred from conducting arbitration proceedings arising out of international commercial arbitration in view of Sections 32 and 33 of the Advocates Act.

State of Karnataka vs. The Karnataka Pawn Brokers Association : MANU/SC/0257/2018: C.A. No. 5793 of 2008 : DoD 15.03.2018 (SC) : Provisions prohibiting payment of interest on the amount of security deposits cannot be said to be arbitrary under Article 14 – The apex court while interpreting Money Lending Act has observed that if a moneylender or a pawn broker applies for license to do this business knowing fully well that the security deposit shall not earn any interest and this provision is not violative of Article 14 of the Constitution of India. The Court also observed by taking into consideration the instances that banks do not pay interest on current account and a person's money lies in the current account for 3-4 years, he cannot claim interest only on the ground that the bank would have utilized this money for commercial purposes. Further, it is observed that there are various instances where schools, other educational institutions, clubs, societies ask for refundable deposits on which no interest is payable. The Court also noted that the clause for non-payment of interest has not been held void in any case even as per Arbitration Act. The Court has further observed that the profession of money lending, maybe a trade, but onerous restrictions may be placed on such trade which is definitely usurious. The onerous

restrictions would be reasonable keeping in view the nature of the trade.

Madhusudan Kabra & Ors. vs. The State of Maharashtra & Ors.: 2018 (1) RCR (Civil) 805 (SC):The annual increase of 10% is permissible on the exemplar in land acquisition cases – In this case the Reference Court has taken into consideration the exemplar of year 1988 regarding the land which was acquired in the year 1992. The High Court had granted 10% annual increase on the exemplar and the findings of the High Court are confirmed by the Supreme Court.

Sita Ram Bhama vs. Ramvatar Bhama: MANU/SC/0284/2018: Civil Appeal of 2018 arising out of SLP (C) No. 11067/2017: DoD 23.03.2018 (SC): Unregistered family settlement which relinquishes the rights of parties and creating new rights of the parties is inadmissible but can be used for collateral purpose: In this case, the trial court **held** that a family settlement deed and a relinquishment document is not admissible in evidence being inadequately stamped and not being registered. The High Court had upheld the order of the trial court. The High Court also took the view that so called family settlement takes away the share of the sisters and mother, therefore, the same was compulsorily registrable. The Supreme Court modified the order observed that the family settlement and relinquishment document is inadmissible being compulsory registrable but is admissible in evidence for collateral purpose subject to payment of stamp duty and penalty.

Sarabjit Kaur vs. Tarlochan Singh through LRs : 2018 (1) RCR (Civil) 844 (P&H) : How to prove revenue excerpt – In the instant case, it has been observed by the high court while dealing with the issue of proof of excerpt report that presumption of truth is not attached to it u/s 35 of Evidence Act, 1872. It has to be proved under the provisions of law. It has been further **held** that a person who has prepared the excerpt should bring the original record in the court. The procedure has been given under Chapter 9, Rule 5(v) and 5(vi) of Punjab and Haryana high Court Rules and Orders which prescribes that original record should be brought in court for comparison with the true copy of excerpt. The court should, as a rule, compare, with the original records some of the entries in the abstract and initial and date those compared entries. The expert report in the case in hand was held inadmissible on these grounds by the high court.

LATEST CASES: CRIMINAL

“...the bail application of ‘small men’ must receive the same importance as the bail application of ‘big industrialists’.”

Lachhman Dass vs. Resham Chand Kaler and Anr.: 2018 (1) RCR (Criminal) 967 (SC) – In this case, High Court of Punjab & Haryana granted bail to respondent No.1 in an FIR u/s 302, 307, 324, 148 & 149 of IPC. Aggrieved by the order of the High Court granting bail, the appellant approached the Hon’ble Apex Court alleging therein that the nature of crime is very serious and the High Court without application of mind, casually granted bail even after observing that there were serious allegations of criminal conspiracy. The Apex Court while setting aside the order of the High Court granting bail **held** that the difference between the cancellation of bail and the legal challenge to an order granting bail for non consideration of material available on record is settled proposition. There is no ground pleaded that a supervening event breaching bail conditions is raised and only order granting bail was challenged on ground of seriousness and gravity of offence.

Issac @ Kishor vs. Ronald Cheriyan: 2018 (1) RCR (Criminal) 926 (SC) – In this case, an FIR u/s 302 IPC and 394 IPC read with Section 34 IPC was registered against the accused. The trial court convicted accused No.2 u/s 302 and 394 IPC whereas accused No.1/appellant was acquitted. Being aggrieved by acquittal of appellant, respondent No.1 – eldest son of the deceased filed a criminal revision challenging the acquittal of appellant/accused No.1. Accused No.2 also challenged his conviction before the High Court. The High Court **held** that the trial court has committed irregularity in omitting to frame charges u/s 34 IPC and set aside the acquittal of the appellant/accused No.1 for the offences punishable u/s 302 and 394 IPC read with section 34 IPC and further remanded the matter back to the trial court for retrial. This order was challenged before the Hon’ble Apex Court. The point falling for consideration before the apex court was as to whether the High Court was right in setting aside the judgment of the trial court and remanding the matter back to the trial court for retrial. While discussing the power of the trial court in dealing with the appeals, Hon’ble Apex Court **held** that in an appeal against acquittal,

P.N. Bhagwati, J. in Bihar Legal Support Society vs. Chief justice of india, (1986) 4 SCC 767

in exceptional circumstances, the High Court may set aside the order of acquittal even at the instance of private parties, though the State may not have thought it for appeal. But it is to be emphasized that this jurisdiction is to be exercised only in exceptional circumstances, when there is glaring defect in the conduct of trial which has materially affected the trial or caused prejudice. It was further **held** that the discretion exercised by the High Court u/s 386(a) Cr.P.C, directing retrial with certain directions cannot be said to be erroneous warranting interference.

Sri Rameshwar Yadav & Ors. vs. State of Bihar & Anr.: 2018 SCC OnLine SC 234 : In this case, the Sub Divisional Magistrate rejected the application filed by the accused u/s 205 Cr.P.C. The accused was booked u/s 498-A and Section 4 of Dowry Prohibition Act. While rejecting the application, the magistrate gave the reasons that the petitioners appeared to be hale and hearty and are not suffering from any kind of disease which may be impediment in appearing before the court. Nature of offences requires that petitioners/accused and also the complainant should be present before the court preferably on each and every date and that there appearance is also desirable for the purpose of conciliation. The order was challenged before the Patna High Court. The High Court dismissed the application taking a new ground that a prayer for exemption from personal appearance u/s 205 Cr.P.C can only be made at the stage of first appearance of the accused. Once the accused appears before the court in person without making any application for dispensing with the personal appearance u/s 205 Cr.P.C, at a subsequent stage, such an application would not be maintainable. Aggrieved by the said order, an appeal was filed before the Hon’ble Apex Court. The Apex Court **held** that they failed to see the reasons given by the magistrate that no valid grounds were given by the accused for seeking exemption. With regard to the ground regarding conciliation which requires the appearance of the accused desirable, this ground was also not available for rejection of the application. The magistrate has not considered the grounds

which were taken by the appellants for seeking exemption. It was on the record before the High Court that distance between residence of accused and the place of trial at Patna is 1570 KM. Moreover, appellant No.3 was a businessman and running company in Pune and appellant No.4 was student in Pune. Taking into consideration the above said facts, the Apex Court **held** that sufficient grounds were made out for granting exemption from personal appearance of the appellant in the trial and further **held** that the magistrate u/s 205 (2) Cr.P.C is empowered at any stage to direct personal appearance of the accused.

P. Sreekumar vs. State of Kerala & Ors.: MANU/SC/0266/2018:Criminal Appeal No.408 of 2018 arising out of SLP (Crl.) No.7970 of 2014: DoD 19.03.2018 (SC) – The Supreme Court has **held** that there is no prohibition in law to register a second FIR in relation to the same incident, if it was not filed by the same person who had filed the first FIR, as a counter-complaint, based on the allegations different from the allegations made in the first FIR.

Laxmi vs. State of Haryana & Anr. : 2018 (1) RCR (Criminal) 987 (P&H) – In this case, an application under Section 319 Cr.P.C filed by complainant for summoning of respondent no.2 as an additional accused was dismissed by trial court. Hon'ble High Court while relying upon **Hardeep Singh vs. State of Punjab 2014 (1) R.C.R (Criminal) 623**, **held** that no person can be summoned as an additional accused merely on the basis of statement of complainant recorded in Court unless there is material to summon. In order to summon accused, some "fresh evidence" must have come on record so as to impel Court to summon such person as additional accused. In this case record shows that statement of complainant and version of FIR is already considered by investigating agency and same is found to be unreliable as regards commission of offence by proposed accused. Therefore, respondent cannot be summoned as an additional accused. **Further held** that there is total contradiction in statements of complainant thus the reliability of statements of complainant is doubtful therefore, no interference is warranted.

Prashant vs. State of Haryana : CRR No.3102 of 2012 (O&M) : DoD 05.03.2018 (P&H) – In this case, accused was booked for offences u/s 279, 336, 427 IPC. He was convicted for offence under Section 427 IPC. However, the accused felt dissatisfied with the judgment of his conviction and order of

sentence passed by the trial Magistrate and preferred an appeal to the Court of Sessions, which was dismissed by the Additional Sessions Judge, Gurgaon vide judgment dated 4.7.2012. He knocked the doors of High Court by way of filing revision petition, praying that the impugned judgments passed by the Court below be set aside and he be acquitted of the charge framed against him. **Held** – Since the prosecution has been able to prove its charge against the accused for offence under Section 427 IPC, beyond a shadow of reasonable doubt, the trial Magistrate was justified in convicting the accused for the said offence and sentencing him to pay the fine. Similarly, the judgment passed by the Additional Sessions Judge, in appeal, is certainly not arbitrary or passed, ignoring the settled principles of criminal law. Learned counsel for the revision petitioner prayed that benefit of probation be granted to the petitioner. **Held** – that no case for grant of benefit of probation to the petitioner is made out, keeping in view the fact that as per affidavit furnished by Assistant Commissioner of Police, Gurgaon, the accused is involved in four more criminal cases, in addition to the case in hand. Although, he is shown to have been acquitted in first two cases, but then it comes out that he has got a criminal bent of mind. Grant of probation is a concession to a criminal to enable him to reform himself and not to indulge in criminal activity again, but if a person keeps on repeating the crime, then there is little justification for granting such concession to him time and again, with no prospects of reforms being there. Furthermore, since the petitioner has been sentenced to pay fine only, which has been and there is no ground to grant such concession to the petitioner.

Lovely vs. State of Punjab and Ors. : CRM-3577 of 2018 : DoD 09.03.2018 (P&H) : The High Court while quashing FIR in rape case and referring to the compromise, **held** – "As per the terms of the compromise, the parties have solemnized marriage with each other and they are now residing together as husband and wife happily, hence, it would be in their welfare if the present FIR is quashed." The complainant even though stated that she was in love with the boy and they promised to marry each other, had alleged in the complaint that the accused called her at his home where he was alone and forcibly made physical relations with her. She had also alleged that she was taken to Vaishno Devi Temple where he made her obscene movie and threatened her to upload on the internet.

LATEST CASES : FAMILY LAW

“Marriage as a social institution is an affirmation of civilized social order where two individuals, capable of entering into wedlock, have pledged themselves to the institutional norms and values and promised to each other a cemented bond to sustain and maintain the marital obligation.”

Deepak Mishra, J. in *Malathi Ravi vs. B. V. Ravi*, (2014) 7 SCC 640

Shafin Jahan vs. Asokan K.M. and Ors.: MANU/SCOR/10464/2018: Criminal Appeal No. 366 of 2018 : DoD March 8, 2018 –

The Supreme Court has set aside the Kerala High Court judgment annulling the marriage between Hadiya and Shafin Jahan. The Apex Court quashed the High Court judgment in view of Hadiya’s statement during her personal appearance before the Court in November, 2017, and opined that the High Court could not have annulled the marriage under Article 226 of the Constitution of India. It, however, directed the National Investigation Agency (NIA) to continue with its investigation. The present case is in respect of Hadiya’s conversion to Islam and her subsequent marriage to a Muslim man Shafin Jahan. In a judgment rendered on 25 May last year, a Division Bench of Kerala High Court had called her marriage a “sham”, and had annulled it, directing her return to the protective custody of her Hindu parents. The Bench comprising Justice Surendra Mohan and Justice Abraham Mathew had made some controversial observations like: “a girl aged 24 years is weak and vulnerable, capable of being exploited in many ways” and “her marriage being the most important decision in her life, can also be taken only with the active involvement of her parents”. **Held:** It was held by the Apex Court that, in the facts of the present case, the High Court should not have annulled the marriage between Shafin Jahan and Hadiya alias Akhila Asokan, in a Habeas Corpus petition under Article 226 of the Constitution of India. It is because in the present appeal, by special leave, the personal presence of Hadiya alias Akhila Asokan was directed and she appeared before this Court on 27th November, 2017, thereby admitting her marriage with appellant No.1. In view of the aforesaid, the appeal stands allowed. The judgment and order passed by the High Court is set aside. Hadiya alias Akhila Asokan is at liberty to pursue her future endeavours according to law.

Shakti Vahini vs. Union of India and Ors. : MANU/SC/0291/2018: Writ Petition (Civil) No. 231 of 2010 : DoD March 27, 2018 – It was **held** by the Summit Court that any interference

by the Khap panchayats to scuttle marriage between two consenting adults is illegal. A three-judge bench headed by Chief Justice Dipak Misra has also laid down certain punitive and remedial measures to be followed till a legislation is put in place. The court was ruling a 2010 petition by NGO Shakti Vahini against khap panchayats and seeking directions to the centre and state governments for preventing honour crimes. The top court adopted a tough line against interference by khap panchayats in inter-caste and inter-faith marriages, and advised them against behaving like the conscience keepers of society. “If people decide to marry, they are adults and you are nobody to interfere,” Chief Justice Misra had said in response to a plea seeking to ban khap panchayats and establish guidelines to check growing instances of honour killing taking place in the name of caste and religion.

The Bench given following Punitive Measure till the time appropriate legislation comes into existence:

- (a) Any failure by either the police or district officer/officials to comply with the aforesaid directions shall be considered as an act of deliberate negligence and/or misconduct for which departmental action must be taken under the service rules. The departmental action shall be initiated and taken to its logical end, preferably not exceeding six months, by the authority of the first instance.
- (b) The States are directed to take disciplinary action against the concerned officials if it is found that (i) such official(s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident had already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.
- (c) The State Governments shall create Special Cells in every District comprising of the Superintendent of Police, the District Social Welfare Officer and District Adi-Dravidar Welfare Officer to receive petitions/complaints of harassment of and threat to couples of inter-caste marriage.

(d) These Special Cells shall create a 24 hour helpline to receive and register such complaints and to provide necessary assistance/advice and protection to the couple.

(e) The criminal cases pertaining to honour killing or violence to the couple(s) shall be tried before the designated Court/Fast Track Court earmarked for that purpose. The trial must proceed on day to day basis to be concluded preferably within six months from the date of taking cognizance of the offence. We may hasten to add that this direction shall apply even to pending cases. The concerned District Judge shall assign those cases, as far as possible, to one jurisdictional court so as to ensure expeditious disposal thereof.

M vs. A.: MANU/DE/1209/2018: CM(M) 140 of 2017: DoD March 28, 2018 – The Delhi High Court has held that Family Court can entertain and try a petition for dissolution of marriage under the Special Marriage Act, if the parties married under the Special Marriage Act, 1954, even though they performed Nikah ceremony subsequently.

In this case, the Husband had challenged the jurisdiction of Family Court where the wife had filed Divorce Petition under Special Marriage Act on the ground that the parties subsequently performed Nikah ceremony and, therefore, the parties are governed by the Muslim Personal Laws. Justice JR Midha, referring to various provisions of the Special Marriage Act and the judgments of the Apex Court, summarized the principles as follows:

a) The Special Marriage Act, 1954 provides a special form of marriage, its registration and divorce. A marriage between any two persons belonging to any religion or creed may be solemnized under this Act. Being a secular Act, it plays a key role in liberating individuals from the traditional requirements of marriage. It provides for a civil law of marriage that would enable individuals to get married outside of their respective community mandates.

b) The Special Marriage Act 1954 is not concerned with the religion of the parties to an intended marriage. Under the Act, any person, whichever religion he or she professes, may marry either within his or her community or in a community other than his or her own, provided that the intended marriage, in either case, is in accord with the conditions for marriage laid down in the Act.

c) No religious rituals or ceremonies are required from the marriage to be completed under the Special marriage and witnesses which is deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized.

d) The Special Marriage Act provides an option of turning an existing religious marriage solemnized in any other form under any other law into a civil marriage by registering it under its provisions, provided that it is in accord with the condition for marriage laid down under the Act. This provision of subsequent registration enables parties to avail secular and uniform remedies despite the solemnization of marriage through the performance of religious ceremonies under one's own personal laws. This aids them in overcoming the constraints or discrimination faced in their own personal laws.

e) The unique feature of the Special Marriage Act, 1954 is compulsory registration of... marriage under the Act which protects the interest of the parties and the children born out of wedlock....

f) The Registration Certificate of the marriage between the parties is conclusive evidence of the fact that their marriage was solemnized under the Special Marriage Act. Therefore, evidence with regard to the fact that their marriage was actually solemnized under any other Act at any other time, cannot be allowed. There can be no issue that the Special Marriage Act would apply.

g) When a person solemnizes a marriage under this law then the marriage is not... governed by personal laws but by Special Marriage Act. The rights and duties arising out of marriage are governed by the Special Marriage Act and the succession is governed by Indian Succession Act, 1925, and not by the personal laws.

h) Having married under the Special Marriage Act, if a person contracts a second marriage, he shall be deemed to have committed an offence under Section 494 or 495 IPC.

The Court observed that Certificate of Marriage issued by the Marriage Officer under the Special Marriage Act is a conclusive proof of their valid marriage under the Special Marriage Act and the husband cannot be permitted to challenge the jurisdiction of the Family Court to entertain and try the petition for divorce. The Court then dismissed the plea challenging the jurisdiction of Family court, filed by the Husband imposing a cost of Rupees Fifty Thousand.

NOTIFICATIONS

1. Applicability of Section 4 of **Punjab Land Preservation Act 1900** has been extended for a period of 15 years from the date of Notification i.e. 2nd February, 2018 to the scheduled areas indicated in the notification. The procedure for the cultivation of the land falling under that area, quarrying of stone etc. and the removal of trees has been mentioned in the notification, which would be beneficial for determining the violence of provisions of Punjab Land Preservation Act 1900.

2. In the **Indian Forest (Amendment) Act, 2017** dated January 05, 2018 to the Indian Forest Act, 1927, the word 'bamboo' has been omitted from definition clause i.e. clause 2(7) of Indian Forest Act, 1927. After the amendment, bamboo would not fall in the definition of tree and accordingly Indian Forest Act is not applicable to bamboo.

3. The High Court of Punjab and Haryana has **amended Rule 10 of Chapter 1 Part B of the Rules and Orders of Punjab and Haryana High Court Volume I** whereby if the plaint is presented through power of attorney and if it is general power of attorney then the plaint is supported with original power of attorney for verification. The power of attorney can only be revoked with the leave of the court or until the client or pleader or agent dies or all the proceedings in the suit are ended so far as regards the client. The advocate is required to give his residential / office address, telephone / cell number, enrolment number, if available email / fax

number. Further, if there are more than one advocates than it shall be sufficient for one of them to fulfill the aforesaid requirements. The vakalatnama / memo of appearance / written authorization shall be affixed with requisite Advocate Welfare Fund stamp.

4. **The High Court of Punjab and Haryana has amended Rule 4 of Chapter 25 Part A of the Rules and Orders of Punjab and Haryana High Court Volume III** whereby an agent appointed by the convict is required to file power of attorney through pleader. The advocate is required to give his residential / office address, telephone / cell number, enrolment number, if available email / fax number. Further, if there are more than one advocates than it shall be sufficient for one of them to fulfill the aforesaid requirements. The vakalatnama / memo of appearance / written authorization shall be affixed with requisite Advocate Welfare Fund stamp.

5. **The High Court of Punjab and Haryana has incorporated Rule 15 of Chapter 5-A of the Rules and Orders of Punjab and Haryana High Court Volume V** by inserting that unattested record of permissible documents can be obtained electronically by the eligible persons as mentioned in Rule 2 of this Chapter and as mentioned in Chapter 5-B of this volume subject to charges : Rs. 100/- upto 500 pages, thereafter Rs. 25/- per 500 pages, in case where any sorted recorded is applied for then the fee shall be Rs. 10/- per page.

EVENTS OF THE MONTH

1. National Judicial Academy in collaboration with Punjab and Haryana High Court and Chandigarh Judicial Academy organized **North Zone Regional Conference on Enhancing Excellence of the Judicial Institutions: Challenges and Opportunities** on March 17 & 18, 2018. There were 16 High Court Judges and 90 Judicial Officers from the High Courts of Delhi, Himachal Pradesh, Jammu and Kashmir, Punjab and Haryana, Uttarakhand and Uttar Pradesh who participated in the conference. The conference was addressed in different sessions by HMJ A.K. Sikri, Judge, Supreme Court of India, HMJ Rajesh Bindal, HMJ Dr. S.Muralidhar, HMJ A.B. Chaudhari, Justice G.Raghuram, Director, NJA and Dr. Balram K. Gupta, Director (Academics), CJA. In this Regional Conference, the focus was on the Relevance of the Constitution to the District Judiciary and the Constitutional Vision of Justice. Besides this, different sessions were devoted to Elements of Judicial Behaviour: Ethics, Neutrality & Professionalism, Social Context Judging as a Controlling Element in Statutory Interpretation & Exercise of Discretion, High Court and District Judiciary: Building Synergies, Access to Justice: Information & Communication Technology in Courts and Access to Justice: Court & Case Management.

2. **Video-conferencing for Civil Judges (Haryana & UT Chandigarh)** was held on

March 23, 2018 (from 3:00 p.m. to 5:00 p.m.) to sensitize them regarding Personal Search under NDPS Act by Mr. Pradeep Mehta, Faculty Member, Chandigarh Judicial Academy. This generated lot of interest in the topic as it was evident from the inter-action which followed the presentation.

3. Chandigarh Judicial Academy organized one day **Training Programme on PC & PNDT (Prohibition of Sex Selection) Act** on March 24, 2018 for Judicial Officers dealing with the cases arising out of the above legislation from the States of Punjab, Haryana and Union Territory. 119 Judicial Officers participated in this training programme. They were sensitized on issues like Understanding & Demystifying the PC & PNDT Act, Prohibitory Scope of Sex Selection under PC & PNDT Act, Trial & Procedural Issues under PC & PNDT Act. The different sessions were addressed by Dr. Raju Dhir, Assistant Director, Family Welfare, Punjab, Dr. K.P. Singh, DGP Prisons, Haryana and Justice M.S. Chauhan (Retired), presently, Judicial Member and Judge In-charge, Armed Forces Tribunal, Regional Bench Chandigarh. In the inter-active session, the different Resource Persons of different sessions and also Dr. Balram K. Gupta, Director (Academics) and Mr. Pradeep Mehta, Faculty Member participated. Mr. Pradeep Mehta co-ordinated the programme.

FORTHCOMING EVENTS

1. Dr. Venkat Iyer, Barrister, Advocate, Professor and Author will deliver a **Talk on Judicial Ethics** based upon his experiences on April 3, 2018.
2. **Refresher-cum-Orientation Course for Civil Judges** will be organized on 07.04.2018 to sensitize them on some important aspects of Hindu Succession Act.
3. **Video-conferencing on Personal Search under NDPS Act** for Civil Judges (Punjab) will be organized on 12.04.2018.
4. **Refresher-cum-Orientation Course for ADJs** will be organized on 21.04.2018 to sensitize them on important issues.