

# CJA MARCH-APRIL-MAY 2020

## e-NEWSLETTER

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### FROM THE DESK OF CHIEF EDITOR

Chandigarh Judicial Academy started with monthly e-Newsletter in June, 2016. Till February, 2020, the e-Newsletter was regularly e-mailed on the first of every month. In fact, it had completed 3 years and 9 months. The issue of March, 2020 was delayed. This was unavoidable in view of COVID-19. It is regretted that this happened. Accordingly, a combined issue of March-April-May, 2020 is being brought out. With this, it completes 04 years.

COVID-19 is indeed, one of the biggest challenge in human history. 208 countries around the globe are impacted. This is more than the UN membership. It was on March 22, 2020 that Janta Curfew was advised. It was followed by lockdown. Further, followed by curfew. Virtually, all human activity came to stand still. All were required to be indoor and not to move out. This even impacted the working and functioning of the courts at all level. In this context, it has become important to ensure that Corona Virus does not 'Infect' the Constitution seriously. It is imperative to ensure healthy interplay of Rights and Duties under the Indian Constitution.

Let me begin with a real story of a boy of 8 years named Corona from Australia. Corono means the 'crown'. He loved his name. He was depressed as he was being bullied as Corona Virus in the school by his schoolmates. He was virtually being hated and boycotted. He wrote a letter to Tom Hanks, Hollywood Megastar and his wife. They both were 'infected' with Corona Virus. Lucky to have survived. The boy wrote a letter. Inquired, are you ok!. How are you. In the letter, the boy also shared his predicament. I love my name but I am being bullied in school. Hanks wrote back that he and his wife feel 'good' and 'wonderful' with his letter. They were doing fine. The boy was told that they are his 'friends'. Do not feel disappointed. Think positive. Do not test positive. It is only a matter of time. The boy was presented with a branded typewriter named Corona. During this time of COVID-19, one would come across many depressing and heart rendering stories. Tough times do not last. It is tough people who last.

Judicial minds are special minds. They are thinking minds. Productive minds. Contributory minds. Fair and impartial minds. Judicious minds. Judicial minds adapt themselves to different situations. They are not rigid minds. In fact, they are a rational minds. In order to reflect about the judicial minds, it would be relevant to refer to the judicial journey of Justice M.C.Chagla. He was elevated as judge of Bombay High Court on August 4, 1941. On gaining independence, Justice Chagla became the first Indian Chief Justice of the Bombay High Court on August 15, 1947. He remained Chief Justice till September, 1958. During this long judicial journey of Justice Chagla, he demonstrated how the judicial mind works without any stress or extraneous consideration. He would never read the petitions at home or in chamber. He believed that reading the petitions in advance results in making up your mind. Therefore, he preferred to deal with each case in the court itself. No pre hearing notions or considerations. The beauty of his mind was that after finishing the arguments in the case, he would dictate the order or the judgment in the open court itself. He was not in the habit of reserving the judgment. During the entire journey, he reserved judgment only in two cases. The two judgments were reserved in order to achieve unanimity. This is an amazing record. Not heard of any other judge. During his early part

hearing the Income Tax references. In one of the cases, when arguments were concluded, the Chief turned to Justice Chagla and told him that he has lost his voice. Fire off the judgment. The area of reference of income tax was new to him. Yet, he dictated the judgment. When Justice Chagla finished, he told the Chief that he should have given him some notice. The Chief smiled and told him that you have done very well. There was no need for any notice. I have shared this special element of Justice Chagla with a purpose. Whatever be the situation and the circumstances, the judgment must flow naturally with no obstacles of any kind. This is so relevant in the present circumstances during COVID-19. The beauty of Justice Chagla's mind was that nothing would disturb him. The only consideration in his mind would be, how best Justice can be done. He dictated his judgments effortlessly. His court was 'Temple of Justice' for the litigants. At the same time, it was an 'Academy' of legal and judicial education for the lawyers.

COVID-19 has been a big challenge for the judges. It is an extra ordinary situation. The state had a gigantic task on hand. At the same time, in a constitutional system under the rule of law, the courts cannot abdicate their constitutional responsibility. The serious challenge which the summit court of the country faced was regarding the Migrant Labour. Their number was huge. Therefore, the magnitude of the problem was colossal. The state was under an obligation to work out a reasonable scheme keeping in view the different issues involved. It was felt that the state was lacking in its effort to deal with the problem. The matter was brought to the apex court three times. It did not consider it necessary to interfere. In fact, it left to the state to work out the entire scheme of its own. Understandably, there was a strong feeling of resentment. On the other hand, the matter regarding the Migrant Labour was taken to the different High Courts like Karnataka, Madras and Bombay. They took a positive stand in support of the rights of the migrants under the constitution. The response of the state was that if the Apex Court has not interfered, how can the High Courts step in. The High courts were firm. Their stand was that they are discharging their constitutional obligation/duty. It is at this stage when the High Courts stepped in, the Supreme Court also took a step forward. The state has been directed to take care of the different aspects relating to the problem of migrant labour.

In this context, there was some criticism. Resentment too. The lawyers have the legitimate reasoning to criticize a judgment on rational grounds. I hasten to add a caveat. No motives ever be attributed to the judges. The trust and confidence in the judicial institution is the very foundation of our judicial system. Nothing should be done which would shake this foundation. We are passing through difficult times. The courts are under a bounden duty to ensure the balancing on the part of the state within the constitutional frame work. The constitutional morality must percolate throughout the fabric of the state. This needs to be ensured by the constitutional courts even during difficult times. In this process, our District Courts have also to play a positive role. Judges need to be compassionate. Also large hearted. These are the elements which are inherent to judicial minds. More so during COVID-19.

The issue of virtual courts is equally important during COVID-19 period. Never before, the judicial system had faced such a problem. We are used to open court system. Before and after the Constitution came into force. COVID-19 has brought in the situation where it became impossible to continue with the open court system. Therefore, there were two options. Either close down the courts or adopt the virtual court system. Consequently, the adoption of virtual court system was not voluntary. It is because of compulsion of the circumstances. It has been rightly said by Justice D.Y.Chandrachud that the system of virtual court is not a substitute for open court system. Even otherwise also, we are not yet sufficiently equipped to introduce the virtual court system. Even the legal and judicial coparcenary needs to be trained in this technological development. In due course of time when this technology is used, we would be marching forward. There are certain plus points of this development. The entire court process would be less time consuming. The quality of pleadings will improve. The written submissions would be more effective. The oral hearings would be less time consuming. We are hopeful that in the post COVID-19 period, we would be gradually getting back to the open court system. This experience of virtual court system will augment our open court system. It

would be a good idea to blend the two systems together. Ultimately, the system will become far more wholesome.

Indian Constitution is all season Constitution. Justice is the first promise of the Indian Constitution. The Preamble promises 'Fraternity' assuring the dignity of the individual and the unity and integrity of the Nation. COVID-19 presented a real challenge to our judges. The constitution of 1950 provided for Fundamental Rights and Directive Principles of State Policy. DPs are fundamental in the governance of the country. Not justiceable. In the working of the constitution, gradually the DPs have been and are being harmonized with FRs. In this process, our constitutional courts have played a meaningful role. It was in June, 1975 that internal emergency was proclaimed. 42<sup>nd</sup> amendment to the constitution (1976) introduced Fundamental Duties by adding Part-IV-A which added Article 51-A. 11 FDs have been incorporated. There is no provision prohibiting the enforceability of FDs. The constitution is silent about it. However, the constitution does not make them enforceable. The need for introducing the FDs was felt during the internal emergency (1975-77). COVID-19 has also placed us under an Emergency. It is an emergency which includes medical, environmental and financial. These are the constitutional obligations which are required to be discharged both during the emergency and the normal times. Our constitutional courts have played a positive role. The Bombay High Court suo-moto initiated PIL regarding the plight of the labour. Directions were issued. Dealing with various issues, it was also held that there was a duty to maintain Peace, Harmony and the Spirit of the brotherhood. This is reflected in Article 51-A (e). This constitutional duty gets focused when the police, the doctors and the health workers were being attacked. In the context of COVID-19 this situation had arisen. It was on April 6, 2020 that the Supreme Court exercising jurisdiction under Article 142 observed that the people also need to commit themselves to the performance of duties. The duties are no more optional. Similarly, there is a constitutional duty to renounce practices derogatory to the dignity of women. The J&K High Court during COVID-19 issued number of directions to keep the Indian women safe and secure from domestic violence. Specifically, the direction was issued that there should be immediate designation of safe spaces as shelters for women who are compelled to live out of their homes. Domestic violence increased manifold during COVID-19 period. It militates against the dignity of women.

An alarming situation arose when large number of deaths took place because of the Corona Virus. The mortuaries of different hospitals were full with dead bodies. The funeral was not taking place. The dead bodies were not being claimed by the family members. What a situation. This all militates against the dignity of the individual. Even the funeral was not allowed. The fear of the virus. This was a hard situation. The citizens of India need to be equal partners. They need to ensure that FDs are not violated. The duty of every citizen is to develop scientific temper and humanism. If this duty is violated, it would be most serious challenge to human dignity. It is important to point out that the violation of FDs cannot be ignored. FDs are not only fundamental but also to be read as limitations on FRs. No one would have the right to claim a fundamental right if he violates FD. The coparcenary of FRs, DPs and FDs needs to be harmonized so that the state plays its own role. The citizens need to follow FDs in every possible situation. FDs cannot be ignored any more. They stand judicially recognized. FDs are not mere obligations. They are constitutional duties. The citizens cannot any more ignore them. They need to be followed as part of the constitutional discipline.

Judicial minds are sensitive minds. I wish to share a story of late Justice R.S.Sarkaria, former Judge of Supreme Court. While being at Patiala as District & Sessions Judge, he had to conduct the trial of the richest landlord of the state in a corruption case. Justice Sarkaria's father mentioned the name of the accused (with the idea to help him). Justice Sarkaria went inside. Came out and handed over the resignation letter to his father. The father realized his mistake. He apologized. Tore the resignation letter. The coldness between the two continued for some months. The trial resulted in conviction. The same was upheld upto the Supreme Court. This is the level of sensitivity which our judges have demonstrated over the decades. This is the real strength of the judicial institution. This is the foundation of trust and confidence in the institution.

**Balram K. Gupta**

## LATEST CASES DURING COVID-19

*“The jurisdiction conferred on the Supreme Court by Article 32 is an important and integral part of the basic structure of the Constitution of India and no act of Parliament can abrogate it or take it away except by way of impermissible erosion of fundamental principles of the constitutional scheme are settled propositions of Indian jurisprudence.”*

— *N.V. Ramana, J. in Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly, (2020) 2 SCC 595, para 64*

**In Re: Problems & Miseries of Migrant Workers: SUO MOTU WRIT PETITION (CIVIL) No(s). 6/2020 d.o.d. 28.05.2020: No Travel Fare To Be Charged from Migrants; Notify Places Providing Food For Stranded Migrants : SC Directions – HELD** - Taking note of the miseries of stranded migrants across the country, the Supreme Court passed a slew of significant directions to safeguard their rights. These include:

1. No fare either by train or bus shall be charged from migrant workers. The rail fare to be shared by states as per their arrangement. In no case any fare should be asked or charged from any migrant workers by the States and the Railways
2. Migrant workers shall be provided food free of cost by the concerned state and UT at places to be publicized & notified for the period they are waiting for their turn to board a train or a bus.
3. At the commencement of train journey, originating states should provide meal & water. During the journey, railways should provide meal and water to migrant workers. Food and water be also provided in buses.
4. State shall simplify and speed up the process of registration of migrants and also provide help desk for registration at places where they are stranded.
5. States to ensure that after registration, they are made to board transport as early as possible.
6. Those migrant workers found walking on the roads, immediately they be taken

to shelters & also provided food and all other facilities.

7. The receiving state, after the migrants reach the native place, shall provide transport, health screening and other facilities free of cost.

The bench also directed the Centre to place on record information regarding number of migrants awaiting, transportation to native places, plan for transportation and mechanism of registration and other requisite details.

**Union of India V. Narayan Chandra Jena: WP(C) No. 11573 of 2020 of 07.05.2020 :SC Stays Orissa HC Order On Mandatory COVID-19 Testing For Migrants To Enter Odisha – HELD** -The Supreme Court stayed the order passed by the Orissa High Court which directed that migrant workers should be allowed entry to Odisha only after testing negative for COVID-19. A bench took up the issue on the basis of mentioning made by the Solicitor General of India. The bench observed that the impugned order created an *unreasonable and impossible pre-condition on the part of government and the migrant workers who wish to travel back to their places.*

**Kamlakar Ratnakar Shenoy V. Union of India: 2020 SCC OnLine SC 752: 'Let the Govt. Decide': SC Dismisses Petition Seeking For Military Deployment For Proper Implementation Of Lockdown – HELD** -The Supreme Court while dismissing a plea which sought for deployment of military forces in each state, for purposes of proper implementation of the Coronavirus-induced national lockdown observed that the issue was the prerogative of

the Executive. A bench was not inclined to hear the issue and directed the petitioner to withdraw the petition, stating that the government may decide where military is required to be deployed.

**Shakeel Qureshi V. Union of India: 2020 SCC OnLine SC 306 :SC Imposes Costs of Rs. 10,000 and Dismisses Petition Seeking for Use of "Physical Distancing" Instead of "Social Distancing"- HELD** -The Supreme Court dismissed a petition seeking for directions for use of the term "physical distancing" instead of "social distancing". A bench dismissed the petition imposing cost(s) of Rs. 10,000/- (to be deposited in the Supreme Court Mediation Centre) within a period of eight weeks.

**Sanisha Thomas V. Union of India: Writ Petition (Civil) Dairy No(s).11045/2020 DoD: 08.05.2020: Women At Advance Stage Of Pregnancy Must Be Given Top Priority While Effectuating Cross-Border Evacuation: SC Tells Govt – HELD** -While hearing a [plea](#) on behalf of over 250 pregnant Indian women praying for evacuation from the Kingdom of Saudi Arabia, Supreme Court observed that women who are at the final stage of pregnancy (Third Trimester) must be given top priority for purposes of repatriation. The Solicitor General of India Tushar Mehta submitted that the Standard Operation Procedures (SOPs) for purposes of evacuation were being strictly followed.

**Arnab Ranjan Goswami Versus Union of India & Ors.: Writ Petition (Crl) No. 130 of 2020 d.o.d. 19.05.2020: SC Rejects Arnab Goswami's Plea To Quash FIR By Maharashtra Police And Transfer Probe To CBI –HELD**-The Supreme Court rejected the plea made by Arnab Goswami, Editor-in-Chief of Republic TV, for transfer of probe of the case registered by Mumbai police for alleged communal remarks to the Central Bureau of Investigation. The Court also rejected his prayer for quashing of the FIR stating that "There can be no quashing of FIR under Article 32. The Petitioner has the liberty to pursue remedy before the competent court".

**In Re: Court on Its Own Motion v. Union Territories of Jammu & Kashmir and Ladakh: WP(C) PIL no. \_\_\_\_/2020 d.o.d 18.04.2020: J&K HC Takes Suo Moto Cognizance Of Domestic Violence Cases Amid Lockdown; Issues Guidelines – HELD**

- The Jammu and Kashmir High Court took *suo-moto* cognizance of plight of victims in domestic violence cases amidst lockdown and issued notices to the concerned authorities to submit an action taken report.

A division bench led by Chief Justice Gita Mittal noted that due to lockdown, victims of domestic violence have been trapped at homes with their abusers and have no access to friends, family, public spaces, legal institutions, etc.

To grant "immediate assistance" in this regard, the following measures were proposed by the court:

- Creation of dedicated funding to address issues of violence against women and girls as part of the COVID-19 response by the Union Territories of the Jammu and Kashmir and Ladakh;
- Increased availability of call-in services to facilitate discreet reporting of abuse;
- Increased tele/online legal and counseling service for women and girls;
- Designated informal safe spaces for women, say grocery stores and pharmacies, where they can report domestic violence/abuse without alerting the perpetrators.
- Immediate designation of safe spaces (say for instance empty hotels/education institutions etc) as shelters for women who are compelled to leave their domestic situation. These shelters must be treated as accessible shelters.
- Giving urgent publicity to information regarding all of the above measures as also the availability of the facilities for seeking relief and redressal against the issues of domestic violence.

## LATEST CASES : CIVIL

*"The freedom to criticise the judgments of the Supreme Court is not being interfered with. Bona fide criticism of a judgment, albeit of the highest court of the land, is certainly permissible, but thwarting, or encouraging persons to thwart, the directions or orders of the highest court cannot be countenanced in our constitutional scheme of things. After all, in India's tryst with destiny, we have chosen to be wedded to the rule of law as laid down by the Constitution of India. Let every person remember that the "holy book" is the Constitution of India, and it is with this book in hand that the citizens of India march together as a nation, so that they may move forward in all spheres of human endeavour to achieve the great goals set out by this "Magna Carta" or Great Charter of India."*

— Rohinton Fali Nariman, J. in *Kantaru Rajeevaru (Sabarimala Temple Review-5 J.) v. Indian Young Lawyers Assn.*, (2020) 2 SCC 1, paras 77 and 78

**M/S Nandan Biomatrix Ltd. Vs. S.Ambika Devi & Ors.: 2020 SCC OnLine SC 309- Farmer Entering Into Buyback Transaction With Seed Company Is A 'Consumer'-HELD-** The Supreme Court has held that a farm is a 'consumer' for the purpose of filing complaints under the Consumer Protection Act even when he has entered into a buyback transaction. The bench observed that the transaction cannot be termed as resale. It also rejected the contention that the tripartite agreement would amount to resale by virtue of containing a buyback clause, and would hence exclude the farmer from the ambit of the definition of "consumer".

**Punjab And Sind Bank Vs. Durgesh Kuwar**

**: Civil Appeal No 1809 Of 2020 d.o.d 25.02.2020 - Sexual Harassment At Workplace Is An Affront to Women's Fundamental Rights- HELD-** Sexual harassment at the workplace is an affront to the fundamental rights of a woman, the bench while upholding a High Court judgment that quashed a transfer of a woman bank employee. A woman employee of the Punjab and Sind Bank, who was holding the office of Chief Manager in the Scale IV in Indore branch was transferred to the branch at Sarsawa in the district of Jabalpur. She challenged the said transfer alleging that her reports about irregularities and corruption at her branch and her complaints against an officer who sexually harassed her met with an order of transfer. The High Court allowed the writ petition and quashed the Transfer order.

**Union Of India Vs. M.V. Mohanan Nair: 2020 SCC OnLine SC 302 - Unreasoned Decisions Delivered On Technical Grounds Without Entering Into Merits Are Not Binding Precedents-HELD-** The Supreme Court has observed that the dismissal of a case by it on the ground of delay in filing/non-filing is not a binding precedent. The bench made this observation while considering

appeals filed by Union of India against High Courts judgments which upheld decisions rendered by different Benches of Central Administrative Tribunal granting financial up-gradation of grade pay in the next promotional hierarchy by placing reliance upon **Union of India and others v. Raj Pal.**

**Vijay Kishanrao Kurundkar Vs. State Of Maharashtra & Ors: Civil Appeal No 1865 Of 2020 d.o.d 28.02.2020 - Appointment Secured On The Basis Of A Fraudulent Caste Certificate Is Void Ab Initio-HELD-** The Supreme Court has observed that an appointment secured on the basis of a fraudulent caste certificate is void ab initio and Government Resolutions and Circulars cannot protect such appointees.

**Assistant General Manager & Ors. Vs. Radhey Shyam Pandey: 2020 SCC OnLine SC 253 - 'Retired People Need Security In The Fall Of Life' : SC Upholds Right To Pension Of SBI Employees Who Took VRS After 15 Or More Years Of Service- HELD-** The Supreme Court held that employees of State Bank of India who have taken voluntary retirement as per the 2000 VRS scheme after 15 or more years of service as on the cut-off date are entitled to proportionate pension as per SBI Pension Fund Rules. A 3-judge bench held so while answering a reference following conflicting of views between judges regarding admissibility of pension under VRS.

**Union Bank Of India Vs. Rajat Infrastructure Pvt. Ltd.: 2020 SCC OnLine SC 417- DRAT Cannot Entertain An Appeal U/s 18 SARFAESI Act Without Insisting On Pre- Deposit-HELD-** T The Supreme Court observed that the Debt Recovery Appellate Tribunal cannot entertain an appeal under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, without insisting on pre-deposit. The bench set aside the judgment of the Bombay High

Court that held that no pre-deposit was required to entertain an appeal by DRAT.

**M. Vanaja Vs. M. Sarla Devi : 2020 SCC OnLine SC 311 - Hindu Adoption and Maintenance Act Consent Of Wife, Actual Ceremony Of Adoption Essential For Valid Adoption-HELD-** The Supreme Court observed that the consent of the wife of the adopter and actual ceremony of adoption is essential for a valid adoption as per Hindu Adoption and Maintenance Act. In a suit for partition, the plaintiff's contention was that she was adopted by the defendants. The Trial Court dismissed the suit on the ground that the plaintiff could not prove the ceremony of adoption. The High Court also dismissed the appeal. While dismissing her appeal, the Apex court noted that the plaintiff had admitted in her evidence that she does not have the proof of the ceremony of giving and taking of her in adoption and there is no pleading in the plaint regarding the adoption being in accordance with the provisions of the Act.

**Mankastu Impex Private Limited Vs. Airvisual Limited: 2020 SCC OnLine SC 301 - Mere Expression 'Place Of Arbitration' Is Not The Basis To Determine 'Seat Of Arbitration': SC-** The Supreme Court observed that mere expression "place of arbitration" cannot be the basis to determine the 'Seat of Arbitration'. The bench observed that the intention of the parties as to the "seat" should be determined from other clauses in the agreement and the conduct of the parties. The court was concerned with a petition seeking appointment of an arbitrator.

**Sadhna Chaudhary Vs. State Of U.P.: 2020 SCC OnLine SC 307- Relief Oriented Judicial Approaches Cannot By Themselves Be Grounds To Cast Aspersions On Honesty & Integrity Of A Judge-HELD-** Relief oriented judicial approaches cannot by themselves be grounds to cast aspersions on the honesty and integrity of an officer, said the Supreme Court while setting aside dismissal of a Judicial Officer. The bench said that mere suspicion cannot constitute 'misconduct' and any 'probability' of misconduct needs to be supported with oral or documentary material, even though the standard of proof would obviously not be at par with that in a criminal trial.

**M/S Ananda Social And Educational Trust Vs. The Commissioner Of Income Tax & Anr.: 2020 SCC OnLine SC 293 - Newly Registered Trust Entitled For Registration Under Section 12AA Income Tax Act On The Basis Of Its Objects: SC-HELD-** The Supreme Court held that a newly registered Trust is entitled to registration under section 12AA of the Income Tax Act, 1961, on the basis of its objects, without any activity having been undertaken. A three judge, SC bench observed that the term 'activities' in the Section includes 'proposed activities' which means that a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the

activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust.

**Nirmala Kothari Vs. United India Insurance Co. Ltd.: 2020 SCC OnLine SC 286: Vehicle Owner's Insurance Claim Cannot Be Repudiated Merely Because Driver Was Possessing Fake Licence-HELD-** The Supreme Court held that the insurance company cannot repudiate the claim of a vehicle owner merely because the driver was possessing a fake licence. The apex court that onus of proving that the insured did not take adequate care and caution to verify the genuineness of the licence or was guilty of willful breach of the conditions of the insurance policy or the contract of insurance lies on the insurer.

**New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd. : 2020 SCC OnLine SC 287- Consumer Protection Act Mere Service Of Notice On Opposite Party Without Complaint Copy Cannot Be Commencing Point Of 30 Days Limitation To File Reply: SC-HELD-** The Constitution Bench of the Supreme Court held that the commencing point of limitation of 30 days under Section 13 of the Consumer Protection Act would be from the date of receipt of the notice accompanied with the complaint by the opposite party, and not mere receipt of the notice of the complaint. The Court clarified that the objection of not having received a copy of the complaint along with the notice should be raised on the first date itself and not thereafter. The bench observed thus in the judgment in which it held that the District Forum has no power to extend the time for filing the response to the complaint beyond the period of 15 days in addition to 30 days as is envisaged under Section 13 of the Consumer Protection Act.

**Indore Development Authority Vs. Manoharlal & Ors. Etc 2020 SCC OnLine SC 316 - Land Acquisition: No Lapse Of Proceedings Under Old Act If Compensation Is Deposited In Treasury ; SC 5-Judge Bench Upholds Indore Development Authority Decision-HELD-** A 5-judge bench of the Supreme Court on Friday held that proceedings under the Land Acquisition Act 1894 will not lapse if the compensation has been tendered by deposit in treasury.

The Court held that land owners cannot insist that the amount should be deposited in Court so as to sustain the land acquisition proceedings under the old Act on the commencement of the new land acquisition law with effect from January 1, 2014. Further Held that the word "or" in Section 24(2) should be read as "and". This means that the proceedings under old LA Act will lapse only if there is failure to take possession "and" failure to pay compensation.

If possession taken but compensation not paid, there is no lapse.

If compensation paid but possession not taken, then also no lapse of proceedings under 1894 Land Acquisition Act.

## LATEST CASES : CRIMINAL

*"It has consistently been laid down that the protection under Section 197 CrPC, 1973 is available to the public servants when an offence is said to have been committed "while acting or purporting to act in discharge of their official duty", but where the acts are performed using the office as a mere cloak for unlawful gains, such acts are not protected."*

— U.U. Lalit, J. in *CBI v. B.A. Srinivasan*, (2020) 2 SCC 153, para 1

**Padma Mishra Vs. State Of Uttarakhand : (2020) 2 SCC 540 : High Court In Article 226 Proceedings Does Not Adjudicate Correctness Of Allegations In FIR-HELD-** The Supreme Court has observed that the writ jurisdiction of the High Court cannot be invoked to adjudicate the correctness of the allegations in an FIR. The bench said that the intervention can only be in exceptional cases if the allegations made in the FIR ex facie do not disclose any offence at all.

**Satishkumar Nyalchand Shah Vs. State Of Gujarat: 2020 SCC OnLine SC 258: Section 173(8) CrPC: Courts Not Obligated To Hear the Accused While Considering Plea For Further Investigation- HELD -** The Supreme Court reiterated that a court is not obliged to hear the accused before any direction for further investigation is made under Section 173(8) of the Code of Criminal Procedure. In this case, the application filed by the appellant seeking to join as a respondent in a Special Criminal Application seeking further investigation against other persons was dismissed by the High Court. Upholding the High Court order, the bench, referring to earlier decisions on this aspect, observed that there is nothing in Section 173(8) CrPC to suggest that the court is obliged to hear the accused before any direction for further investigation is made.

**Samta Naidu & Anr. Vs. State Of Madhya Pradesh And Anr.: 2020 SCC OnLine SC 252-Second Complaint On Same Facts Not Maintainable- HELD -** *If the earlier disposal of the complaint had been on merits and in a manner known to law, the second complaint on "almost identical facts" which were raised in the first complaint would not be maintainable.* The Supreme Court bench held that a second complaint on same facts as the first complaint shall not be maintainable. The bench pointed out that if the core of both complaints was same, the second complaint ought not to be maintained.

**Downtown Temptations Pvt. Ltd. Vs. The State Of West Bengal: Criminal Appeal No. 340 Of 2020 d.o.d 27.02.2020: Immovable**

**Property Cannot Be Seized By Police Under Section 102 CrPC- HELD-** The Supreme Court reiterated that immovable property cannot be seized by Police under Section 102 of the Code of Criminal Procedure. In the appeal, the bench noted that sealing that had taken place of the premises are admittedly for more than one year and not by the Magistrate as required by Section 18 of the Immovable Traffic (Prevention) Act, 1956.

**Parvat Singh Vs. State Of Madhya Pradesh : 2020 SCC OnLine SC 259: Statement U/s 161 CrPC Inadmissible In Evidence And Cannot Be Relied Upon For Conviction- HELD -** The Supreme Court reiterated that a statement recorded under Section 161 of the Code of Criminal Procedure is inadmissible in evidence and cannot be relied upon or used to convict the accused. While setting aside a concurrent conviction in a murder case, the bench observed that a statement recorded under Section 161 Cr.P.C. can be used only to prove the contradictions and/or omissions.

**Manoj Suryavanshi Vs. State Of Chattisgarh : 2020 SCC OnLine SC 313: SC Commutes Death Sentence Of Man Accused Of Kidnap-Murder Of Three Children- HELD -** The Supreme Court commuted the death sentence awarded to a man accused of kidnapping and later murdering three children. Manoj Suryavanshi was convicted under Sections 302 and 364 by the Trial Court, and sentenced to death. This was later confirmed by the Punjab and Haryana High Court. Two sons of one Shivalal – Vijay aged about 8 years, Ajay aged about 6 years and a daughter Kumari Sakshi aged about 4 years were allegedly kidnapped and murdered by the accused. Referring to the judgment in *Absar Alam v. State of Bihar (2012) 2 SCC 728*, the bench said that the mental condition or state of mind of accused is one of the factors that can be taken into account in considering the question of sentence. It noted that it has come on evidence that the offence was committed under the influence of extreme mental or emotional disturbance and that the

accused was emotionally disturbed due to the elopement of his wife with the uncle of the deceased and that his children were suffering in absence of their mother with them. Taking note of the evidence on record, the bench confirmed the concurrent conviction recorded by the High Court and the Trial Court. Furthermore it converted the death sentence to life imprisonment, the bench directed that the life means till the end of the life with the further observation and direction that there shall not be any remission till the accused completes 25 years of imprisonment.

**Jeetendra Vs. State Of Madhya Pradesh: 2019 SCC OnLine SC 1792: Bail Is Rule And Jail Is Exception: SC Reminds HC That Denied Bail To Accused Even After Police Filed Closure Report- HELD** - *Bail is rule and jail is exception*, reminded the Apex Court while granting bail to a person whose bail application was rejected by the High Court even though the Police had filed closure report. While allowing the appeal filed by the accused, the bench said that *"The High Court ought to have kept in view that 'Bail is rule and jail is exception'. There is no gainsaying that bail should not be granted or rejected in a mechanical manner as it concerns the liberty of a person. In peculiar circumstances of this case where closure report was filed twice, the High Court ought not to have declined bail only because the trial court was yet to accept the said report. Further, the examination of witnesses would depend upon the fate of 2nd closure report. Considering the nature of allegations attributed to the appellant and the period he has already spent in custody, we are satisfied that he deserves to be released on bail forthwith."*

**Bhagwan Singh Vs. State Of Uttarakhand: Criminal Appeal No. 407 Of 2020 d.o.d 18.03.2020-Guns Licensed For Self Protection Cannot Be Used For Celebratory Firing': SC Expresses Concern About Rising Incidents – HELD** - While sentencing a man accused of killing two persons in a celebratory firing to ten years rigorous imprisonment, the Supreme Court expressed its concerns about the rising incidents of celebratory firing. The bench observed that

"Incidents of celebratory firing are regrettably rising, for they are seen as a status symbol. A gun licensed for self protection or safety and security of crops and cattle cannot be fired in celebratory events, it being a potential cause of

fatal accidents. Such like misuse of fire arms convert a happy event to a pall of gloom."**FURTHER HELD**-Partly allowing his appeal, the bench disagreed with the Trial Court and the High court finding that the firing from the gun which was pointed towards the roof, was as bad as firing into a crowd of persons so he ought to have known that his act of gun shot firing was so imminently dangerous that it would, in all probability, cause death or such bodily injury as was likely to cause death. It observed:

*"It was an unfortunate case of misfiring. The appellant of course cannot absolve himself of the conclusion that he carried a loaded gun at a crowded place where his own guests had gathered to attend the marriage ceremony. He did not take any reasonable safety measure like to fire the shot in the air or towards the sky, rather he invited full risk and aimed the gun towards the roof and fired the shot. He was expected to know that pellets could cause multiple gunshot injuries to the nearby persons even if a single shot was fired. The appellant is, thus, guilty of an act, the likely consequences of which including causing fatal injuries to the persons being in a close circuit, are attributable to him. The offence committed by the appellant, thus, would amount to 'culpable homicide' within the meaning of Section 299, though punishable under Section 304 Part 2 of the IPC."*

**Makwana Mangaldas Tulsidas Vs. The State Of Gujarat And Anr: 2020 SCC OnLine SC 317: S.138 NI Act: SC Directs RBI To Consider Developing A New Proforma Cheque To Include Purpose Of Payments- HELD** - The Supreme Court has recently asked The Reserve Bank of India to consider developing a new proforma of cheques so as to include the purpose of payment, along with other informations to facilitate adjudication of real issues in cheque bounce cases. **"With ensuring the credibility of cheques, it is equally important that cheques are not allowed to be misused giving cause to frivolous litigation. The Reserve Bank of India may consider developing a new proforma of cheques so as to include the purpose of payment, along with other informations mentioned above to facilitate adjudication of real issues."**

# NOTIFICATION

1. Parliament receives President's assent for — Insolvency and Bankruptcy Code (Amendment) Act, 2020: Insolvency and Bankruptcy Code (Amendment) Act, 2020 came into force on 13-03-2020. The key changes under the act are:

a) In Section 5 of the Insolvency and Bankruptcy Code, 2016 (hereafter referred to as the principal Act),—

(i) in clause (12), the proviso shall be omitted;

(ii) in clause (15), after the words “during the insolvency resolution process period” occurring at the end, the words “and such other debt as may be notified” shall be inserted.

b) In section 7 of the principal Act, in sub-section (1), before the Explanation, the following provisos shall be inserted, namely:—

“Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.”

c) In section 11 of the principal Act, the Explanation shall be numbered as Explanation I and after Explanation I as so numbered, the following Explanation shall be inserted, namely:—

“*Explanation II.*—For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor.”

d) In section 14 of the principal Act,—

(a) in sub-section (1), the following Explanation shall be inserted, namely—

“*Explanation.*—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;”

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.”; (c) in sub-section (3), for clause (a), the following clause shall be substituted, namely:— “(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;”<sup>1</sup>

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<sup>1</sup> <http://egazette.nic.in/WriteReadData/2020/218654.pdf>