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FROM THE DESK OF CHIEF EDITOR

The Judgment (May 6, 2021) in the case of Chief Election Commissioner of India (two judge bench of Justice Dr. Dhananjaya Y. Chandrachud and Justice M.R. Shah) is a complete code of 30 pages. This container contains the booster dose of **Judicial Culture. Judicial Discipline. Judicial Conduct. Judicial Communication and Judicial Restraint.** This judgment has performed the open heart surgery of the **Open Court System.** The judgment has focused meaningfully on the need for strengthening the Open Court System. Strengthening the judicial human fabric. Nurturing Mutual Respect for different institutions, bodies and authorities.

The High Court of Madras entertained a writ petition under Article 226 of the Constitution. The petitioner had sought directions from the High Court to the EC. To ensure that the counting of votes on May 2, 2021 takes place by taking effective steps and arrangements in accordance with Covid-19 protocols. During the course of the hearing of the Petition, it was alleged that the High Court orally observed that the EC is:

“.....the institution that is singularly responsible for the second wave of Covid-19” and that the EC “should be put-up for murder charges”.

These remarks of the honourable Division Bench comprising Justice Sanjib Banerjee, Chief Justice of Madras High Court and Justice Senthilkumar Ramamoorthy were not part of the court order dated April 26, 2021. The grievance of the EC was that these derogatory and damaging oral observations in the court and reported in the print, electronic and tele media have cast a shadow on the role being played by a constitutional body namely, the EC.

India can take legitimate pride in having an Open Court System. The proceedings of the courts are open to the litigating parties. They are also open to public. The Open Court System is healthy for the Judicial Institution. For judges. For lawyers. For good governance. For the different stake holders of the court system. Above all, for the people of India. Why? The two judge bench of the summit court has answered this preliminary question:

“An Open Court proceeding ensures that the judicial process is subject to public scrutiny. Public scrutiny is crucial to maintaining the transparency and accountability. Transparency in the functioning of democratic institutions is crucial to establish the public faith in that”.

The Bench adds:

“An Open Court System ensures that judges act in accordance with the law and with probity”.

The courts are in public gaze. The Open Court System is in furtherance of and in support of Rule of Law. The Open Court System introduces discipline. Introduces orderly conduct of judicial proceedings. It acts as a restraining tool in judicial communication. At the same time, it does not mean that the court is not free to express itself freely. The Open Court System helps in shaping the conduct of a judge in court. The Open Court System opens the way for public evaluation of judicial conduct. Justice M.Hidayatullah in 1966 simply put:

“It operates as a wholesome check upon judicial behavior as well as upon the conduct of the contending parties and their witnesses”.

The Open Court System envisages that the courts are open to public. The public as such does not have the time. Nor the inclination to be in court. Unless, someone is actually interested in particular matter for different reasons. However, in some matters, some public persons may also be interested. The Open Court System actually has only limited exposure to public at large. A serious thought is being given to make the Open Court System more open through ‘live-streaming’ or any other suitable open excess methodology. The Courts: the US Supreme Court, the UK Supreme Court, the Court of Appeal in the UK and the International Criminal Court have introduced ‘live-streaming’. It is in this context that the supreme court has held :

“It would be retrograde for this court to promote the rule of law and access to justice on one hand, and shield the daily operations of the High Courts and this Court from the media in all its forms by gagging the reporting of the proceedings, on the other”.

This two-fold recipe truly supports and promotes the rule of law and access to justice. As also, the freedom to freely report the operations of all Courts at different levels. This connects the judiciary. This linkage is educative. It helps in understanding each other. The constructive and critical responses help in strengthening the Judicial Institution. It helps the other institutions to shape and reshape their roles. It is not the discord between the different institutions. It is the building up of harmony between different institutions which is the Constitutional Morality. This Judgment has played the balming role between the two constitutional authorities. The High Court and the Election Commission.

The issue of publication of court proceedings needs deeper consideration. The strength of the Open Court System has been beautifully brought out by J.R.S.Bachawat while speaking for the apex court in Mirajkar case (1966).

“.....the trial should be open to the public and there should be no restraint on the publication of the report of the court proceedings. The publicity generates public confidence in the administration of justice....”

In this EC matter, the Supreme Court had not been called upon to decide the constitutionality or even the legality of the actions of EC. The grievance was the ‘oral remarks’ made by the judges of Madras High court. The Supreme Court has described them as:

“The remarks of the High Court were harsh. The metaphor inappropriate”

The Bench made it clear:

“.....the power of Judges must not be unbridled and judicial restraint must be exercised, before using strong and scathing language to criticize any individual or institution”.

Obviously, the High court was prompted by the situation in hand. The ever rising cases of Covid-19. The human lives were being lost. It was nothing short of health emergency. In a situation like this, the EC as a constitutional body was required to act more independently and without any constraints. On the other hand, the High Court was to discharge its constitutional responsibility to protect the life and liberty of citizens. The usage of the harsh words was actually not to attribute the culpability to EC. It was intended to remind the EC that be alive to the situation in playing your constitutional role. The reminder was couched in harsh words. However, the reminder was well intended and timely. Much required.

Judicial restraint and Judicial respect are the two sides of the same coin. It is true that the Judiciary reviews the actions of other constitutional bodies. It is possible that the court may find the actions of the other bodies arbitrary and discriminatory. Such actions, the court is bound to strike them down. All this must be done. But at the same time ‘mutual respect’ ought not to be lost. Respect to those who come to the court. Respect to the two other organs of the state. The courts must play their role gracefully and meaningfully. Judges are cultured minds. Nurtured minds. Irrigated minds. No arrogance. Only elegance. They speak in measured language. I add a caveat. Sometimes, during the course of arguments, the Judges make observations to provoke the lawyers to get the best out of them. This is healthy. This helps in developing the law. Sharp exchanges between lawyers and Judges have contributed to the growth of law and jurisprudence.

In handling the present situation, the top court decided to strike a balance. Not to hamper the independent functioning of High Courts. Equally, the top court must intervene where ‘Judges have over-stepped the mark and breached the norms of Judicial Propriety’. This balancing will help in generating harmony between different bodies. Mutual respect for each other. They would play their respective constitutional roles with better understanding. This would strengthen Rule of Law. Judicial culture-in-action.

LATEST CASES: CIVIL

"There is difference between "Government established by law" and "persons for the time being engaged in carrying on administration". Comment or criticism of the government action in howsoever strong words must be protected and cannot be a ground to take penal action unless the words written or spoken, etc. have pernicious tendency or intention of creating public disorder. Without exciting those feelings which generate inclination to cause public disorder by acts of violence, political views and criticism cannot be made subject-matter of penal action."

- *Sanjiv Khanna, J. in Amish Devgan v. Union of India, (2021) 1 SCC 1, para 79*

Rahul Sharma and another vs National Insurance Company Ltd and others : 2021 SCC OnLine SC 370 : CIVIL APPEAL NO. 1769 OF 2021- Motor Accident Compensation - Self-Employed Deceased Aged Below 40 Years Entitled To 40% Addition As Future Prospects : Supreme Court-HELD- The Supreme Court has reiterated that addition of 40% income must be given towards future prospects while computing motor accident compensation if the deceased was self-employed and was aged less than aged 40 years.

"This Court in a Five Judge Bench decision in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680, clearly held that in case the deceased is self-employed and below the age of 40, 40% addition would be made to their income as future prospects. In the present case, the deceased was self-employed and was 37 years old, therefore, warranting the addition of 40% towards future prospects", the Supreme Court observed.

Commissioner of Income Tax-I Vs. Reliance Energy Ltd. : 2021 SCC OnLine SC 349 : [CA 1327 of 2021]- Deduction Under Section 80-IA Income Tax Act Not Restricted To 'Business Income' Only: Supreme Court-HELD- that the scope of sub-section (5) of Section 80- IA of the Act is limited to determination of quantum of deduction under sub-section (1) of Section 80-IA of the Act by treating 'eligible business' as the 'only source of income'.

The court observed that the essential ingredients of Section 80-IA (1) of the Act are: a) the 'gross total income' of an assessee should include profits and gains; b) those profits and gains are derived by an undertaking or an enterprise from a business referred to in subsection (4); c) the

assessee is entitled for deduction of an amount equal to 100% of the profits and gains derived from such business for 10 consecutive assessment years; and d) in computing the 'total income' of the Assessee, such deduction shall be allowed.

"We hold that the scope of sub-section (5) of Section 80- IA of the Act is limited to determination of quantum of deduction under sub-section (1) of Section 80-IA of the Act by treating 'eligible business' as the 'only source of income'. Sub-section (5) cannot be pressed into service for reading a limitation of the deduction under sub-section (1) only to 'business income'." The bench held.

Rahul S Shah vs. Jinendra Kumar Gandhi: 2021 SCC OnLine SC 341 : [CA 1659-1660 of 2021] - Supreme Court Directs High Courts To Reconsider And Update Rules Relating To Execution Of Decrees- HELD-The Supreme Court bench directed the High Courts to reconsider and update all the Rules relating to Execution of Decrees, made under exercise of its powers under Article 227 of the Constitution of India and Section 122 of CPC, within one year.

The observation came while issuing directions to reduce delays in the execution proceedings which shall be enforceable till the Rules are updated by High Courts. The court said that it must be ensured that the Rules are in consonance with CPC and the directions (issued now), with an endeavour to expedite the process of execution with the use of Information Technology tools.

The Court observed that in suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third party interest and further exercise the

power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.

Chief Election Commission of India v MR Vijaya Bhaskar : 2021 SCC Online SC 364 - 'Citizens Have Right To Know What Transpires In Judicial Proceedings' : Supreme Court Upholds Media's Freedom To Report Court Hearings- HELD- In a significant judgment, the Supreme Court on Thursday upheld the freedom of media to report the oral observations and discussions made by judges and lawyers during a court proceeding. The Supreme Court bench held that freedom of speech and expression under Article 19(1)(a) extends to reporting judicial proceedings as well. The bench was delivering its judgment in a petition filed by the Election Commission of India seeking to restrain media from reporting oral remarks made by judges, after the Madras High Court orally said that the ECI "should probably be booked for murder" for being "singularly responsible for COVID second wave" by allowing election rallies.

"The concept of an open court requires that information relating to a court proceeding must be available in the public domain. Citizens have a right to know about what transpires in the course of judicial proceedings", the 31-page judgment authored by Justice DY Chandrachud stated.

Shital Fibers Ltd. v. Indian Acrylics Ltd.: 2021 SCC OnLine SC 281 - Company Court cannot decide in winding up proceeding which party defaulted with the compromise; Supreme Court clarifies jurisdiction of Company Court -HELD- That, *"The company Court while exercising its powers under sections 433 and 434 of the Companies Act would not be in a position to decide, as to who was at fault in not complying with the terms and conditions of the deed of settlement and the compromise deed."*

The Bench observed that it is well settled that where the debt is undisputed, the court will not act upon a defence that the company has the ability to pay the debt but the company chooses not to pay that particular debt. The principles on which the court acts are *firstly*, that the defence of the company is in good faith and one of substance, *secondly*, the defence is likely to succeed in point of law and *thirdly* the company adduces prima facie proof of the facts on which the defence depends. Relying on the decision in *Madhusudan Gordhandas & Co. vs. Madhu Woollen Industries Pvt. Ltd.*, (1971) 3 SCC 632, the Bench stated that, *If the debt is bona fide disputed and the defense is a substantial one, the court cannot wind up the company.*

Regarding the claim of the appellant that defective material was supplied by the respondent; the Court concurred with the findings of the Company Judge and the High Court that the defence sought by the appellant was an afterthought, as no document was placed on record in support of such contention.

The Bench stated that the defence of the appellant was neither bona-fide nor substantial as no prima facie evidence was produced by the appellant to buttress his claim. Lastly, the Court held that, *"The company Court while exercising its powers under sections 433 and 434 of the Companies Act would not be in a position to decide, as to who was at fault in not complying with the terms and conditions of the deed of settlement and the compromise deed."*

Hence, holding the defence of the appellant not to be *bona fide*, in good faith and of substance, the Bench dismissed the appeal for being devoid of merit.

M/S Utkal Suppliers v. M/S Maa Kanak Durga Enterprises: 2021 SCC OnLine SC 301- Judicial review or judicial restraint? Supreme Court explains where the virtue itself turns into vice-HELD- the issue of overstepping of review jurisdiction by the High Courts in policy matters. The Bench expressed,

"Judicial review in these matters is equivalent to judicial restraint in these

matters...the writ court does not have the expertise to correct such decisions by substituting its own decision for the decision of the authority.”

The Court had repeatedly held that judicial review in these matters is equivalent to judicial restraint in these matters. What is reviewed is not the decision itself but the manner in which it was made. The writ court does not have the expertise to correct such decisions by substituting its own decision for the decision of the authority. Referring to the judgment in ***Silppi Constructions Contractors v. Union of India, 2019 SCC OnLine SC 1133***, wherein, the Court had held that, *the authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted*; the Court stated that the constitutional courts must defer to this understanding and appreciation of the tender documents.

M.K. Ranjitsinh v. Union of India:2021 SCC OnLine SC 326-Protection of heaviest flying bird, the Great Indian Bustard: SC emphasizes on need to adopt ecocentric approach; issues directions-HELD-The Bench remarked,“...keeping in view, the sustainable development concept and on striking a balance the protection of the rare species of birds is essential to be made, the effort being to save every bird while at the same time allowing transmission of power in an appropriate manner.” The Directions issued are as follows:

1. The government shall take steps forthwith to install divertors pending consideration of the conversion of the overhead cables as exist on today in the priority and potential GIB area into underground powerlines.
2. In all such cases where it is found feasible to convert the overhead cables into underground powerlines the same shall be undertaken and completed within a period of one year and till such time the divertors shall be hung from the existing

3. *Irrespective of the cost factor the priority shall be to save the near extinct*

4. One of the options that could be explored, is to invite the attention of each electricity utility engaged in the generation of power, to Section 135 of the Companies Act, 2013, which imposes *corporate social responsibility* upon companies having a specified net worth or turnover or net profit.

5. Under Compensatory Afforestation Fund Act, 2016 (CAF, 2016), substantial funds are available with the National and State Authorities. The State of Rajasthan has already set up a Compensatory Afforestation Fund Management and Planning Authority. Rule 5(2)(i) of these Rules permit the use of the State Fund for the improvement of wildlife habitat. *(According to the petitioner a sum of Rs.47,436 crores, out of a total of Rs.54,685 crores CAMPA Fund have been transferred by the Union Environment Ministry to the States for afforestation projects.)*

6. *For conservation of the habitat to secure the safety of the eggs laid by the birds, the area earmarked shall be fenced and protected from invasion by predators so that the eggs laid in these areas are protected. The power supply line regarding which underground passage is to be made should also avoid these areas.*

7. Since the laying of highvoltage underground power line would require expertise to assess the feasibility of the same. For the purpose of assessing the feasibility the Bench constituted a committee consisting of Dr. Rahul Rawat (Scientist), Dr. Sutirtha Dutta (Scientist) and Dr. Devesh Gadhavi, Deputy Director (The Corbett Foundation).

The above committee was granted liberty to obtain technical reports if need be, from experts in the field of electricity and the respondents were directed to refer the matter to the committee with all the relevant material and particulars if there is any issue relating to feasibility.

LATEST CASES: CRIMINAL

"Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting."

- *Dr D.Y. Chandrachud, J. in Arnab Manoranjan Goswami v. State of Maharashtra, (2021) 2 SCC 427, para 67*

Patan Jamal Vali vs. State of Andhra Pradesh: 2021 SCC OnLine SC 343 : Section 3(2) (v) was amended and Clause (c) of Section 8 was inserted by Act 1 of 2016 with effect from 26 January 2016 these amendments would not be applicable to the case which is of the prior date- HELD: It is pertinent to mention that Section 3(2)(v) was amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which came into effect on 26 January 2016. The words "on the ground of" under Section 3(2) (v) have been substituted with "knowing that such person is a member of a Scheduled Caste or Scheduled Tribe". This has decreased the threshold of proving that a crime was committed on the basis of the caste identity to a threshold where mere knowledge is sufficient to sustain a conviction. Section 8 which deals with presumptions as to offences was also amended to include clause (c) to provide that if the accused was acquainted with the victim or his family, the court shall presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise.

The bench was considering the appeal filed by one Patan Jamal Vali, the sole accused tried for the offences punishable under Section 376(1) of the IPC and under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act for committing rape on the victim girl who is aged about 20 years and blind by birth, on

31.03.2011 at about 9:30 AM in her house. The High Court had affirmed the conviction of the accused by the Trial Court on these charges. The Supreme Court finally set aside the conviction of the accused under Section 3(2)(v) of the SC and ST Act but upheld the conviction and life sentence punishable under Section 376 IPC.

Mangala Waman Karandikar (D) TR. LRS vs. Prakash Damodar Ranad: 2021 SCC OnLine SC 371: Evidence Act - Proviso 6 to Section 92 will not apply if the Document is straightforward with no ambiguity: Section 95 only builds on the proviso 6 of Section 92: Supreme Court- HELD- that the proviso 6 to Section 92 of the Evidence Act will not apply if a document is straightforward, without any ambiguity in meaning.

Section 92 of the Evidence Act bars giving oral evidence with respect to the contents of a written document. However, proviso 6 to Section 92 allows the admission of facts external to the document which shows in what manner the language of a document is related to existing facts. Unlike a statutory interpretation, which is even more difficult due to assimilation of individual intention of law makers, contractual interpretation depends on the intentions expressed by the parties and dredging out the true meaning is an 'iterative process' for the Courts. In any case, the first tool for interpreting, whether it be a law or contract is to read the same. The Supreme Court was considering an appeal in which the question was whether the agreement in the case should be

interpreted as a license to run a business or a license to occupy the rented premises in which the business was located.

Sanjay Kumar Rai Vs. State of Uttar Pradesh and Another 2021 SCC OnLine SC 367: Orders framing Charges or refusing Discharge neither Interlocutory nor final; Not affected by bar U/Sec 397: HELD: *that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397 (2) of the Code of Criminal Procedure.* Further, it is well settled that the trial court while considering the discharge application is not to act as a mere post office. The Court has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspect. The court has to consider the broad probabilities, total effect of evidence and documents produced and the basic infirmities appearing in the case and so on.....Likewise, the Court has sufficient discretion to order further investigation in appropriate cases, if need be. *The Court observed thus while allowing appeal against the Allahabad High Court order which dismissed a Criminal Revision Petition against a Trial court order dismissing a discharge application. The High Court was of the view that it lacked jurisdiction under Section 397 of Cr.P.C to interfere with CJM order. It relied on Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation (2018) 16 SCC 299 to hold that interference in the order framing charges or refusing to discharge is called for in rarest of rare case only to correct the patent error of jurisdiction.*

Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana Makwana (Koli) and Another: 2021 SCC OnLine SC 335- **“Consent of parties cannot obviate the duty of the High Court to indicate its**

reasons”; **Supreme Court explains the law on Bail- HELD-** This important judgment came out to be a significant development regarding law relating to bail. In this judgment the Supreme Court Bench not only criticized the practice of lower Courts of attaching caveat for not treating the decision as precedent, but also emphasized on need for reasoned disposal of bail matters. The Bench expressed, ***“Whether an order granting a bail is a precedent on grounds of parity is a matter for future adjudication if and when an application for bail is moved on the grounds of parity on behalf of another accused...it is for that court before whom parity is claimed to determine whether a case for the grant of bail on reasons of parity is made out.”***

The grant of bail is a matter which implicates the liberty of the accused, the interest of the State and the victims of crime in the proper administration of criminal justice. It is a well-settled principle that the Court granting bail cannot obviate its duty to apply a judicial mind and to record reasons, brief as they may be, for the purpose of deciding whether or not to grant bail. *The consent of parties cannot obviate the duty of the High Court to indicate its reasons why it has either granted or refused bail. This is for the reason that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other.* Lastly, the Bench added that the recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice.

Sudha Singh v. State of Uttar Pradesh: 2021 SCC OnLine SC 342: Gangster previously prosecuted in 15 cases gets

bail in a murder case! Supreme Court sets aside Allahabad High Court order- HELD- The SC has set aside the order of the Allahabad High Court granting bail to a gangster arrested under Section 3 (1) of the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986. ***“There is no doubt that liberty is important, even that of a person charged with crime but it is important for the courts to recognise the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail.”***

Making a strong case, the appellant also argued that the grant of bail in a routine manner to gangsters, has had an adverse effect in the past, upon the law and order situation. The Court was reminded of the case where Vikas Dubey, who was prosecuted in connection with 64 criminal cases which included cases of murders, offences of dacoity, criminal intimidation, extortion and offences under the UP-Gangster Act, etc., was released on bail. Ultimately, when a police team went to apprehend him in a case, allegedly 8 policemen were killed and many grievously injured.

Taking note of all the factors concerned, the Court said that the high court has overlooked several aspects, such as the potential threat to witnesses, forcing the trial court to grant protection. ***“It is needless to point out that in cases of this nature, it is important that courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question. It is necessary for courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims.”***

Rajkumar Sabu Vs. Sabu Trade Private Limited :2021 SCC OnLine SC 378:

Mere language problem of a party not a ground to Transfer a Case U/s 406 CrPC: Supreme Court- HELD- Transfer of a criminal case under Section 406 of the 1973 Code can be directed when such transfer would be ***“expedient for the ends of justice”***. This expression entails factors beyond mere convenience of the parties or one of them in conducting a case before a Court having jurisdiction to hear the case. The parties are related, and are essentially fighting commercial litigations filed in multiple jurisdictions. While instituting civil suits, both the parties had chosen fora, some of which were away from their primary places of business, or the main places of business of the defendants. The court observed thus while dismissing a transfer petition filed by one Rajkumar Sabu, against whom a criminal case is pending in Salem Court, that he is not being able to understand Tamil language, and therefore the case ought to be transferred to a Court in Delhi. It relied on the decision in *Sri Jayendra Saraswathy Swamigal (II), T.N. vs. State of Tamil Nadu & Ors. [(2005) 8 SCC 771]*. Justice Aniruddha Bose noted that language was a factor considered in the case of Sri Jayendra Saraswathy Swamigal (supra), while selecting the Court to which the case was to be transferred. ***“....But language was not the criteria based on which transfer of the case was directed. The language factor weighed with this Court while deciding the forum to which the case was to be transferred after decision was taken to transfer the case for certain other reasons”***, the court said. A criminal case cannot be transferred under Section 406 CrPC merely because the party does not understand the language of the Court which has jurisdiction to hear the case, the Supreme Court held.

LATEST CASES: FAMILY LAW

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

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

Joydeep Majumdar v. Bharti Jaiswal Majumdar: 2021 SCC OnLine SC 146- Malicious allegations against spouse costing him his job and reputation not an attempt to preserve the relationship but a definite case of mental cruelty-HELD-In a

case where an Army Officer's wife made numerous malicious complaints against him to his superiors and various authorities, that such conduct cannot be considered to be "squabbles of ordinary middle class married life" and that it amounted to mental cruelty.

What amounts to Mental Cruelty?

For considering dissolution of marriage at the instance of a spouse who alleges mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. "The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party."

The Court hence held that the High Court was in error in describing the broken relationship as normal wear and tear of middle class married life.

"It is a definite case of cruelty inflicted by the respondent against the appellant and as such enough justification is found to set aside the impugned judgment of the High Court and to restore the order passed by the Family Court."

Hence, the appellant was held entitled to dissolution of his marriage and consequently the respondent's application for restitution of conjugal rights was dismissed.

Anjali Brahmawar Chauhan v. Navin Chauhan: 2021 SCC OnLine SC 38-SC allows video conferencing in matrimonial matter, though not as a matter of course-HELD-dismissed a review petition while directing the Family Court, Gautam Budh

Nagar, to conduct proceedings by video conferencing. Reasoning placed by the petitioner for filing the present petition was that there was no video conferencing facility at Gautambudh Nagar, District Courts. Another ground was that video conferencing is not permissible in matrimonial matters in light of the Supreme Court decision in *Santhini v. Vijaya Venketesh*, (2018) 1 SCC 62. Since March 2020, due to the physical functioning of the Courts was stopped. Hence, proceedings in all Courts are being conducted only through video conferencing.

Bench stated that in the normal course, it would not have directed video conferencing in respect of matrimonial matters as per the above-referred Judgment, but in the present matter, since all the proceedings are being conducted in video conferencing, Court directed the Family Court, District Gautambudh Nagar, U.P. to conduct the trial through video conferencing.

Soniya and another Versus State of Haryana and others: CRWP No.4533 of 2021 (O&M) Date of Decision: May 18, 2021-Live-In Relationships May Not Be Acceptable To All But Living Together

Without Marrying Doesn't Constitute An Offence-HELD- the Punjab and Haryana high Court observed that a live-in relationship may not be acceptable to all, but it cannot be said that such a relationship is an illegal one or that living together without the sanctity of marriage constitutes an offence.

Varun Jagotta v. Diksha Kapur :CRR(F)-28 of 2021, decided on 05-02-2021:Wife entitled to increase alimony after an increase in husband's salary, Punjab and Haryana HC upholds-HELD-a revision petition filed against the enhanced amount of alimony H.S. Madaan, J., upheld Family Court's decision that,

If salary of the husband increases the wife would be entitled to increased maintenance as well.

The Petitioner, one Varun Jagotta had filed the instant revision petition against his wife Diksha Kapur, feeling aggrieved by the order of the Family Court whereby the Court had granted interim maintenance at Rs 20,000 per month till September, 2019 and thereafter at Rs 28,000 per month. The petitioner was basically aggrieved by the portion of the impugned order granting maintenance at Rs 28,000 w.e.f. October, 2019 onwards.

Taking note of the fact that there had been increase in the salary of the respondent from Rs 95,000 per month to Rs 1,14,000 per month in September, 2019 and there had been increase in rent being paid by the petitioner at the rate of Rs.1,500 per month, the Family Court opined that if the petitioner is awarded a sum of Rs 20,000/- per month by way of interim maintenance from the date of filing the application (on 03.10.2018) till September, 2019 and henceforth, at the rate of Rs 28,000/- per month, it would suffice the purpose and ends of justice would be met.

The petitioner contended that as per pay slip of the petitioner for the month of December, 2019, his net carry home salary after all the deductions came out to Rs 92,175,

therefore, grant of maintenance at Rs.28,000 per month was not justified.

Noticing that salary of the petitioner had increased from Rs 95,000 per month to Rs.1,14,000 per month, the Bench held that, "Increase in maintenance by Rs.8,000 when there was increase in salary of revision petitioner by 19,000, was justified."

Hence, it was held that the impugned order did not suffer from any illegality or infirmity and was not perverse or passed in an arbitrary manner.

Rajnish v. Neha :2020 SCC OnLine SC 903-Husband doesn't have to pay maintenance in each of the proceedings under different Maintenance laws -HELD-

The SC bench has framed guidelines on the issue of maintenance of wife, covering overlapping jurisdiction under different enactments for payment of maintenance, payment of Interim Maintenance, the criteria for determining the quantum of maintenance, the date from which maintenance is to be awarded, and enforcement of orders of maintenance.

The directions came in a case which revealed that the application for interim maintenance under Section 125 Cr.P.C. has remained pending before the Courts for seven years now, and there have been difficulties encountered in the enforcement of orders passed by the Courts, as the wife was constrained to move successive applications for enforcement from time to time.

a) Issue of overlapping jurisdiction

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, the Court issued the following directions in order to ensure uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or setoff, of the amount awarded in the previous proceeding/s, while determining

whether any further amount is to be awarded in the subsequent proceeding;

(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.

(b) Payment of Maintenance

Interim Maintenance

(a) the Affidavit of Disclosure of Assets and Liabilities shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

[Note: The judgment has the Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III.]

(b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

(c) The respondent must submit the reply alongwith the Affidavit of Disclosure within a maximum period of four weeks.

- The Courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent.

- If the respondent delays in filing the reply with the Affidavit, and seeks more than two adjournments for this purpose, the Court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings.

- On the failure to file the Affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on basis of the Affidavit filed by the applicant and the pleadings on record;

(d) The above format may be modified by the concerned Court, if the exigencies of a case require the same. It would be left to the judicial discretion of the concerned Court, to issue necessary directions in this regard.

(e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the concerned Court may pass appropriate orders in respect thereof.

(f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the Court to serve interrogatories, and seek production of relevant documents from the opposite party under Order XI of the CPC. On filing of the Affidavit, the Court may invoke the provisions of Order X of the C.P.C or Section 165 of the Evidence Act 1872, if it considers it necessary to do so.

The income of one party is often not within the knowledge of the other spouse. Hence, the Court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

(g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended / supplementary affidavit, which would be considered by the court at the time of final determination.

(h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the Court may consider initiation of proceeding u/S. 340 Cr.P.C., and for contempt of Court.

(i) In case the parties belong to the Economically Weaker Sections ("EWS"), or are living Below the Poverty Line ("BPL"), or are casual labourers, the requirement of filing the Affidavit would be dispensed with.

(j) The concerned Family Court / District Court / Magistrate's Court must make an endeavour to decide the I.A. for Interim Maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

(k) A professional Marriage Counsellor must be made available in every Family Court

Permanent alimony

(i) Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the concerned Court, for fixing the permanent alimony payable to the spouse.

(ii) In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.

(iii) Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family.

(iv) If there are any trust funds / investments created by any spouse / grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.

(c) Criteria for determining the quantum of maintenance

For determining the quantum of maintenance payable to an applicant, the factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after

adult members of the family; reasonable costs of litigation for a non-working wife.

The financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living.

Serious disability or ill health of a spouse, child / children from the marriage / dependant relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance

The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded

Maintenance in all cases will be awarded from the date of filing the application for maintenance before the concerned Court. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.

(e) Enforcement/Execution of orders of maintenance

For enforcement / execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 r.w. Order XXI.

EVENTS

- Sri Gurcharan Singh, Faculty – Central Detective Training Institute, Chandigarh gave a Webinar on “Appreciation of Digital Evidence and its challenges” on May 08, 2021 to the District Judiciary of Punjab, Haryana and UT Chandigarh including Trainee Judicial Officers.
- Hon’ble Mrs. Justice Alka Sarin, Judge, Punjab & Haryana High Court gave a Webinar on “The Restricted Functioning of Courts – its challenges” on May 22, 2021 to the District Judiciary of Punjab, Haryana and UT Chandigarh including Trainee Judicial Officers.
- The Chandigarh Judicial Academy conducted Induction Training Programme (Online) for newly recruited Ministerial Staff which was initially started from April 19 to April 21, 2021. This was followed by 10 days training at the place of posting to the newly recruited officials. The last four days of training from May 20, 21, 22 and 24, 2021 was again conducted at Chandigarh Judicial Academy. The sessions were taken online by the serving faculty of the Chandigarh Judicial Academy.
- One Month Training Programme (online) for promotee Additional District & Sessions Judges from the states of Punjab & Haryana was started from April 27, 2021 and concluded on May 26, 2021.