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FROM THE DESK OF CHIEF EDITOR

Chandigarh Judicial Academy has taken another step forward. A Memorandum of Understanding was entered into between the National Judicial Academy, India and the Supreme Court of Bangladesh for organizing Training and Capacity Building Programmes for Bangladesh Judges and Judicial Officers on April 08, 2016. This MoU had been signed during the visit of the Hon'ble Prime Minister of Bangladesh to India. The Chairperson of the NJA, Hon'ble the Chief Justice of India had approved the proposal. As per the MoU, about 1500 Bangladesh Judicial Officers are to visit India to participate in Training and Capacity Building Programmes to be organized over a period of time. The first group of 37 Judicial Officers came to Chandigarh Judicial Academy on October 16, 2017 after having spent one week at NJA, Bhopal.

Chandigarh Judicial Academy feels privileged to have hosted the First Programme for Bangladesh Judicial Officers from October 17-23, 2017. This programme had been structured at the National Judicial Academy in consultation with the Supreme Court of Bangladesh. During the five working days, 20 different sessions were organized of 75 minutes each. Visits to the High Court, Chandigarh District Courts and the Central Forensic Science Laboratory, Chandigarh were also organized. 13 Hon'ble Justices of Punjab and Haryana High Court sitting and former besides the Director Academics were associated as Resource Persons for this programme.

Earlier to this, Chandigarh Judicial Academy had organized the first programme for Sri Lankan Judges from December 12-16, 2016 which was inaugurated by Justice K. Sripavan, the then Chief Justice of Sri Lanka. After the first programme, Sri Lankan Judges Institute asked the Chandigarh Judicial Academy to organize three programmes during the year 2017. Accordingly, the first programme of the year 2017 for Sri Lankan Judges was organized from April 21-25, 2017. Thereafter, the second programme was held from August 19-23, 2017. This programme was inaugurated by Mr. Justice Nalin Perera, Judge, Supreme Court of Sri Lanka. The inaugural address of Mr. Justice Nalin Perera is being separately included in this issue of e-newsletter. The third programme for Sri Lankan Judges of the year 2017, is scheduled in the month of December 2017. Thus, the year 2017 in the journey of Chandigarh Judicial Academy has ushered the Academy from the national to international level. We owe this to SAARC country judges. Strengthening the Institution of Judiciary of the SAARC countries is one of the obligations which we owe to the Judicial Fraternity. Serving the Judicial Fraternity across different States and even beyond the borders of India, is a continuous effort. In all these programmes, the effort is to share the best practices which are being followed by the Indian Courts with the Judicial Brethren of other countries. Such programmes help in building up healthy bond. It is a learning process. Different systems follow different practices. Different practices have their own merit. The blending of different practices ushers in a wholesome system. Preserving and conserving what suits the most. Let this be a continuous on-going process.

Balram K. Gupta

ADDRESS BY JUSTICE NALIN PERERA, JUDGE OF THE SUPREME COURT, SRI LANKA

It is indeed a refreshing experience to gather in the convivial atmosphere of Chandigarh Judicial Academy on yet another occasion of imparting and sharing common themes and values on diverse aspects of law. It is no doubt that diversity characterizes both our legal systems. But we cannot hide the fact that in this diversity lies several strands of unity and that singular unity highlights the need for a constant visit of this nature to strike out in the directions of Indian developments that will stand the Sri Lankan judiciary in good stead.

The fact that 5 days of interactive sessions will give us food for thought goes a long way to strengthen the synergy between the two judiciaries and we are thankful that Chandigarh Judicial Academy hosts this program for the next five days in order to achieve the objective of imparting the latest developments in law to our judicial officers whilst this exercise will also result in great bonds of friendship and continued engagement.

Before we kick off the proceedings of productive interactions, I thought of sharing with you some common strands of uniformity that inform our two legal systems, which in turn showcase our common heritage. Both in regard to substantive and procedural law we have common origins. Why I wish to reflect on these common bonds is because our meeting today is to reinforce the value of comparative jurisprudence. I hold the strong view that no two legal systems can develop in isolation particularly when their ancestral origins are the same.

It is undisputed that English Law, which is called the common law all over world, has influenced our two legal systems to a great extent. Though English law governs the law of Sri Lanka in diverse areas such as commercial law, banking and international trade law, Sri Lanka is also an heir to the Roman Dutch law tradition. In fact, Roman Dutch Law is called the common law of the country, though English Law plays a truly significant role in our country.

In fact the British enacted a law for Ceylon called *the Civil Law Ordinance* in 1852 introducing English Law in commercial disputes. English commercial law principles were introduced by section 3 of this Ordinance "*with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by land (maritime matters), life and fire insurance*", in the absence of specific statutory enactments.

We cannot deny that the common heritage between India and Sri Lanka is owed so much to English Law as we were colonized and ruled by the British for a long time until our respective independence in 1947 and 1948. I can speak of several examples where the Indian enactments made by the British were transplanted into Sri Lanka.

The Evidence Ordinance of Sri Lanka is based on the Indian Evidence Act of 1872 with some important modifications. We are all aware that the Indian Evidence Act, No 1 of 1872, became law on March 15th, 1872, when its architect **Sir James Fitz-James Stephen** was invited to introduce it in the Indian Legislature. It was a tribute to Sir **Stephen's excellent drafting** that we followed suit in adopting this Act and enacted our own Ordinance in 1895. I spoke of some modifications in the Sri Lankan Evidence Ordinance. The important difference between the Indian Evidence Act and the Sri Lankan Evidence Ordinance is found in Section 100 of our Evidence Ordnance where provision has been made to bring in the English Law if the Evidence Ordinance is silent on a particular matter. There is no such *cassusomissi*in the Indian Evidence Act.

Other important legacies left by the British are our respective Civil Procedure Codes. The Sri Lankan Civil Procedure Code came into operation in 1890. It was influenced to a large extent by the provisions of the Indian Civil Procedure Code of 1877. In ***Fernando vs. Soysa***-a Sri Lankan case reported in **2 New**

Law Reports page 40, Chief Justice Bonser- an English judge said that our Civil Procedure Code is a copy of the Indian Civil Procedure Code slightly altered and that our Code closely follows the Indian Code in the matter of pleadings.

Though the template is the same, a vast corpus of domestic law has developed in Sri Lanka giving the code a flavor of its own.

Like the Indian Penal Code, the Sri Lankan Penal Code of 1883 owes its parentage to **Lord Macaulay** and today in the interpretation of the provisions relating to offences under the Penal Code we do look across Palk Straits.

So the similarities between our two jurisdictions are more than their dissimilarities and even in the interpretation of Fundamental Rights which was made justiciable for the first time in the 1978 Constitution the Indian authorities have had a tremendous influence. Just as the Constitutional Law of India has borrowed from American jurisprudence, so has the judiciary in Sri Lanka and in the initial days after Chapter 3 containing Fundamental Rights came to be litigated in Sri Lanka after 1978, a number of Indian judgments shaped the thinking and growth of own jurisprudence. In the Indian case of ***People's Union For Democratic Rights v the Union of India*** – writ petition 8143 of 1981 which is known as the ASAD case, the actual violations of fundamental rights took place at the hands of private contractors, but the state was held responsible because it had chosen to enter into contract with those who violated the fundamental rights.

I must say that this broad interpretation given by Indian courts has taken hold in Sri Lanka as well, in cases such as ***Faiz v Attorney General*** (1995) 1 Sri Lanka Law Reports page 372.

Our Supreme Court has oftentimes quoted the words of Indian Supreme Court. Interpreting the equality clause in Article 12 (1) of the Constitution, the Supreme Court in the case of **Senarath v Bandaranaike (2007) 1 Sri.LR page 59 at page 75** cited the words of a famous judge of India who later became its chief justice P.N. Bhagwati. His words on rule of law appear in the famous case of Gupta v Union of India (1982) All India Reports page 149 at page 197. I quote-

> "*If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of Law meaningful and effective. It is to aid the judiciary in this task that the power of judicial review has been conferred upon the judiciary and it is by exercising this power which constitutes one of the most potent weapons in the armoury of the law, that the judiciary seeks to protect the citizen against the violation of his constitutional or legal rights or misuse or abuse of power by the state or its officers*."

Justice Bhagwati's innovation namely **public interest litigation**s today permitted in Sri Lanka. Our Supreme Court is now prepared to entertain an application under the fundamental rights chapter, in the form of public interest litigation even if there is no specific complaint that the petitioner's own fundamental right has been violated. There are two judgements of the Sri Lankan Supreme Court which I can cite namely ***Vasudeva Nanayakkara v Choksy*** and ***Nandalal v Public Enterprise Reform Commission*** reported in 2009 Bar Association Law reports at pages 1 and 4.

Procedurally, the Indian Supreme Court adopted a series of innovations under the **aegis** of "public interest litigation". The liberalization of locus standi rules is likely the most significant innovation. Earlier, the Indian Supreme Court jurisprudence mandated that in order for Petitioners to have the standing to file writ applications under Article 32, they must show that an impugned law directly harmed them. The Indian Supreme Court departed from the early precedents in the 1980s. This process began in the First Judges' case, where the Court conferred standing on a group of senior advocates who

challenged various government policies that interfered with the Judiciary's independence. Justice Bhagwati held that "traditional standing doctrine had to make way for more flexible procedures; specially, "any member of the public "can maintain a petition under Article 32 on behalf of a "person or determinate class of persons (who) is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief". (S.P. Gupta V. Union of India, AIR 1982 SC 149)

As in India the Sri Lankan judiciary has expanded its role in fundamental rights litigation. The Sri Lankan Supreme Court has relaxed standing requirements and moved towards enforcing the Directive Principles of State Policy. Article 126 of the 1978 Constitution confers on the Supreme Court exclusive jurisdiction to adjudicate fundamental rights violations. Like Article 32 of the Indian Constitution, Article 126 empowers the Supreme Court to issue various writs (habeas corpus, certiorari, mandamus, etc.) in the exercise of this jurisdiction, and "to grant such relief or make such directions as it may deem just and equitable". Over time, the Sri Lankan Supreme Court has relaxed its procedures to hear writ petitions filed in the public interest.

A more important development is the expansion of the right to equality under Article 12(1). The Sri Lankan Supreme Court has generally been very receptive to public interest litigation filed on behalf of environmental NGO's. This is due to an expansion in the meaning of right to equality since the early 1990s. The Sri Lankan Supreme Court followed the Indian Supreme Court's judgments in Maneka Gandhi V. Union of India, (AIR 1978 SC 59), and Ajay Hasia V. Khalid Mujib (AIR 1981 SC 487), which held that arbitrary legislative or executive action constituted a violation of the right to equality under Article 14 of the Indian Constitution. Thus, much as the Indian Supreme Court has utilized Article 21 to expand its scope of review, the Sri Lankan Supreme Court today users Article 12(1) as a far reaching tool to weigh in on the constitutionality of legislative and executive action.

Article 21 of the Indian Constitution which enshrines right to life has been expansively interpreted by the Indian Supreme Court. Life does not simply means physical existence. The right to life includes the right to live with human dignity. The Indian Supreme Court has held that it also includes the right to food, right to clothing, the right to decent environment and reasonable accommodation to live in.

While right to life is express in the Indian Constitution, it is not so in the Sri Lankan Constitution. In a case called Sriyani V. Iddamalgoda, 2003 Sri. L.R, the Supreme Court of Sri Lanka implied it into the constitution s existing through Article 11 of the Constitution. Article 11 is the anti-torture provision in the Sri Lankan Constitution, through which right to life has been read into the constitution. In the proposed new constitution right to life has been mooted as an express provision making human life an express life to treasure and promote as a fundamental right.

This showcases the apparent symbiosis and synergy that exist between the Sri Lankan courts and the Indian jurisprudence.

We have so many common law origins to nurture and nourish us and we are the proud inheritors of the great legal tradition. Cross-border transplants in legal jurisprudence has become the norm today and Sri Lanka and India have a lot to benefit from each other and this relationship would be strengthened a great deal by the interactions of this nature that we begin today .

While thanking the Chandigarh judicial Academy for organizing such a wonderful program of activity for the next five days, I hope and trust that we will continue this partnership for a long time to come.

I have no doubt that such a continuous engagement is bound to help both the Indian and Sri Lankan judiciaries.

Thank You

LATEST CASES: FAMILY LAW

"Ordinarily, Rape is violation, with violence, of the private person of a woman – an outrage by all cannons"

V.R. Krishna Iyer, J. in Phul Singh vs. State of Haryana, (1979) 4 SCC 413

Santhini vs. Vijaya Venketesh: MANU/SC/1274/2017 : Transfer Petition (Civil) No. 1278 of 2016 – Hearing of Matrimonial Disputes to be Conducted in Camera; Video-Conferencing cannot be directed in Transfer Petitions – Held – the Supreme Court, with a 2:1 majority, has overruled the directions issued in the case of ***Krishna Veni Nagam vs. Harish Nagam***, observing that if proceedings are directed to be conducted through videoconferencing, "the spirit of the 1984 Act will be in peril and further the cause of justice would be defeated". The Court summed up its conclusion as follows:

(i) In view of the scheme of the 1984 Act and in particular Section 11, the hearing of matrimonial disputes may have to be conducted in camera.

(ii) After the settlement fails and when a joint application is filed or both the parties file their respective consent memorandum for hearing of the case through video conferencing before the concerned Family Court, it may exercise the discretion to allow the said prayer.

(iii) After the settlement fails, if the Family Court feels it appropriate having regard to the facts and circumstances of the case that video conferencing will sub-serve the cause of justice, it may so direct.

(iv) In a transfer petition, video conferencing cannot be directed.

(v) Our directions shall apply prospectively.

(vi) The decision in Krishna Veni Nagam is overruled to the aforesaid extent.

Nipun Saxena and Anr. vs. Union of India and Ors : MANU/SCOR/42713/2017 : SC tells NALSA to form Panel to Draft Model Rules for Victim Compensation in Sexual Offences, Acid Attack Cases – Held – The Supreme Court asked the National Legal Services Authority (NALSA) to set up a committee of about 4 or 5 persons who can prepare model rules for victim compensation for sexual offences and acid attacks. After hearing Amicus Curiae the bench held that "The Chairperson or the nominee of the Chairperson of the National Commission for Women should be associated with the Committee." The court further asked the amicus and the Union of India to give their suggestion on how best to evolve an integrated and cohesive system of payment of compensation to victims of sexual assault and also steps to rehabilitate these victims or at least reduce or eliminate the trauma they have undergone. The bench remarked that "It appears that the funds are being handed over to the States by the Union of India but there is no payment to the victims. This is an unhappy state of affairs and the victims of apathy are are only those who had already suffered sexual assault and nobody else". Furthermore, many states and union territories did not even have in place such a scheme for the victim's compensation.

Independent Thought vs. Union of India and Anr. : MANU/SC/1298/2017 : Writ Petition (Civil) No. 382 of 2013 :– Sex with Minor Wife is Rape, SC Reads Down Exception–2 to S.375 IPC – Held – Sexual intercourse with a

girl below 18 years of age is rape regardless of whether she is married or not. The exception carved out in the IPC creates an unnecessary and artificial distinction between a married girl child and an unmarried girl child and has no rational nexus with any unclear objective sought to be achieved. The artificial distinction is arbitrary and discriminatory and is definitely not in the best interest of the girl child. The artificial distinction is contrary to the philosophy and ethos of Article 15(3) of the Constitution as well as contrary to Article 21 of the Constitution and our commitments in international conventions. It is also contrary to the philosophy behind some statutes, the bodily integrity of the girl child and her reproductive choice. The artificial distinction turns a blind eye to trafficking of the girl child and surely each one of us must discourage trafficking which is such a horrible social evil. However, the court clarified that it refrained from making any observation with regard to the marital rape of a woman who is 18 years of age and above since that issue is not for consideration in the petition.

Sukhendu Das vs. Rita Mukherjee – MANU/SC/1275/2017 : Civil Appeal No. 7186 of 2016: DoD 09.10.2017 (SC) – Supreme Court invokes 'Inherent Powers' to Dissolve Marriage of District Judge Couple who have been Living Separately for 17 years – Held – The husband and wife, in the instant case, are district judges in the state of West Bengal. The husband's application for divorce was dismissed on the ground that he failed to prove cruelty on the part of his wife. The high court also dismissed the appeal by holding that irretrievable breakdown of marriage cannot be a ground for divorce. The wife did not appear before the trial court after filing of written statement. She also did not appear before the proceedings in the high court as well as the Supreme Court. Noting the said conduct on her part, the bench said it indicated that she was not interested in living with the husband. Refusal to participate in proceeding for divorce and forcing the appellant to stay in a dead marriage would itself constitute mental cruelty, the bench said by referring to **Samar Ghosh vs. Jaya Ghosh case**. **Futher Held** – "There is no likelihood of the Appellant and the Respondent living together and for all practical purposes there is an irretrievable breakdown of the marriage."

Anuradha Arya vs. The Principal, Govt. Girl Senior School, West Patel Nagar, New Delhi and Ors.: O.A. No.3734/2015: M.A.No.1596/2016: DoD 12.10.2017 : Temporary, Ad-hoc and Contract Staff also entitled to Maternity Leave – Held – In a significant ruling, the Central Administrative Tribunal (CAT) has said that temporary, ad hoc and contract women employees are also entitled to maternity leave and consequent benefits akin to regular staff. "In view of the discussions above, I am of the view that benefits of maternity leave with full salary cannot be denied to a female employee appointed on contractual basis. This view finds support in various judgments of the Hon'ble Apex Court cited above. The applicant is entitled to maternity leave as per provision of Section 5 of the maternity benefit Act, 1961. The CAT based its ruling on a Supreme Court judgment of ***2000 (3) SCC 224 in the case of "Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and another"*** which said women who constitute almost half of the segment of the society have to be honored and treated with dignity at cases where they work to earn their livelihood".

LATEST CASES: CIVIL

"While the court gives immense weightage to the legislative judgment, still it cannot deviate from its own duties to determine the constitutionality of an impugned stature."

Swatanter Kumar, J. in Namit Sharma vs. Union of India, (2013) 1 SCC 745

Himangni Enterprises vs. Kamaljeet Singh Ahluwalia:MANU/SC/1307/2017: Civil Appeal No. 16850 of 2017 : DoD 12.10.2017 (SC) – The rights of the parties and the demised premises would be governed by the Transfer of Property Act/Rent Act and the civil suit/petition would be triable by the Court and not by the arbitrator even though arbitration clause is incorporated in rent agreement – The respondent has filed a suit seeking the appellant's eviction from in a Commercial Shop alongwith unpaid arrears of rent and grant of permanent injunction. The lease deed executed was for a period of three years. The appellant, on being served with the notice of the civil suit, filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 since the suit was founded on the lease deed, containing an arbitration clause for resolving the dispute arising out of the lease deed between the parties. It was contended that the civil suit to claim the reliefs in relation to the suit premises was, therefore, not maintainable. Reiterating law laid down in ***Natraj Studios (P) Ltd. v. Navrang Studios & Another, 1981(1) SCC 523 and Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. & Ors., (2011) 5 SCC 532***, It has been held by the Apex Court that the rights of the parties and the demised premises would be governed by the Transfer of Property Act and the civil suit would be triable by the Civil Court and not by the arbitrator.

Nagar Palika Raisinghnagar vs. Rameshwar Lal & Anr.: MANU/SC/1299/2017:Civil Appeal No.10833 of 2010: DoD 10.10.2017 (SC) – It is the duty of public authorities to prove their case by leading cogent evidence to protect public properties – The respondent (plaintiff) claiming to be the holder and in possession of the suit land on the strength of Patta issued in favour of his grandfather by the appellant way back in the year 1957 vide resolution and he had filed a suit against the appellant out of which present appeal arises seeking permanent injunction restraining the appellant from dispossessing him from the suit land. The appellant in written statement denying the respondent's claim, alleged that the respondent's grandfather was given some other land, and the grant so made in relation to the said land was cancelled and the money received was also refunded to him, and also the suit land is a Nagar Palika land and the respondent with the help of some employees of the Nagar Palika got the suit land un-authorizedly allotted to him, and lastly, the suit land is needed for public purpose. It has been held by the Supreme Court that It is not in dispute that the respondent's predecessor-in-title was granted Patta in relation to the suit land on payment and the respondent is the grandson of original allottee. The appellant (defendant) though took a stand that the Patta in question was cancelled and money returned but the appellant could not prove it with the aid of any evidence. It is also not in dispute that though the appellant took a stand that the Patta granted to the respondent's predecessor-in-title did not relate to the suit land but of some other land, the appellant also failed to prove even this fact with the aid of any evidence. Further, the respondent (plaintiff) was able to make out all the three necessary ingredients for grant of permanent injunction with the aid of evidence and the plaintiff was rightly held entitled to claim permanent injunction against the appellant (defendant) in relation to the suit land.

Nadiminti (D) through LRs. vs. Kothurthi Krishna Suryanarayan Murthy Bhaskara Rao & Ors.: MANU/SC/1280/2017:Civil Appeal No. 5517 of 2007 : DoD 09.10.2017 (SC) – The proper form of decree is to direct specific performance of the contract between the vendor and the prior transferee and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the prior transferee – In this appeal original defendant No.6 had challenged the final judgment and order passed by the High Court of whereby the High Court upheld the judgment and decree passed by the subordinate Judge, thereby decreeing the plaintiff's (respondent No.1 herein) suit against defendant No.6 (original appellant herein) for specific performance of agreement in relation to the suit house. The main question involved in this case is which agreement is bona fide and genuine between defendant Nos. 1 to 5 and defendant No. 6 or the between defendant Nos. 1 to 5 and

the plaintiff? The other question is whether the plaintiff was ready and willing to perform his part of the agreement and secondly, whether he was able to prove the breach committed by defendant Nos. 1 to 5 in not performing their part of the agreement. It was held that the Trial Court and Division Bench were right in holding that the agreement dated 18.01.1983 was a genuine and bona fide agreement with defendant Nos. 1 to 5 whereas the agreement dated 04.01.1983 set up by defendant Nos. 1 to 6 claiming to be prior in point of time as against the plaintiff's agreement a bogus agreement brought into existence only to somehow avoid execution of the agreement dated 18.01.1983 of the plaintiff and specific performance in favour of prior purchaser upheld by the Apex court. Further, the proper form of decree is to direct specific performance of the contract between the vendor and the prior transferee and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the prior transferee.

Adiveppa & Ors. vs. Bhimappa & Ors. : 2017 (4) RCR (Civil) 364 (SC) – It has been held by the Supreme Court that it is a settled principle of Hindu law that there lies a legal presumption that every family is a joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family. The burden therefore, lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of the entire lot of ancestral properties are self acquired property.

Mukund Devangan vs. Oriental Insurance Company : 2017 (4) RCR (Civil) 110 (SC) – In this case the law relating to the driving license in motor accident claim has been discussed. It has been held by the Supreme Court that when a driver is holding a licence to drive light motor vehicle, he is competent to drive a class for vehicle off that category without suppressing endorsement to drive the transport vehicle.

Bhola Singh vs. Ashok Kumar and Ors. : CR No. 2101 of 2017 : DoD 11.10.2017 (P&H) – A suit for specific performance was filed on the basis of agreement to sell dated 13.04.2006 by the plaintiff. The defendants took the stand that the earnest money had already been returned along with interest by means of a cheque. Petitioner in the present revision has assailed the order passed by Civil Judge whereby the application for comparison of the signature appearing at the back of the cheque with specimen signature of the plaintiff was declined. It has been held by reversing the order of trial court that Since, the signature appearing on the cheque is the core question which would enable the Court to decide the controversy once for all. In case signature of the plaintiff at the back of the cheque is proved by means of handwriting expert, the Court would certainly take into consideration the said incriminating material to decide the controversy in accordance with law. If the opinion of the expert comes otherwise, thereafter the Court shall proceed to decide the suit on the basis of available material on record. It was opined by the Court that in the event of denial of signature at the back, the plaintiff can be asked to give his specimen signature for necessary comparison. Such a course would enable the Court to decide the controversy in an effective and just manner.

Pritam Singh and Anr. vs. Karan Garg : Civil Revision No.3695 of 2016: DoD 11.10.2017 (P&H) – Petitioners are aggrieved of the orders passed by the Civil Judge vide which objection petition under Order 21 Rule 34 CPC was dismissed and the objections filed by the judgment-debtors in the execution were also dismissed. The suit specific performance of the agreement to sell filed by respondent was decreed by the Civil Judge and the defendants were directed to execute the sale deed within a period of two months in favour of the plaintiff on receipt of balance sale consideration who was also directed to deposit the balance sale consideration within one months. The appeal was also dismissed by the lower Appellate Court and balance sale consideration was deposited after counting period from the order of appellate court and time was granted by the court but challenged by the petitioner in revision. It has been held after affirming the order of trial court that a decree for specific performance by its nature is a preliminary decree. The powers of the Court under Section 28 of the SR Act are discretionary. The Court cannot ordinarily annul the decree once passed as the Court does not cease to have the power to extend the time even though the trial Court had earlier directed in the decree. The Court in its discretion, if stipulates the time for deposit of balance sale consideration without imposing any pre-emptory condition in the event of default, the Court would have power to extend as well.

LATEST CASES: CRIMINAL

"We must remember that a strong and efficient criminal justice system is a garuntee to the rule of law and vibrant civil society."

R.M . Lodha, J. in State of U.P. vs. Chhotey Lal, (2011) 2 SCC 550

Suresh Chandra Jana vs. State of West Bengal and Ors. : 2017 (4) RCR (Crl.) 1 (SC) : Law Finder Doc Id: 888563 – In this case accused made acid attack on victim who died after few days. Trial court convicted the accused. In appeal, it is contended by defence counsel that the evidence recorded by the trial court was not properly put to the accused u/s 313 Cr.P.C. Hon'ble Apex Court held that in the present case spirit of section 313 Cr.P.C is neither forgotten nor it can be said that the court had not complied with the said provision. Section 313 (b) of Cr.P.C requires the court to question the accused generally on the case after the prosecution evidence is over. It does not require to re-write hundred pages evidence in another hundred pages to record the statement of the accused under the section. It should be borne in mind that the entire evidence has been recorded in the presence of the accused or his counsel, and before he enters into his defence, what is required is that he is generally asked on the case, after the prosecution case is over, to explain any circumstances against him. It does not require that each and every sentence of the prosecution evidence has to be re-written and read over once again while examining the accused u/s 313 Cr.P.C.

R.A.H. Siguran vs. Shankare Gowda @ Shankara & Anr. : 2017 (4) RCR (Crl.) 113 (SC) : Law Finder Doc Id: 897356 – The question for consideration before Hon'ble Apex Court was whether the High Court was justified in quashing the proceeding against respondent No.1 (accused) on the ground that investigating officer who conducted the investigation was not authorized to do so under the provision of Immoral Traffic (Prevention) Act, 1956. It was held that the High Court was not justified in quashing the proceeding merely on the ground that the investigation was not valid. It is further held that it was well settled that even if investigation is not conducted by authorized officer, the trial is not vitiated unless a prejudice is shown.

Ms. Z vs. The State of Bihar and other : 2017 (4) RCR (Crl.) 56 (SC) : Law Finder Doc Id: 889783 – Medical Termination of Pregnancy Act, 1971 – In this case rape was committed on a 35 years old mentally retarded and a destitute women living on a footpath. She became pregnant and brought to sheltered home. After 18 weeks pregnancy, she wanted to terminate the pregnancy. An application was filed before High Court for permission to terminate pregnancy. High Court sought consent of father and husband who had abandoned her. Hon'ble Apex Court held that in case of medical termination of pregnancy of mentally retarded women who was abandoned by husband and father, consent of father and husband not required. Further held, that the woman was mentally retarded and she was not mentally ill. She was in a position to give her consent. Hon'ble Apex Court awarded a compensation of Rs.10 lakhs to be paid by state and further held that the child to be born shall be given proper treatment and nutrition by the state.

Birbal Choudhary @ Mukhiya Jee vs. State of Bihar : 2017 SCC OnLine SC 1240 : The trial court had convicted 11 accused and sentenced 2 of them to death penalty and others were awarded life imprisonment. On their appeal, the High court sustained conviction, but modified the sentence to 20-year RI to all the appellants. This order was assailed before the apex court. One of the contentions put forth on behalf of an appellant was that his enhancement of sentence to 20-year RI from life imprisonment was legally impermissible. Referring to Section 401 of Code of Criminal

Procedure, it was contended that a notice is required to be given, which was not done in this case and, therefore, the order of modifying the sentence, thereby, giving RI of 20 years was not in accordance with law. Referring to Swamy Shraddananda @ Murali Manohar Mishra vs. State of Karnataka, the Bench comprising Justice A.K. Sikri and Justice R.K. Agrawal said imprisonment for life would mean full life and not sentence of 14 years which may be grossly disproportionate or inadequate and cannot be called as sentence of life. "The High court, while modifying the sentence qua the appellant Birbal, in fact, reduced the same from life imprisonment to 20 years RI", it said.

Sunil vs. State of Haryana : 2017 (4) RCR (Crl.) 143 (P&H) – Revision petition was filed by the petitioner Sunil against respondent State of Haryana challenging the judgment of conviction and order of sentence passed by JJB, Rohtak vide which petitioner was convicted u/s 302 read with section 34 IPC and he was sent to special home for a period of 3 years and also challenging the judgment passed by Ld. Sessions Judge, Rohtak vide which appeal filed by petitioner was dismissed. It was argued on behalf of petitioner who was juvenile at the time of occurrence that he has attained 31 years of age and as such, he cannot be kept in the observation home due to his age nor his sentence can be executed at any other place. Hon'ble High Court relying upon the judgment of Hon'ble Supreme Court in Pardeep Kumar vs. State of UP 1994 AIR (SC) 104 held that petitioner cannot be sent to observation home due to his age nor his sentence can be executed at any other place. Therefore, the sentence imposed upon the petitioner was reduced to the sentence already undergone by him.

Har Mohan vs. State of UP : 2017 (4) RCR (Crl.) 309 (AH) : Law Finder Doc Id: 813164 : NDPS Act – Recovery of Charas – One of the contention for the appellant/accused was regarding the tempering of the sample based upon the seal that was put on the sample. The chemical laboratory report also narrated that seal upon the sample was of U.P.P. (Uttar Pradesh Police) and not of PW2 Tej Bahadur Singh Hon'ble High Court held in para no.40 & 41 of the judgment that from this fact it can be inferred that when seizure was being made and sample is being prepared it was sealed by Tej Bahadur Singh but when it reached to chemical laboratory, seal of UPP was found and accordingly it can be said the original seal that was affixed at the time of seizure was being replaced by UPP and it was incumbent upon the prosecution to have made it clarify as to when the seals were changed but prosecution is conspicuously silent about this. Further held, on this basis it can be said that samples were tempered and seals were changed but why they were changed, prosecution has failed to explain and all these facts can be interpreted against the prosecution and on that basis it can be said that whatever was seized and sealed at the spot and the samples that were made and entered in Malkhana and was actually sent to the laboratory for analysis were not the same and due to this discrepancy conviction of the appellant by the trial court cannot be upheld.

Ramesh Bansiram Pawar vs. The State of Maharashtra:2017 (4) RCR (Crl.) 28 (Bombay HC) : Law finder doc id: 892092 – S.376 (2)(f) and 377 Rape on Minor Girl – In this case accused raped a minor girl aged 10 years and sodomised her 7 years cousin at knife point. He was convicted by the Sessions Court. It was argued by ld. Defence Counsel that the victim has given incorrect name of the accused and that therefore, possibility of false implication of the accused in crime in question cannot be ruled out. Hon'ble High Court held that once the victim of the crime identifies the accused as a perpetrator of the crime while in the doc, mentioning incorrect surname pales into insignificance. No benefit could be given to accused and court cannot be swayed by minor discrepancies.

SC ISSUES DIRECTIONS FOR SPEEDY DISPOSAL OF CHEQUE CASES

M/s Meters and Instruments Private Limited versus Kanchan Mehta 2017 (12) SCALE 303

The Court laid down the following guidelines with regard to conduct of cases under Section138:

1. Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect. (emphasis supplied)

2. The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.

3. Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused. (emphasis supplied)

4. Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C. to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases.

5. Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances.

EVENTS OF THE MONTH

1. National Legal Services Authority in collaboration with State Legal Services Authority, UT, Chandigrh organized **Regional Meet of State Legal Services Authorities of Northern Region** on 01.10.2017 at Chandigarh Judicial Academy. The function was inaugurated and addressed by HMJ Ranjan Gogoi, Judge, Supreme Court of India, Executive Chairman, NALSA. HMJ Shiavax Jal Vazifdar, Chief Justice, High Court of Punjab & Haryana, Patron-in-Chief, SLSA, UT, Chandigarh, HMJ A.K. MIttal and HMJ Surya Kant, Judges, High Court of Punjab & Haryana, Executive Chairman, SLSA, UT, Chandigarh also addressed on this occasion. HMJ T.P.S. Mann, Judge, Punjab and Haryana High Court-cum-Executive Chairman, SLSA, Punjab gave the expression fo gratitude.

2. **Refresher-cum-Orientation Course** for Civil Judges-cum-Judicial Magistrates of Punjab and Haryana to sensitize them with regard to Criminal Matters, Mediation and use of Dragon Software was organized on 07.10.2017. This one day programme covered: Negotiable Instruments Act, Jurisdiction and Settlement, Penal & Jurisdictional aspects of Electricity Act, 2003, Session on Dragon Dictation Software, Mediation – Sensitization of Referral Judges. A visit to the Paperless Court – A Guided Tour and Mock Demonstration was also organized. 50 Civil Judges participated in this programme. Mr. B.M. Lal, the Faculty Member, CJA was the co-ordinator of the programme.

3. **Ministerial Staff Training** was organized for the Staff from District Courts of Punjab, Haryana and Chandigarh on 13.10.2017 at Chandigarh Judicial Academy. This training programme covered different aspects in four sessions: Maintenance of Accounts–Practice & Procedure, Civil Nazir, Naib Nazir and Process Serving Agency-Practice & Procedure, Duties & Responsibilities of Reader, Record Keeper, Copying Agency etc., Duties & Responsibilities of Ahlmads, Execution Clerk and Stenographers, Govt. Employees Conduct Rules, Punishment & Appeal Rules, LTC & Joining Rules. Ms. Mandeep Pannu & Dr. Gopal Arora, the Faculty Members, CJA were the co-ordinators of the programme.

4. **Five Days Academic Programme for Bangladesh Judges** was organized from October 17-24, 2017 in Chandigarh Judicial Academy. A delegation of 37 Bangladesh Judges participated in the Academic Programme. The delegation was led by Md. Shamim Sufi, Research and Reference Officer (Senior Assistant Judge), Appellate Division, Supreme Court of Bangladesh. During the five working days, 20 different sessions were organized of 75 minutes each. Hon'ble Justices Rajesh Bindal, R.K. Jain, Jaswant Singh, Ajay Tewari, Ritu Bahri, Arun Palli, Amit Rawal addressed the participants in different sessions. Besides them, Justice Virender Singh, now Chairman, AFT, Justices S.S. Saron, Rajive Bhalla, H.S. Bhalla, B.B. Parsoon and Dr. Balram K. Gupta, Director (Academics) also addressed the different sessions. The programme was co-ordinated by Mr. Pradeep Mehta, Faculty Member, CJA. Moreover, the Bangladesh Judicial Officers visited High Court, District Courts, Chandigarh and Central Forensic Laboratory, Chandigarh. They were also taken for a visit to Sri Harmandir Sahib, Golden Temple, Amritsar. They had the opportunity of watching the Beating Retreat, Wagah Border Ceremony. At the valedictory session, HMJ A.B. Chaudhari, President, BOG, CJA awarded the certificates to the participating Bangladesh Judicial Officers.

5. **One Day Sensitization Workshop on Gender Based Violence for Lawyers & Public Prosecutors** was organized jointly by CJA & Save the Children, Punjab & Haryana on October 27, 2017 at Chandigarh Judicial Academy. Sh. Inderjeet Mehta, Director (Administration), CJA was the Chief Guest. Mr. Jatin Mondar, Project Director, Save the Children spoke about the Role of Save the Children organization. Ms. Mandeep Pannu, Mr. Tejinderbir Singh and Sh. Pradeep Mehta and Prof. Shashi K. Sharma, Faculty Members also addressed during the workshop.

FORTHCOMING EVENTS

1. It is proposed that the **training for different stakeholders under the Juvenile Justice Act** is to be organized by the Chandigarh Judicial Academy. Accordingly, in the first instance, one day workshop is scheduled to be organized on November 11, 2017 for training the Principal Magistrates and Members, Juvenile Justice Boards of Punjab, Haryana and Chandigarh.

2. **Refresher-cum-Orientation Course** for Additional District and Sessions Judges from the States of Punjab and Haryana is scheduled to be organized on 18.11.2017.