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In this Issue:

From the Desk of Chief Editor

Mail from HMJ Nalin Perera,
Chief Justice of Sri Lanka

Recent I.T. Initiatives by High
Court

Latest Cases : Constitutional

Latest Cases : Civil

Latest Cases : Criminal

Notifications

Events of the Month &
Forthcoming Events

Editorial Board

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FROM THE DESK OF CHIEF EDITOR

I was on a visit to Sri Lanka during Oct. 4-10, 2018. International Centre for Ethnic Studies and Konard Adenauer Stiftung had organized a meet on Constitutional Review in Asia : Promoting Equality, Integrity and Rule of Law. This meet was organized at Jetwing Lighthouse, Galle, Sri Lanka. It was inaugurated by Hon'ble the Chief Justice, Justice Priyasath Dep. Chief Justices, Justices and Scholars from India, Nepal, Seoul, Singapore, South Africa and Sri Lanka had formed part of the meet. This assemblage of 20 was unique in more than one way. Some of them were Chief Justices and Justices of the highest Court, the Constitutional Court in their respective jurisdictions. Some others were Justices of the top court in their respective countries. Still others, scholars from different universities. They brought in such rich experience. Justice Madan B. Lokur, Judge Supreme Court of India and Justice J.S. Khehar, former Chief Justice of India could not attend the meet. In short, it was a rare mix to have healthy inter-action and meaningful dialogue particularly relating to the role of the Constitutional and apex courts. Different systems being governed by written Constitutions, they encounter a variety of Constitutional issues, concerning the role of Judicial Review and the Rule of Law. One of the significant issues was, should there be a separate Constitutional Court or should the Supreme Court itself be a court playing both the roles. In this process, I had the opportunity to focus on the role being played by the Indian Supreme Court. Indian Supreme is both Constitutional Court as also the Supreme Court of the country. During the last 68 years, the Indian apex court has richly contributed to the durability and longevity of the Indian Constitution. Coupled with this, the Indian top court has also contributed to the development of healthy constitutional jurisprudence. In this backdrop, it was argued in the meet that the Indian recipe has resulted in a product which other countries around the globe are looking forward to be adopted in their respective systems. During my different visits to UK and USA, I have found that both the academic and professional lawyers and judges are happy to acknowledge the growth of constitutional Jurisprudence in India. It was specifically pointed out that if we have separate Constitutional Court and the Supreme Court, the division of the work may be an advantage. I hasten to add, if the same judges dealing with Constitutional matters and apply constitutional decisions to the matters which otherwise come before them, the application would be far sounder and better than if the two sets of judges deal with these matters separately. In short, it was an enriching experience.

I also availed the opportunity to visit the Sri Lankan Judges Institute. My meeting with the Director, SLJI, Justice Janak De Silva, Judge, Court of Appeal was meaningful. We shared common concerns concerning the Sri Lankan Judges who come to different programmes at CJA. I delivered a lecture at Jetwing Lighthouse, Galle for the Sri Lankan Judges from south of the Sri Lanka. I also delivered an oration on "Strengthening and Weaving the Judicial Human Fabric" for Sri Lankan Judges in Colombo. It was chaired by Hon'ble Justice Eva Wanasundera, Judge, Supreme Court of Sri Lanka. A glass Plaque was presented with the inscription : 'In Appreciation of the Invaluable Experience and Expertise Shared with us' in the presence of Justice Janak De Silva, Judge, Court of Appeal, Director, SLJI and Justice Prasantha De Silva, Deputy Director. I availed this opportunity by sharing my recipe of weaving the judicial human fabric. It is truly a rainbow of compassion, humanism, humility, impartiality, judicial conscience, judicial discipline, judicial temperament and neutrality. Perhaps, many more threads. Above all, the common thread which connects every other thread, **be a good human being if you wish to be a good judge.**

Balram K. Gupta

HMJ Nalin Perera was sworn in as 46th Chief Justice of Supreme Court of Sri Lanka. Justice Perera had inaugurated a programme for Sri Lankan Judges on August 18, 2017 at CJA. A congratulatory letter was written to him on behalf of CJA. A mail has been received in response. Both are included :

Prof. (Dr.) BALRAM K. GUPTA
Sr. Advocate
Director (Academics)



CHANDIGARH JUDICIAL ACADEMY
(High Court of Punjab and Haryana)
Sector 43-D, Chandigarh-160 022

17.10.2018

Dear *Chief,*

It was a delight and joy to know that you were sworn in as the 46th Chief Justice of Sri Lanka. My sincere felicitations to you on being the pater-familias of Sri Lankan Judiciary. Chandigarh Judicial Academy takes legitimate pride in the fact that you had come to us in our programme from August 18-24, 2017. You inaugurated the programme. You sat through all four working days. Participated in each session. Made rich contribution. Your concluding remarks are remembered. Your association with the programme was so meaningful. Useful. Contributory. So very satisfying.

I had a chance brief meeting with you on October 5 in the Chamber of Her Ladyship, Justice Eva Wanasundera during my visit to Sri Lanka. I did not know at that time that soon you would be the Chief Justice of Sri Lanka. You have played a long innings as a judge at all different levels. You have brought such blending of Judicial Human Fabric which would enrich the Judicial Institution. Chandigarh Judicial Academy is basking in the sunshine that you have brought to this great institution.

Wish you a satisfying innings as the Leader of the Judicial Institution.

warmly

Yours Sincerely,
Bk. Gupta
Balram K. Gupta

Hon'ble Mr. Justice Nalin Perera
Chief Justice, Supreme Court of Sri Lanka

Oct. 31, 2018

Dear Gupta,

It was joyful to hear from you soon after this major event in my life. How have you been? Hope you are keeping well and continuing your good work.

Thank you for your very warm wishes and encouraging sentiments sent to me. I deeply appreciate you taking the effort to write to me and for your authentic and generous remarks.

I treasure my memories of the conference in Chandigarh and even more the opportunity I got to get to know you in person. I will not forget the great hospitality you showed me and the excellent company you gave me.

I had no idea that you would be visiting Sri Lanka this month, until I saw you at Justice Wanasundera's chamber. At that point I thought I must invite you for a meal and spend some time with you.

However, I came to know that you would be leaving the other day and so sadly, it was not possible to carry out my plan.

I do hope I get to host you the next time you come to Sri Lanka and hope we can catch up soon. With regard to this honour and great responsible and God has bestowed upon me, I am humbled and hopeful that I could serve my motherland in a major way.

Again, thank you for writing to me and showering me with your genuine friendship. Wishing you good health, peace of mind, joy and the strength and wisdom to pursue your work.

With best regards,

Sincerely,

Nalin Perera

Chief Justice Sri Lanka

RECENT I.T. INITIATIVES BY HIGH COURT

Upon taking over as Chief Justice of Punjab & Haryana High Court, Justice Krishna Murari, has shown keen interest to make the system litigant friendly. He is very sensitive about the environment. Expeditious disposal of old cases is also on his priority list.

In August, 2018, Hon'ble the Chief Justice held meeting with the Judicial Officers of the States of Punjab & Haryana and U.T., Chandigarh and gave directions for expeditious disposal of old cases. The progress is being monitored regularly. Hon'ble the Chief Justice had also launched I.T. initiatives for ease of litigants and lawyers on 19.08.2018. e-Payment of High Court Services, Android based Mobile Application, Online Grievance & Feedback System, Surety Information Management System, Infrastructure Web Application, Crystal Reports Software and eNotices are some of the major I.T. initiatives recently developed under the guidance of Hon'ble Mr. Justice Rajesh Bindal, Chairman, Computer Committee.

e-PAYMENT MODULE

Due to introduction of e-Payment module, now payment of services such as Copy, Inspection etc. can be made through Internet Banking, Debit, Credit Cards, pre-paid cards etc.

'PHHC eCourts Services' APP

The recently launched mobile application for High Court has also got a rating of 4.7 out of 5 Stars on Google App Store within few days of its launch. Any person interested can download the same from Google play store by searching 'PHHC eCourts Services' app. It makes easier for any person/litigant interested to have any information about a Court case and access the same while on move.

ONLINE GRIEVANCE & FEEDBACK SYSTEM

Litigant is an important stakeholder in any judicial system. It is the duty of the Court to redress his grievances and also take his suggestions to improve further. Facility through Online Grievance & Feedback System application is being provided to the litigants / general public to give their feedback and suggestions online.

SURETY INFORMATION MANAGEMENT SYSTEM

To identify persons who furnish surety in criminal/civil matters on the basis of fake documents or for consideration, Surety Information Management System has been developed, which will check the fake sureties and also the persons who are repeatedly furnishing sureties in different cases.

INFRASTRUCTURE WEB APPLICATION

Through Infrastructure Web Application, status of Judicial Court Complexes and Residential Houses and its progress can be monitored.

REPORT GENERATION SOFTWARE CCR 3.0 FOR DISTRICT COURTS

Report generation in Subordinate Courts in the States of Punjab, Haryana and Chandigarh through Case Information System 3.0, will get fillip due to introduction of Crystal Reports Software (CCR 3.0) developed by officials from District Courts. With the aforesaid module, District Judge will be able to monitor progress of cases more effectively.

NOTICE SERVICE VIA SAANJH KENDRAS

With the launching of module for sending e-Notice through Saanjh Kendras in Punjab, speedy delivery of notices upto the concerned Police station level would be ensured.

MEETING WITH MEMBERS OF BAR

In a meeting held with the Members of Bar on 25.09.2018, Justice Rajesh Bindal, Chairman, Computer Committee, High Court of Punjab and Haryana sensitized the Advocates regarding some of the latest IT initiatives taken by the High Court which will benefit the lawyers, litigants and general public as well. The meeting was attended by Justice Surinder Gupta, Justice Arun Palli and Justice B.S. Walia, members of the Computer Committee.

NEW PRINTING PARAMETERS TO SAVE PAPER

New printing parameters providing for both side printing of the pleadings filed in Court, are being introduced which will result into saving of about 1.50 crore papers per annum and also save space required for storage of records.

Filing of record of the Writ Petition in Letters Patent Appeal has been dispensed with, which will result in saving around 2.50 lac papers per annum.

Similarly, instead of physical print-outs of receipts, SMS will be sent on the registered mobile number of the applicant. Last year around 5 lac receipts were issued in the High Court for filing of different applications or cases which consumed around 800 rolls of paper equivalent to 400 rims of A4 size paper (500 sheets each). With the introduction of 'e-Receipts' these papers will be saved.

VISITORS COUNTER ON WEBSITE

In January 2018, a counter was setup on the website of the High Court to count the number of visitors. In the last about eight months, the website has been visited by 3.68 crore visitors, which is the highest in the country for any Court.

e-COPY AND e-INSPECTION

To facilitate the litigants and the lawyers, facility for online application for supply of certified copy of orders or for inspection has also been started. The certified copy of any order applied online is delivered to the applicant through speed post at his residence.

SUPPLY OF CERTIFIED COPY OF HIGH COURT IN DISTRICT COURTS

The facility of filing application for supply of certified copy of the orders passed in the High Court has also been provided in all the Districts Courts in the States of Punjab and Haryana. Any litigant or lawyer can apply copy of the order, which will be supplied at the district level. They are not required to visit the High Court for that purpose. The idea is to educate the litigants and keep them up-to-date regarding the Court proceedings.

CASE STATUS / CERTIFIED COPY OF ORDERS AT CSCs

The case status information can be accessed in around 12000 Common Service Centres in the States of Punjab, Haryana and U.T, Chandigarh. Any litigant can even apply for certified copy of an order through those centres.

FIVE STAR RATING

Website of Punjab & Haryana High Court is the only website amongst all Courts in India with five star rating on the National Portal of India (www.india.gov.in).

DEDICATED WEBSITE LINK OF INDIAN JUDICIARY FOR NRIs

A dedicated website link of Indian Judiciary has been provided on the website of Consulate General of India, Toronto, Canada (i.e. www.cgi.toronto.ca). Anyone visiting the said website can access links of Punjab & Haryana High Court, Supreme Court of India, National Judicial Data Grid (NJDG), High Courts of India, District Courts of India, e-Courts Services Mobile Application for Android, e-Courts Services Mobile Application of iOS and help videos. Now, NRIs can obtain information pertaining to their matters pending in Indian Courts by accessing this dedicated link. This initiative aims at creating e-awareness amongst the NRIs regarding e-Court services being provided and keep them aware of the status of their cases pending in any Court to enable them to pursue them properly.

THREE SPECIAL BENCHES FOR MURDER REFERENCES

For expeditious disposal of murder references pending in High Court, seeking confirmation of capital punishment, Hon'ble the Chief Justice has constituted following three Special Benches:

Justice Rajesh Bindal and Justice Gurvinder Singh Gill
Justice A.B. Chaudhari and Justice Surinder Gupta
Justice Rajan Gupta and Justice Raj Shekhar Attri

CONSTITUTIONAL CASES

“A constitution must of necessity be the vehicle of the life of a nation. It also has to be borne in mind that the constitution is not a gate but a road.”

H.R. Khanna, J. in *Kesavananda Bharti vs. State of Kerala*, (1973) 4 SCC 225

Swapnil Tripathi vs. Supreme Court of India: 2018 SCC OnLine SC 1667: Cases of constitutional and national importance to be live streamed; Supreme Court Rules to be modified suitably – Held – Supreme Court has finally decided in favour of live streaming of cases of constitutional or national importance before a Constitution Bench of the Supreme Court. The petitioners, claiming to be public-spirited persons, sought a declaration that Supreme Court case proceedings of *constitutional importance having an impact on the public at large or a large number of people should be live streamed* in a manner that is easily accessible for public viewing. Further direction was sought to frame guidelines to enable the determination of exceptional cases that qualify for live streaming. The Court requested the Attorney General for India, to collate the suggestions given by him as well as the petitioners and submit a comprehensive note for evolving a framework, in the event the relief claimed in the writ petition(s) was to be granted. The Supreme Court made a reference to Section 327 Cr.P.C and 153-B CPC to which can be traced provisions regarding *open court hearing*. In Court’s considered opinion use of technology to relay the live court proceedings could be a way forward. By providing *virtual* access of live court proceedings to one and all, it would effectuate the right of access to justice or right to open justice and public trial, right to know the developments of law and include the right of justice at the doorstep of the litigants. However, it was also opined that while doing so, regard must be had to the fact that just as the dignity and majesty of the Court is inviolable, the issues regarding privacy rights of the litigants or witnesses, as also other exceptional categories of cases of which live streaming of proceedings may not be desirable as it may affect the cause of administration of justice itself, are matters which need to be identified and a proper regulatory framework must be provided in that regard by formulating rules in exercise of the power under Article 145 of the Constitution.

Indian Young Lawyers Association and Ors. vs. State of Kerala and Ors. : 2018 SCC

Online SC 1690 : Devotion cannot be subjected to gender discrimination, SC allows women entry in Sabarimala by 4:1 majority – Held – The Supreme Court by a majority of 4:1, held not allowing entry to women of the age group of 10 to 50 years in the Sabarimala Temple is unconstitutional. The instant proceedings arose after a 3-Judge Bench in *India Young Lawyers Assn. vs. State of Kerala*, (2017) 10 SCC 689, keeping in view the gravity of issues involved, referred the matter for consideration by a Constitution bench. The writ petition preferred under Article 32 of the Constitution sought issuance of directions against the Government of Kerala and other respondents to ensure entry of female devotees between the age group of 10 to 50 years to the Lord Ayyappa Temple at Sabarimala (Kerala) which has been denied to them on the basis of certain custom and usage; to declare Rule 3 (b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 as unconstitutional being violative of Articles 14, 15, 25 and 51 A(e) of the Constitution and further to pass directions for the safety of women pilgrims. On the other hand, according to the respondents, the said temple, though open to all members of the public regardless of caste, creed, or religion, is a denominational temple which claims the fundamental right to manage its own affairs in matters relating to religion. The court observed;

“In the theatre of life, it seems, man has put the autograph and there is no space for a woman even to put her signature. There is inequality on the path of approach to understand the divinity. The dualism that persists in religion by glorifying and venerating women as goddesses on one hand and by imposing rigorous sanctions on the other hand in matters of devotion has to be abandoned.” It further noted, *“Notions of ‘purity and pollution’, which stigmatize individuals, have no place in a constitutional order... Hindu deities have both physical/temporal and philosophical form. The same deity is capable of having different physical and spiritual forms or manifestations. Worship of each of these forms is unique, and not all forms are worshipped by all*

persons.” Thus the apex court held that, ‘devotion cannot be subjected to gender discrimination’. The court observed, “Women is not lesser or inferior to man. Patriarchy of religion cannot be permitted to trump over faith. Biological or physiological reasons cannot be accepted in freedom for faith Religion is basically way of life however certain practices create incongruities”. The bench also wondered how a Temple which was open to all sects of Hindus and even persons of other religions could be denominational in character for the purpose of Article 26. The Summit court also observed that, “Anything destructive of individuality is anachronistic of Constitutionality. To treat women as lesser people blinks at the Constitution itself.”

Mallikarjun Kodagali (Dead) through LR vs. State of Karnataka and Ors.: 2018 SCC Online SC 1941 : Rights of accused far outweigh that of victims, needs some balancing so that criminal proceedings are fair to both – Held – While holding that ‘victims’ can file appeal without seeking leave to appeal, the Supreme Court has made pertinent observations about rights of victims of crime. The court observed that even today the rights of an accused far outweigh the rights of the victim of an offence in many respects and there needs to be some balancing of the concerns and equalizing their rights so that the criminal proceedings are fair to both. The judge said it is necessary to seriously consider giving a hearing to the victim while awarding the sentence to a convict and victim impact statement or a victim impact assessment must be given due recognition so that an appropriate punishment is awarded to the convict. The court observes, “The rights of victims of crime is a subject that has, unfortunately, only drawn sporadic attention of Parliament, the judiciary and civil society. Yet, it has made great progress over the years. It is our evolving and developing jurisprudence that has made this possible. But we still have a long way to go to bring the rights of victims of crime to the centre stage and to recognize them as human rights and an important component of social justice and the rule of law.” It further stated, “It is possible that in a given case the husband of a young married woman gets killed in a fight or a violent dispute. How is the young widow expected to look after herself in such circumstances, which could be even more traumatic if she had a young child? It is true that a victim impact statement or assessment

might result in an appropriate sentence being awarded to the convict, but that would not necessarily result in ‘justice’ to the young widow—perhaps rehabilitation is more important to her than merely ensuring that the criminal is awarded a life sentence. There is now a need, therefore, to discuss these issues in the context of social justice and take them forward in the direction suggested by some significant Reports that we have had occasion to look into and the direction given by Parliament and judicial pronouncements. “The bench also said that the Parliament also has taken proactive steps like plea bargaining, victim compensation scheme, and providing them right to appeal. “A considerable amount has been achieved in giving life to the rights of victims of crime, despite the absence of a cohesive policy. But, as mentioned above, a lot more still needs to be done”.

Justice K.S. Puttaswamy (Retd.) and Anr. vs. Union of India and Anr. : 2018 SCC Online SC 197 : Sections 33(2), 47 & 57 of Aadhaar Act struck down; national security exception gone; private entities cannot demand Aadhaar data – Held – Apex court in the Aadhaar case has struck down Sections 33(2) and 57 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act 2016. Section 33(2) permits disclosure of information under Aadhaar Act, including identity and authentication information, made in the interest of national security in pursuance of a direction of an officer not below the rank of Joint Secretary to the Government of India specially authorised in this behalf by an order of the Central Government. The judgment has struck down Section 47 of the Act, which stated that criminal complaints for data breach can be filed only by UIDAI. The exclusion of individuals from filing complaints was held to be arbitrary. The judgment however endorsed the Aadhaar project and held that enrolment was valid. It was also held that profiling was not possible and there were inbuilt safeguards against it. As regards enrolment of children, it was held that they should be given an option to exit the scheme on attaining majority. School admissions cannot be based on Aadhaar. CBSE cannot insist on Aadhaar for examinations. The judgment also stated that there was no impropriety in Aadhaar Act being introduced as a money bill. Section 139AA of the Income Tax Act was also upheld.

LATEST CASES : CIVIL

“Law is what law does, not what law speaks.”

V.R. Krishna Iyer, J. in *Lingaya Vijay Kumar vs. Public Prosecutor*, (1978) 4 SCC 196

Sebastiani Lakra & Ors. vs. National Insurance Company Ltd. & Anr. : 2018 SCC Online SC 1924 : The service benefits cannot be excluded or no deduction on this basis—Held – The tribunal awarded compensation as per the norms in a death of an employee, but the HC reduced on the ground that the heirs are getting EFB scheme. The apex court reversed the order of High Court and reiterated the law as under. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependents is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share, debentures etc. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get

substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

PSEB (Now Punjab State Power Supply Corporation Ltd.) & Ors. vs. Kulwant Singh : MANU/SC/1156/2018:Civil Appeal No. 10181 of 2018 arising out of SLP(C) No.583 of 2017: DoD 03.10.2018 – Payment of back wage is not automatic lump sum compensation is preferred—Held—The workman/respondent was reinstated by labour court due to noncompliance of provisions of law i.e. Industrial Disputes Act with 40% back wages. The apex Court modified the order by holding that in the case in hand, of course all the three fora have held that the respondent would be held entitled to 40% of the back-wages, it is well settled that whenever there was any violation of Section 25-F of the Industrial Disputes Act, payment of back-wages is not automatic (See: *Rajasthan Lalit Kala Academy vs. Radhey Shyam* - (2008) 13 SCC 248). In this case, the respondent has been terminated way back in the year 1998. 40% back-wages from 2002 till 2015 for thirteen years would mean huge financial burden upon the appellant- Corporation. In the peculiar facts and circumstances of the case, in lieu of full quit of all claim towards 40% back-wages, the appellant-Corporation shall pay to the respondent a lump sum amount of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) within eight weeks from today.

Vijay Kumar & Others vs. Om Parkash : 2018 SCC Online SC 1913 : The purchaser has to prove the complete resources in hand to show his readiness and willingness – Held – The suit of respondent/plaintiff for specific performance was dismissed on the ground that respondent was not having sufficient funds and had failed to prove his readiness and willingness. The appeal filed by him was allowed in first appeal and affirmed by the High Court. The Apex Court allowed only refund of earnest money with interest by holding that it was rightly pointed out by the Trial Court, that

the respondent-plaintiff could not produce any document to show that he had the amount of Rs.22,00,000 (Rupees Twenty Two Lakhs) with him on the relevant date; nor was he able to name the friends from whom he raised money or was able to raise the money. Furthermore, as rightly pointed out by the Trial Court, the respondent-plaintiff could have placed on record his Accounts Book, Pass Book or the Statement of Accounts or any other negotiable instrument to establish that he had the money with him at the relevant point of time to perform his part of the contract. Therefore, the Trial Court was justified in holding that the respondent-plaintiff has not been able to prove his readiness and willingness on his part.

Sushil Kumar Agarwal vs. Meenakshi Sadhu & Ors.: 2018 SCC OnLine SC 1840 – In development agreement specific performance is not a rule – Held – In this case suit for specific performance of development agreement was entered into by the appellant with the predecessor-in-interest of the respondents. The agreement recites that the owners had approached the appellant for construction of a building on the land and certain terms were agreed upon by and between the parties. The appellant had instituted a suit seeking a declaration that the cancellation of the agreement by the respondent was invalid and a permanent injunction restraining the respondent from entering into any agreement with a third party for sale of the premises. The City Civil Court dismissed the Suit with the observations that "No tangible evidence is forthcoming in the instant suit by which it can be said that the plaintiff (developer) obtained possession of the suit property i.e. the possession of the suit property is/has handed over to him after the execution of the agreement in question." The High Court had dismissed the appeal, on the ground that the suit was not maintainable under Section 14(3)(c) of the Act. The Apex court passed following order: Ordinarily, if there was an alternative plea for damages or monetary relief, we would have remanded the case to the High Court for consideration of the prayer. However, in the impugned judgment, the Division Bench of high court has observed: "Although we find no merit in this appeal, we

wanted to give liberty to the plaintiff for amendment of the plaint for the purpose of getting alternative relief by way of return of security of money and damages, if at all suffered, in terms of Section 22 of the Specific Relief Act; but Mr. Das, the learned Advocate appearing on behalf of the appellant after taking instruction from his client submitted before us that his client did not want to avail of such remedy and wanted to challenge our decision by preferring an appeal if we decided to refuse the prayer for specific performance of the contract. "Further the same statement was made before the Apex Court, as was made before the High Court. Also, while dismissing the appeal it was observed that in the absence of any plea for damages or monetary relief by the respondents, there is no reason to remit the appeal back to the High Court.

Hindustan Antibiotics Ltd. vs. MHADA : 2018 SCC On Line SC 1732: Order 27 Rule 5 CPC mandates the Court to ensure disputes concerning public undertakings are resolved amicably; Arbitrator appointed therefore – Held – Supreme Court disposed of an appeal filed against the judgment of the High Court whereby the petition of the appellant was dismissed. The appellant was a Government of India undertaking controlled by the Ministry of Chemicals and Fertilizers. A dispute arose between the appellant and the Maharashtra Housing and Area Development Authority in relation to the disposal of 263.57 acres of land owned by the appellant in Pimpri, Pune. The appellant, in order to resolve the dispute, filed a writ petition before the High Court which was dismissed. Aggrieved thereby, the appellant preferred the instant appeal. The Supreme Court referred to *ONGC v. CCE*, 1995 Supp (4) SCC 541 and *ONGC v. City and Industrial Development Corpn. (Maharashtra) Ltd.*, (2007) 7 SCC 39 and observed that Order 27 Rule 5 CPC casts a duty on the Court to ensure that such disputes should be resolved amicably. Also, the parties had submitted that they were willing for the matter to be referred to arbitration. Accordingly, the Court appointed Justice R.V. Raveendran (former Judge, Supreme Court) as the sole Arbitrator for settling the dispute between the parties. The appeal was disposed of in the terms above.

LATEST CASES : CRIMINAL

“Life and personal liberty are the most prized possession of an individual. The inner urge for freedom is a natural phenomenon of every human being. Respect for life, liberty and property is not merely a norm or a policy of the state but an essential requirement of any civilized society.”

Dr. Dalveer Bhandari, J. in *Siddharam Satlingappa Mhetre vs. State of Maharashtra*, (2011) 1 SCC 694

Mohammed Imran vs. State of Maharashtra : 2018 SCC OnLine SC 1943: Acquittal due to hostile prosecutrix doesn't make applicant's character unfit for purpose of employment; matter directed to be reconsidered – Held – Supreme Court while allowing an appeal filed by a successful judicial services candidate stated that, “the consideration and candidature in the present case of the appellant are afflicted by a myopic vision, blurred by the spectacle of moral turpitude, reflecting inadequate appreciation and application of facts.” “Judicial service is very different from other services and the yardstick of suitability that may apply to other services, may not be the same for judicial service.” The appellant being a successful aspirant for judicial service was aggrieved from cancellation of his selection for appointment due to the character verification report. He had honestly and truthfully disclosed his prosecution and acquittal. The respondents stated that acquittal because prosecutrix turned hostile cannot come to the aid of the appellant and fact that he had disclosed the same earlier does not exempt his conduct involving moral turpitude. The Supreme Court on the observance and analysis of the facts and circumstances of the case stated that “**Employment opportunities are a scarce commodity in our country.**” In furtherance to the stated analysis, the Court added that “**every individual deserves an opportunity to improve.**” Also, the Apex Court concluded by stating that no reasonable person on the basis of materials placed before them can come to the conclusion that the antecedents and character of the appellant are such that he is unfit to be appointed as a judicial officer. The respondents were directed to reconsider the candidature of the appellant and an appropriate decision shall be taken thereof.

S.K. Jhunjhunwala vs. Dhanwanti Kumar : 2018 SCC OnLine SC 1721 : Medical Negligence “Suffering of ailment by the patient after surgery is one thing, it may be due to myriad of reasons known in medical jurisprudence” – Held – Supreme Court in a case of “medical negligence” as alleged by the respondents in the present case allowed the

appeal and set aside the impugned order passed by the National Consumer Dispute Redressal Commission on no merits being laid down in favour of alleged medical negligence. It was observed, “The subject of negligence in the context of medical profession necessarily calls for treatment with a difference.” The appellant was a doctor with expertise in gall bladder surgery and he was alleged by Respondent 1 to have conducted a gall bladder surgery on Respondent 1 without her consent, which she had claimed to be given only for Laparoscopic surgery. On the grounds as mentioned above, Respondent 1 approached the State Commission claiming negligence on the part of the appellant as right after the year 1996, in 1997, the respondent had to get admitted to a hospital in Delhi and suffered from various other ailments which occurred due to the negligence on the part of appellant giving reference to the conventional gall bladder surgery which she had not agreed to. On refusal of any compensation from the State Commission, Respondent 1 approached the National Commission which awarded her compensation setting aside the State Commission's order. The Supreme Court, in appeal of doctor, on perusal of the facts, evidence and placing reliance on the Bolam's Test as suggested in the case of *Bolam v. Friern Hospital Management Committee*, [1957] 1 WLR 582, in which it was held that a “physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on.”; the Apex Court concluded its decision while briefing out some important pointers of the case in order to deliver justice and clarity to comprehend the concept of medical negligence. It is further observed that the appellant-doctor was a qualified senior doctor with requisite knowledge and skill to perform the surgery of gall bladder. The said step of conducting the gall bladder surgery while conducting the laparoscopic surgery was taken due to the condition. Further, the Court observed that Clause 4 of the Consent Form

which was duly signed by Respondent 1, empowered the doctor to perform additional operation or procedure in the event of emergency. Also, it was not an unauthorized act of the appellant and he could legally perform on the basis of above-mentioned Clause 4 of the Consent Form on which Respondent 1 had duly signed. Adding to the above opinion of the Bench, it also stated that no medical evidence of any expert was adduced to prove the allegation of negligence by Respondent 1. The appeal was allowed by restoring the State Commission's order and setting aside the National Commission's order on finding no merits in their decision.

Ram Lal vs. State of H.P. : 2018 SCC OnLine SC 1730 : Law doesn't require that evidence of extra-judicial confession in all cases be corroborated; evidentiary value reiterated –

Held – The Supreme Court while deciding an appeal against the conviction of appellant under Prevention of Corruption Act, 1988 reiterated the law regarding the evidentiary value of extra-judicial confessions. The appellant was convicted for misappropriation of money entrusted to him as a public servant. He worked in United Commercial Bank and was accused of making fake account entries and thereby causing wrongful loss to the Bank. When the fraud came to light, a committee of two officers was deputed to hold preliminary enquiry which recommended investigation in the matter. Subsequently, an FIR was registered, trial held and the appellant was convicted under Sections 13(1)(c) and 13(2) of the PC Act along with Section 477-A IPC. The conviction of the appellant was based on the extra-judicial confession submitted by the appellant to the committee of two officers mentioned above. The judgment of the trial court was confirmed by the High Court. The Supreme Court, on perusing the record, was of the view that conviction of the appellant did not require any interference. Referring to *Madan Gopal Kakkad v. Naval Dubey*, (1992) 3 SCC 204, it was reiterated that extra-judicial confession of accused need not in all cases be corroborated. The rule of prudence necessarily does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated. If the Court is satisfied that the confession is voluntary, the conviction can be based upon the same. In the instant case, trial court as well as the High Court concurrently held that the confession statements were voluntarily made and the

same could form the basis for conviction. The Supreme Court upheld the conviction of the appellant and the sentence imposed was reduced to three years from five years.

Hemudan Nanbha Gadhvi vs. State of Gujarat : 2018 SCC OnLine SC 1688 : Prosecutrix turning hostile does not efface the evidence of sexual assault upon her; no conviction for false evidence in facts of the case –

Held – Supreme Court dismissed an appeal of accused. Factually, the prosecutrix was aged 9 years at the time of sexual assault in the year 2004 by an unknown person; along with the prosecutrix was PW-3 who was a minor too. Further, it has been stated that the FIR was lodged by the mother of the prosecutrix and in furtherance, to that, a medical test was conducted which clearly had established the sexual assault signs on the prosecutrix. Six months later when the trial took place PW-3 and prosecutrix both denied the sexual assault and also declined dock identification. Therefore, Trial Court acquitted the appellant, which further was reversed by the High Court on an appeal by the State. The Supreme Court on noting the submissions placed by the learned counsel who was opposing the appeal, the Court stated that *"We find no infirmity in the reasoning of the High Court that, 6 months was a sufficient time and opportunity for the accused to win over the prosecutrix by a settlement through coercion, intimidation, persuasion and undue influence."*

The Court on placing reliance on *State v. Sanjeev Nanda*, 2012 (8) SCC 450, stated that the mere fact of prosecutrix turning hostile is not relevant, and it also does not efface the evidence with regard to the sexual assault upon her and the identification of the appellant as the perpetrator. The Apex Court in the present case stated it to be a *"travesty of justice"* if the appellant were acquitted simply on the basis of prosecutrix turning hostile by giving no consideration to the overwhelming evidence placed. Additionally, the Court was of the view that it was a fit case to direct prosecution of the prosecutrix under Section 344 Cr.P.C for tendering false evidence. However, the Court took a different view even after being aware of the perpetrator in the present case only on the basis that the stated occurrence took place 14 years ago and at present she must be married and settled in a new life, all of which may possibly be jeopardized if the present appeal is not dismissed. Therefore, the appeal stands to be dismissed.

NOTIFICATIONS

‘Triple Talaq Ordinance’ promulgated in wake of ending the arbitrary custom of oral unilateral divorce: The Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 has been passed by the Parliament and notified on 19-09-2018, as signed by the President for promulgation. The ordinance is directed towards protection of married Muslim women and prohibition of pronouncement of *talaq* by their husbands and any other matter incidental thereto. This ordinance has been promulgated with a view that despite the holding in the matter of *Shayara Bano vs. UOI*, (2017) 9 SCC 1 where triple *talaq* was declared unconstitutional the practice still continued.

Highlights of the Ordinance:

- **Definition of *talaq*** – Section 2(b) of the ordinance defines “*talaq*” as *talaq-e-biddat* or *talaq* of similar form, pronounced by a Muslim husband having effect of instantaneous and irrevocable divorce.
- ***Talaq* to be void and illegal** – This ordinance declares pronouncement of *talaq* by Muslim husband to be void and illegal and penalizes the commission of same with imprisonment which may extend to 3 years and fine under Section 3 and Section 4 respectively.
- **Allowance** – According to the ordinance under Section 5 a Muslim husband who pronounces triple *talaq* to his wife will be liable to pay to her and dependent children subsistence allowance as may be determined by Magistrate.
- **Custody of Minor Children** – In case a Muslim husband pronounces triple *talaq* to his Muslim wife the custody of their minor children will be with the married Muslim women i.e. his wife provided u/s 6.
- **Cognizable Offence** – The offence under this ordinance has been declared as cognizable under Section 7(a).
- **Who can report?** – Any commission of offence under this act can be informed to the officer in charge of a police station directly by the married Muslim woman on whom the *talaq* was pronounced and by any other person related to her by blood or marriage.
- **Compoundable Offence** – According to Section 7(b) offence of pronouncing *talaq* is stated to be compoundable at the instance

of married Muslim woman on whom *talaq* was pronounced but only with the permission of Magistrate.

- **Grant of Bail** – Under Section 7(c) bail can be granted only when the Magistrate is satisfied after perusing the application of the accused and hearing married Muslim women upon whom the *talaq* was pronounced that reasonable ground for granting bail exists.

Competition Law Review Committee constituted to review the Competition Act :

In pursuance of its objective of ensuring that Legislation is in sync with the needs of strong economic fundamentals, the Government has constituted a Competition Law Review Committee to review the Competition Act, 2002. The Competition Act was passed in the year 2002 and the Competition Commission of India (CCI) was set up in pursuance of the same. The Commission started functioning in right earnest from 2009 and has contributed immensely towards the development of competition and fair play practices in the Indian market. During the past 9 years the size of the Indian Economy has grown immensely and India is today amongst the top 5 economies in the World and poised to forge ahead further. In this context, it is essential that Competition Law is strengthened, and re-calibrated to promote best practices which result in the citizens of this country achieving their aspirations and value for money.

The Terms of References of the Committee are as follows:

1. To review the Competition Act/ Rules/ Regulations, in view of changing business environment and bring necessary changes, if required;
2. To look into international best practices in the competition fields, especially anti-trust laws, merger guidelines and handling cross border competition issues;
3. To study other regulatory regimes/ institutional mechanisms/ government policies which overlap with the Competition Act;
4. Any other matters related to competition issue and considered necessary by the Committee.
5. The Committee has to complete its work and submit its report within 3 months of the date of its first meeting.

EVENTS OF THE MONTH

1. **One Month Training Programme of Fourth Batch of 30 Public Prosecutors from Punjab** commenced from Sept. 24, 2018. The training programme consisted of 39 sessions which included four sessions of 1.15 hours per day. In this training program, different relevant topics for Public Prosecutors regarding Criminal and Civil Matters were discussed. The training was imparted to enhance the capacity of PPs to perform their duties effectively and efficiently. The training programme concluded on October 5, 2018.

2. **Refresher-cum-Orientation Course for Civil Judges (JD)** from the States of Punjab and Haryana was organized on Oct. 6, 2018 to sensitize them with regard to important Criminal Matters and Mediation. The Judicial Officers were sensitized on topics: Nuances on Law of Bails, Role of Referral Judges-Mediation, Challenges in Appreciation of Electronic Evidence, Protection against Self Incrimination – Dimensions and Applicability

and Training on Practical Use of Computers in Courts. 59 participants attended the Refresher Course.

3. **One Month Training Programme for three newly promoted ADJs from the State of Haryana** commenced from Oct. 6, 2018 which would conclude on November 5, 2018. One ADJ out of the previous batch of promotee ADJs is also undergoing this training programme.

4. Sh. Davinder Singh, PCS (JB) who is undergoing Induction Training Programme completed court attachment training from 01.10.2018 to 06.10.2018; training on postmortem, medicolegal cases, various injuries and ancillary issues from 08.10.2018 to 10.10.2018. He also visited jail on 11.10.2018 and visited Juvenile Home and Drug Deaddiction Centre on 12.10.2018. He underwent Village Immersion Training, which is also part of curriculum from 15.10.2018 to 20.10.2018.

FORTHCOMING EVENTS

1. The Enforcement Directorate, Regional Office, Northern Region, Chandigarh will be organizing one day workshop on November 18, 2018 at Chandigarh Judicial Academy. The workshop will be relating to legal issues pertaining to Prevention of Money Laundering Act, 2002, which is a piece of legislation having direct impact on the economy of the country. The participants in the workshop would be Session Judges / Special Judges of Punjab and Haryana. Further details in this regard are being worked out.

2. Juvenile Justice Committee of Punjab and Haryana High Court in collaboration with Chandigarh Judicial Academy will be organizing a state level consultation on November 25, 2018 relating to the issues under the Juvenile Justice Act focusing on Safety of Children in Child Care Institutions.

3. Video Conferencing for ADJs from the State of Haryana and UT Chandigarh is scheduled to be held on November 26, 2018.