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FROM THE DESK OF CHIEF EDITOR

STRENGTHENING THE INSTITUTION OF JUDICIARY

The Punjab High Court started functioning in the present building at Chandigarh on January 17, 1955. Prior to this, after partition, it functioned from 'Peterhoff' in Shimla. At the inaugural function, the first CJ of Punjab High Court, Justice A.N.Bhandari, I.C.S. expressed that we have returned from exile in the forests of the Himalayas and taken up our permanent abode in this building. From 1955, we are coming to the close 2021. It would be completing 67 years of its journey on January 16, 2022. This High Court building has grown many fold. The original building was compared with a 'mouth organ'. The first Advocate General, Mr.S.M.Sikri (later CJ of India) said that apart from its resemblance in looks, to play good music on a mouth organ is as difficult as it is to administer Justice. He added that the Bar plays all kinds of legal tunes hoping that they would appeal to lordships. The pursuit has been to find out the Truth and do Justice. I am a witness to the growth of this court since its inception. My father had shifted in 1956 from Patiala to Chandigarh. PEPSU High Court had merged with Punjab High Court.

I have referred to this with a purpose. It was on October 23, 2021 that the two wings : B & C of a building of the Aurangabad Bench of the Bombay High Court were inaugurated. On this special occasion, all the three wings of the state were duly represented. It was a happy and healthy augury for the institution of judiciary. Speaking on this occasion, the Union Law Minister, Sri Kiren Rijiju said : I am looking forward to the harmonious relationship between the Judiciary and the Executive and the Legislature. He added, it is the responsibility of all of us to ensure that the gap between justice and government must be reduced as much as possible. We can do it, he assured. In this process, he made a most meaningful statement :

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“Politics is always there because politics is the essence of democracy, but when it comes to the judiciary, there is no politics. My friend Devendra Fadnavis (former Maharashtra CM in the BJP-led government) laid the foundation for this new building of the Aurangabad bench of the Bombay High Court and today, Shri Uddhav Thackeray (incumbent CM) is part of its inauguration. This is the team-work and team-spirit.”

Never earlier, such a potent statement had been made by the Union Law Minister. Each organ has to play its role in furtherance of the first promise made in the Preamble to the Constitution : Justice, Social, Economic and Political. It has been rightly emphasized that it is team-work sans politics. In this stream, it was emphasized by Sri Rijju :

“Today in the presence of CJI and all the Supreme Court judges, let me mention that when I was addressing one of these international conferences, I told the story of the leadership role the Supreme Court of India has taken to ensure the justice delivery in this pandemic. Districts courts heard 97 lakh cases while the High Courts heard 51 lakh cases. The Supreme Court emerged as the golden leader with over 96,000 virtual hearings till July 9”.

The pandemic time was an emergency situation. How the Top Court played its role, it is a matter of record. How article 142 was used usefully. The High Courts and District Courts did not lag behind. Sri Rijju is handling and managing the institution of judiciary with a positive mind. He said :

“I know very well that judges have their own challenges and difficulties but I also know that many people do not know the real life of a judge, how he manages his time, the cases and the pressure. It is very important to understand that. Once we understand the problems of the judiciary, I think we can take corrective steps to ensure that all the support systems are managed and put in place. The infrastructure becomes very important.

CJI NV Ramana proposed the establishment of the **National Judicial Infrastructure Authority of India** to the Ministry of Law & Justice. He urged the Minister of Law and Justice to expedite the process to create NJIAI with statutory backing in the upcoming winter session of the Parliament. This legislative mechanism will augment and create state-of-the-art judicial infrastructure. The CJI felt that this would be the best gift that we can think of giving to the people of our country in the 75th year of our independence. He further expressed : ‘I am glad

to be sharing the dias with Shri Kiren Rijju, Hon'ble Law Minister. I will call him my young friend and I am happy that he understood the problems of the judges and the judiciary very quickly and his enthusiasm and commitment to the cause of justice is reflected in the frequency of our meetings over the past few months through such events'. This was a clear expression of working in unison. This togetherness would strengthen the trust and confidence of the people in the institution of judiciary.

Dr. Justice DY Chandrachud, Judge, Supreme Court of India took this opportunity to focus that the **citizens are entitled to know what goes on in the court** :

“We have formulated live streaming rules so that cases can be live-streamed, the hearings before a court can be live-streamed for the rest of the country. Because I do believe that citizens are entitled to know what goes on in the courts, they are entitled to know why cases are adjourned, whether judges sit from morning to evening in deciding cases. It is the basic right of the citizens to know.”

We have open court system. It is open to the people to go to the courts and watch proceedings. This openness, in fact, provides access to those who have litigation in courts. Live-streaming would open the courts to the public at large. This would help in strengthening the administration of justice. It would also help in building up the trust and confidence of the public in the institution of judiciary. Justice Chandrachud felt that the people of India have a cause and a reason to celebrate justice. He shared :

“Virtual courts have been set up across the country. 12 states and union territories including Maharashtra have a virtual court. You will be interested to note that as many as 91,000 cases involving traffic challans have been disposed off and 180 crores worth of fine has been realized from citizens who can pay fines on the online portal of the virtual courts. We provide citizen services for common citizens. The service portal which has been created by the E-committee with the Department of Justice has 75 lakh hits per day and the mobile application has 35 lakh hits per day. 3.85 lakh SMSs and emails are sent by the E-courts services to the citizens across the nation. Our website, in one year, has had 224 crore transactions.”

There should be full understanding between the three organs of the state. Meeting of minds. Collective effort. Equally, the collective responsibility. If this could be achieved, it would strengthen the institution of judiciary.

Balram K. Gupta

FRAMING OF ISSUES

Framing of issues is an art which a judge must master. Rule 1 of Order XIV of the Code of Civil Procedure 1908 deals with framing of issues. As per dictionary meaning, "issue" means a point in question, an important subject of debate, disagreement, discussion, argument or litigation. An "issue" in pleading is thus, a question either of fact or law, raised by the parties in their pleadings and mutually proposed and accepted by them as the subject for decision.

It is well known that every trial is a voyage of discovery in which truth is the quest. In case titled **Maria Margarida Sequeira Fernandes vs Erasmo Jack De Sequeira (2012) 5 SCC 370** Hon'ble Apex Court has observed that in order to bring on record the relevant fact, the judge has to play an active role ; no doubt within the bounds of the statutorily defined procedural law. The object of framing the issues is to ascertain the controversy and rival contentions between the parties. It has to be remembered that Issues are the backbone of a suit. The framing of the issues, therefore has a very important bearing on the trial and decision of a case

A plaintiff commences his action by presenting a plaint. A defendant files his written statement to the plaint of the plaintiff. The third important stage in the suit is settlement of issues. **It is known as the first hearing** . At the first hearing , the court may examine the parties in order to ascertain matters in controversy in the suit. The court may then frame issues on propositions of law or fact on which the parties are at variance.(Rule 1).

In case titled **Makhan Lal Bangal v. Manas Bhunia, AIR 2001 SC 490**, the Hon'ble Supreme Court has held that the issues are to be framed in respect of only those facts which has been alleged by one party and either denied or not admitted by the other party.

In case titled **Lakshmikant Shreekant (HUF) vs M.N. Dastur & Company Pvt. Ltd. 1998 (44) DRJ 502** it was held by the Hon'ble Delhi High court that the court is required to frame Issues of fact or of law that necessarily and properly arise for determining the real controversy involved on the pleadings of the parties and that such issues arise when a material proposition of fact or law is affirmed by one party and denied by the other and the court would not frame an issue which does not arise on the pleadings nor a issue need be framed on a point of law which is perfectly clear. It was further held that court is required to apply its mind and understand the facts before framing the issue. If the plea is malafide or preposterous or vexatious and can be disposed of without going into the facts or is contrary to law or the settled legal position , the court will not be justified in adopting a hands off policy and allow the game of the defendant to have its sway.

As it has been stated that issues arise when material proposition of fact or law is affirmed by one party and denied by the other, it is necessary to understand the meaning of "material proposition". The term "material propositions" includes those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Therefore it is the duty of the court to frame issues only in respect of those facts which have been alleged by one party and denied by the other party.

In case titled **Pulmati Shyamlal Mishra vs Ramkrishna Gangaprasad Bajpai 1981 Maharashtra Law Journal 321** Division Bench of Hon'ble Maharashtra High Court has held that it was not correct to assume that the court is under any obligation to frame and remit the

issue of tenancy mechanically, merely on the same being raised in the written statement without judicial satisfaction of its necessity and justification.

The Court may thus frame the issues from all or any of the following materials:

- (a) Allegations made on oath by the parties, or by any persons present on their behalf, or statements made by the pleaders of such parties;
- (b) Allegations made in the pleadings or in answers to interrogatories delivered in the suit;
- (c) The contents of documents produced by either party and
- (d) Examination of witnesses or inspection of documents. (Rule 4)

In case titled **D.M Deshpande vs Janardhan kashinath Kadam (1998) 8 SCC 315** it was held that in the absence of particulars viz. date, mode and terms of creation of tenancy in the pleadings, an issue on a bare claim of tenancy ought not to have been framed.

In another case titled **Zulfiquar Ali Khan vs Straw Products Limited 87(2000) DLT 76** it was observed that it is a notorious fact that to drag the case, a litigant often takes all sorts of false or legally untenable pleas and it was held that legal process should not be allowed to be misused by such persons and only such defence as give rise to clear and bonafide dispute or triable issues should be put to trial and not illusory or unnecessary or malafide based on false or untenable pleas to delay the suit. It was further held that court is not bound to frame an issue on unnecessary and avoidable baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable court time.

The manner in which issues are required to be framed has been painstakingly and elaborately explained by Hon'ble Delhi High Court in case titled **Anil Kumar vs Devender Kumar & others , case No CS(OS) 350/2018 & IA No 9403/2018 decided on 21/05/2019 (Law Finder Doc ID# 1509251)** .It was observed that framing of omnibus issues with respect to the reliefs claimed, as suggested , is in violation of Order XIV Rule 1(3) which requires distinct issues to be framed on each material proposition affirmed by one party and denied by the other. It was further observed that framing such omnibus issues has the potential of the trial as well as the decision , going haywire. After discussing scope of Order XIV CPC in detail ,the Hon'ble Delhi High Court has given examples of proper issues which ought to be framed in a given set of facts.

It cannot be lost sight of that framing of an unnecessary issue invites unnecessary evidence and arguments and that certainly protracts the disposal of the suit. A court must keep in mind that owing to infelicitous pleadings in this country, the real point in controversy is often missed or not properly highlighted and in such cases, it is the duty of the judge to ascertain the real dispute between the parties by framing proper issues. To sum up, under Order 14 Rule 1(5) CPC ,after reading the plaint and the written statement and after examination under Order X Rule 2 CPC and after hearing the parties or their pleaders, the court is required to ascertain upon what material proposition of fact and or of law the parties are at variance and thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

Madhu Khanna Lalli
Additional District & Sessions Judge
-cum-Faculty Member

LATEST CASES: CIVIL

"While economic development should not be allowed at the cost of ecology or by causing widespread environmental destruction, the necessity to preserve ecology and environment should not hamper economic and other development. Both development and environment must go hand in hand. In other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. The traditional concept that development and ecology are opposed to each other is no longer acceptable."

- *Nageswara Rao, J. in NHAJ v. Pandarinathan Govindarajulu, (2021) 6 SCC 693, para 18*

[Jaganarayan Lal Vs. Doctor Smt. Girija Tiwari :Civil Appeal No. 2539 OF 2011 dt 15.09.2021 - Whether Karta of HUF can file a complaint for the member of the family?—HELD](#)-The Supreme Court observed that a Karta of a Joint Hindu Family cannot file a consumer complaint in respect of deficiency in service on part of the Hospital/Doctor regarding the treatment given to his pregnant sister-in-law. The Karta of Joint Hindu Family cannot file a consumer complaint in respect of deficiency in service on part of the Hospital/Dr regarding the treatment given to his pregnant sister-in law, only because he is a Karta without further proving that he paid or promised any consideration for engaging the services of the hospital or was the beneficiary of any services rendered by the hospital.

[Shoraj Singh vs Charan Singh: Civil Appeal No.6304 Of 2021 dt 08.10.2021. – Does Order 8 Rule 1 apply to Commercial courts act, 2015?—HELD](#)-Yes the provisions of Order 8 Rule 1 of CPC are mandatory in the Commercial Courts under the Commercial Courts Act, 2015.

[Dipali Biswas and Others vs. Nirmalendu Mukherjee and Others : 2021 SCC OnLine SC 869 -Whether the Judgment debtor is allowed to raise objections as to method of execution in installments? -HELD:-](#)No, A judgment-debtor cannot be allowed to raise objections as to the method of execution in installments.

[Uflex Ltd. Vs. Government Of Tamil Nadu & Ors.: 2021 SCC OnLine SC 738-Whether imposition of cost is reflection on the counsel? - HELD-](#)

- The legal principles for interpretation of commercial contracts have been discussed.
- Held that, costs must follow the cause in commercial matters including writ petitions.
- The court added that it is not a correct approach to presume that imposition of costs is a reflection on the counsel.

[Karnataka Rural Infrastructure Development Limited V. T.P. Nataraja & Ors. : 2021 SCC OnLine SC 767 -Whether change of date of birth in service record is a matter of right? -HELD](#)-Date of Birth :- Law on change of date of birth – (i) application for change of date of birth can only be as per the relevant provisions / regulations applicable; (ii) even if there is cogent evidence, the same cannot be claimed as a matter of right; (iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag end of service and / or when the employee is about to retire on attaining the age of superannuation.

[Ajai Pal Singh & Ors. Vs. State of Uttar Pradesh & Anr.: 2021 SCC OnLine SC 789 -Whether sale deed/ sale price of the land executed subsequent to acquisition can be looked at while determining the compensation? - HELD](#)-The compensation determined for the lands acquired subsequently cannot be said to be comparable at all.

[In Re: Cognizance For Extension Of Limitation: 2021 SCC OnLine SC 947 -](#)

Expiry of extension of limitation (Covid 19 period)? - HELD-

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of IV. The Government of India shall amend the guidelines for containment zones, to state. "Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

[Placido Francisco Pinto \(D\) by LRs & Anr. Vs. Jose Francisco Pinto & Anr.: 2021 SCC OnLine SC 842 -Principle regarding Section 92 of Indian Evidence Act- HELD-](#) Section 92 of the Indian Evidence Act bars giving of oral evidence on a written document except to prove that the document reflects a sham transaction. It is beyond dispute that a sale deed is required to be registered i.e. a document required by law to be reduced to the form of a document. Therefore, no evidence of any oral agreement or statement shall be admitted for the purpose of contradicting, varying, adding

or subtracting from its terms. The proviso (1) of Section 92 of the Evidence Act on which reliance was placed is a proof of such fact which would invalidate any document such as fraud, intimidation, illegality, want of due execution, want of go capacity in any contracting party, want or failure of consideration, or mistake in fact or law

[Nitaben Dinesh Patel vs. Dinesh Dahyabhai Patel: 2021 SCC OnLine SC 902 – Q. Whether in a proceedings under the Hindu Marriage Act between a husband and a wife, a relief against a third party can be claimed ?](#)

A. NO, The Court held so while rejecting a wife's plea to seek a declaration that the alleged marriage between her husband and another woman was void. It was observed that "Under the provisions of the Hindu Marriage Act, the relief of divorce, judicial separation etc. can be between the HUSBAND AND THE WIFE ONLY and cannot extend to the third party. Therefore, by virtue of Section 23A of the Hindu Marriage Act, it is not open for the appellant herein – original defendant to seek declaration to the effect that the marriage between the respondent – original plaintiff and the third party is void.

[Q. Can relief be prayed by way of counter claim at least against the son born out of the alleged wedlock between the respondent – original plaintiff and the third party?](#)

A. No

[Q. Under what circumstances, even after commencement of trial, pleading can be amended ?](#)

A. If some facts have come to the knowledge subsequent to the commencement of trial an application for amendment of written statement can be allowed EVEN AFTER the trial has commenced as per the proviso to Order VI Rules CPC.

[Milkhi Ram vs. Himachal Pradesh State Electricity Board: 2021 SCC OnLine SC 916- Whether the civil suit based on the Industrial Disputes Act, 1947before the civil court at the instance of the terminated employee is maintainable? -](#)

HELD- The civil courts may have the limited jurisdiction in service matters, but jurisdiction may not be available to Court to adjudicate on orders passed by disciplinary authority. The authorities specified under the ID Act including the appropriate government and the industrial courts perform various functions and the ID Act provides for a wider definition of "termination of service", the condition precedent of termination of service. The consequence of infringing those, are also provided in the ID Act. When a litigant opts for common law remedy, he may choose either the civil court or the industrial forum.

The court noted that the plaintiff clearly founded his claim in the suit, on the provisions of the ID Act and the employer therefore is entitled to raise a jurisdictional objection to the proceedings before the civil court.

[Smriti Madan Kansagra v. Perry Kansagra: 2021 SCC OnLine SC 909- Can Custody Of Child be obtained by Playing Fraud on Court? - HELD-](#) It is fundamental that a party approaching the Court must come with clean hands, more so in child custody matters. Any fraudulent conduct based on which the custody of a minor is obtained under the orders of the Court would negate and nullify the element of the trust reposed by the Court in the concerned person. Wherever the custody of a minor is a matter of dispute between the parents or the concerned parties, the primary custody of the minor, in parens patriae jurisdiction, is with the Court which may then hand over the custody to the person who in the eyes of the Court, would be the most suitable person. Any action initiated to obtain such custody from the Court with fraudulent conduct and design would be a fraud on the process of the Court. The Court declared its earlier order granting custody to the father who played fraud as "illegal" and "ab initio void".

[Korukonda Chalapathi Rao & Ors v Korukonda Annapurna Sampath Kumar: 2021 SCC OnLine SC 847 – Does an unregistered document which does not affect ‘immovable property’ being record of past transaction attract Sec. 49\(1\)\(a\) of Registration Act? -HELD-](#)As far as Section 49(1)(c) of the Registration Act is concerned, it provides for the other consequence of a

compulsorily registrable document not being so registered. That is, under Section 49(1)(a), a compulsorily registrable document, which is not registered, cannot produce any effect on the rights in immovable property by way of creation, declaration, assignment, limiting or extinguishment. Section 49(1)(c) in effect, reinforces and safeguards against the dilution of the mandate of Section 49(1)(a). Thus, it prevents an unregistered document being used ‘as’ evidence of the transaction, which ‘affects’ immovable property. If the *Khararunama* by itself, does not ‘affect’ immovable property, as already explained, being a record of the alleged past transaction, though relating to immovable property, there would be no breach of Section 49(1)(c), as it is not being used as evidence of a transaction effecting such property.

The Supreme Court has held that a family settlement document which merely sets out the existing arrangement and past transaction will not be compulsorily registrable under Section 17(1)(b) of the Registration Act, 1908, if it doesn't by itself create, declares, limits or extinguishes rights in the immovable properties.

"If we apply the test as to whether the Khararunama in this case by itself 'affects', i.e., by itself creates, declares, limits or extinguishes rights in the immovable properties in question or whether it merely refers to what the appellants alleged were past transactions which have been entered into by the parties, then, going by the words used in the document, they indicate that the words are intended to refer to the arrangements allegedly which the parties made in the past. The document does not purport to by itself create, declare, assign, extinguish or limit right in properties. Thus, the Khararunama may not attract Section 49(1)(a) of the Registration Act," .

Karuna Sharma
Civil Judge (Jr.Divn.)/JMJC
-cum-Faculty Member, CJA

LATEST CASES: CRIMINAL

"It is well established that a hospital is vicariously liable for the acts of negligence committed by the doctors engaged or empanelled to provide medical care. It is common experience that when a patient goes to a hospital, he/she goes there on account of the reputation of the hospital, and with the hope that due and proper care will be taken by the hospital authorities. If the hospital fails to discharge their duties through their doctors, being employed on job basis or employed on contract basis, it is the hospital which has to justify the acts of commission or omission on behalf of their doctors."

- *Indu Malhotra, J. in Maharaja Agrasen Hospital v. Rishabh Sharma, (2020) 6 SCC 501, para 12.4.21*

[Gurmail Singh Versus State of Punjab: CRM-M-10851-2021 Date of decision : 19.08.2021-HELD](#)

Hearing a petition filed under Section 482 of the Code of Criminal Procedure, 1973 for issuance of appropriate directions to the Trial Court to conclude the trial in a time bound manner, the Hon'ble Punjab & Haryana High Court answered questions as to (i) whether supplementary Police Report/Challan filed by the Officer in charge of the police station against one or more of the accused is to be mandatorily attached with Police Report/Challan filed earlier by the Officer in charge of the police station against one or more of the other accused; (ii) whether the accused in both the Police Reports/Challans are to be jointly tried and (iii) Whether de-novo trial is required to be conducted in all such cases by recalling all the prosecution or defence witnesses examined earlier irrespective of the stage to which the trial on Police Report/Challan filed earlier has reached?

[Ravi Kumar Versus State of Haryana and others: CRM-M-23537-2020 Date of decision: 31.08.2021-HELD](#)

Hearing a Petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail, the Hon'ble Punjab & Haryana High Court finding delay or laxity in proper investigation and collection of evidence available and delay in conclusion of trial and for preventing abuse of process and securing ends of justice, passed directions to State Governments, to the police, Directions for expeditious trial and Directions to the State Legal Services Authorities.

[Sy. Azhar Sy. Kalandar Vs. State of Maharashtra & Another: 2021 SCC OnLine SC 701-Can Court interfere in the quantum of sentence in non compoundable offence having no minimum sentence prescribed](#)

where the parties decided to forgive their past and live amicably?-**HELD**-Hearing a Criminal Appeal against conviction for the offence under Section 307 Indian Penal Code, the Hon'ble Supreme Court took note of judgment in Murali Vs. State represented by Inspector of Police, 2021(1) SCC 726, wherein it has taken note of the compromise between the parties to reduce the sentence of the convicts even in serious non-compoundable offences.

[Nagendra Sah Vs. State of Bihar: 2021 SCC OnLine SC 717-Applicability of Section 106 of the Evidence Act? -HELD](#)

Hearing a Criminal Appeal against conviction for the offence under Section 302 and 201 Indian Penal Code, the Hon'ble Supreme Court held that Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the Court can always draw an appropriate inference.

[Bhaqwan Narayan Gaikwad Vs. State of Maharashtra and Ors.:2021 SCC OnLine SC 748-Can Compromise be taken to be a solitary basis for reduction of sentence?-HELD](#)

Hearing a Criminal Appeal against conviction for the offence under Section 326 Indian Penal Code, the Hon'ble Supreme Court held that the compromise if entered at the later stage of the incident or even after conviction can indeed be one of the factor in interfering the sentence awarded to commensurate with the nature of offence being committed to avoid bitterness in the families of the accused and the victim and it will always be better to restore their relation, if possible, but the compromise cannot

be taken to be a solitary basis until the other aggravating and mitigating factors also support and are favourable to the accused for molding the sentence which always has to be examined in the facts and circumstances of the case on hand.

[Vipan Kumar Dhir Vs. State of Punjab and Anr.: 2021 SCC OnLine SC 854](#)-Well established principles which guide courts to exercise their discretion in the matter of cancellation of bail?-**HELD**-Hearing a Criminal Appeal arising out of an order granting anticipatory bail to the mother-in-law of the deceased in offence under Sections 304B, 302 read with 120B of Penal Code, 1860, the Hon'ble Supreme Court held that It is necessary that 'cogent and overwhelming reasons' are present for the cancellation of bail. Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non conducive to fair trial, making it necessary to cancel the bail.

The Hon'ble Supreme Court further held that bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system.

[Geo Varghese Vs. State of Rajasthan & Anr., 2021 SCC OnLine SC 873](#)-The scope and ambit of Section 107 IPC and its co-relation with Section 306 IPC?-**HELD**-Hearing a Criminal Appeal arising out of an order dismissing the petition under Section 482 of the Code of Criminal Procedure seeking to quash the First Information Report for an offence under Section 306 Penal Code, 1860 the Hon'ble Supreme Court held that the settled principles which have been consistently reiterated since the judgment of this Court in State of Haryana & Ors. Vs. Bhajan Lal & Ors., (1992) Supp (1) SCC 335, include a situation where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

[Central Bureau of Investigation \(CBI\) and Anr. Vs. Thommandru Hannah Vijayalakshmi @ T. H. Vijayalakshmi and Anr., 2021 SCC OnLine SC 923](#)-Whether a Preliminary Inquiry is mandatory before registering an FIR?-**HELD**-Hearing a Criminal Appeal arising out of a judgment by which a writ petition filed under Article 226 of the Constitution of India was allowed and the First Information Report registered for offences punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act 1988 and Section 109 of the Penal Code, 1860, the Hon'ble Supreme Court held that in case the information received by the CBI, through a complaint or a "source information" under Chapter 8, discloses the commission of a cognizable offence, it can directly register a Regular Case instead of conducting a Preliminary Enquiry, where the officer is satisfied that the information discloses the commission of a cognizable offence. The Hon'ble Supreme Court clarified that if the CBI chooses not to hold a Preliminary Enquiry, the accused cannot demand it as a matter of right.

[Nasib Singh Vs. State of Punjab & Anr., 2021 SCC OnLine SC 924](#)-The scope of the power of the Appellate Court to direct a re-trial/Joint Trial?-**HELD**-Hearing a Criminal Appeal arising out of a judgment remitting the orders of acquittal and conviction arising out of two separate FIRs for fresh trial and directed that the proceedings arising out of both the FIRs be clubbed together under Section 223 CrPC and be tried together by one court, the Hon'ble Supreme Court emphasised the principles for directing a Retrial and Joint Trial.

[State of Gujarat & Anr. Vs. Narayan @ Narayan Sai @ Mota Bhagwan Asaram @ Asumal Harpalani, \[Criminal Appeal No. 1159 of 2021 arising out of SLP \(Crl.\) No. 5699 of 2021\], Date of Decision: 20.10.2021](#)-When Prisoner may be granted Furlough and when prisoners shall not be granted Furlough and its difference with Parole?-**HELD**-Hearing a Criminal Appeal arising out of a judgment releasing the respondent on furlough, the Hon'ble Supreme Court enumerated the factors dealing with grant of Furlough and Parole.

Amrinder Singh Shergill
Additional District & Sessions Judge
-cum-Faculty Member, CJA

LATEST CASES: NDPS ACT

"Section 304-B IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand. Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, "soon before" they did not mean "immediately before". Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down to define what exactly the phrase "soon before" entails."

— *N.V. Ramana, C.J. in Satbir Singh v. State of Haryana, (2021) 6 SCC 1, paras 15 and 38.1*

[Union of India v. Md. Nawaz Khan : 2021 SCC OnLine SC 782 - Law on grant on bail in NDPS cases- HELD-](#)

The SC has elaborately discussed the principles governing the grant of bail, especially in cases under the NDPS Act and has held that, "... the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed."

Under Section 37(1)(b)(ii), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27A and also for offences involving a commercial quantity are :

1. The Prosecutor must be given an opportunity to oppose the application for bail; and
2. There must exist 'reasonable grounds to believe' that
 - (a) the person is not guilty of such an offence; and
 - (b) he is not likely to commit any offence while on bail.

[Gurdev Singh v. State of Punjab: 2021 SCC OnLine SC 285 - Murderer kills one or two persons but persons dealing with narcotic drugs inflict death blow to a number of innocent youngsters-HELD-](#) That persons dealing with narcotic drugs are hazard to the society and therefore, while awarding the sentence/punishment in case of NDPS Act, the interest of the society as a whole is required to be taken in consideration.

Why Courts should be slow in mitigating the punishment?

In a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young victims who are vulnerable; it cause deleterious effects and

deadly impact on the society; they are hazard to the society.

Organized activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances shall lay to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, it has a deadly impact on the society as a whole.

Therefore, while striking balance between the mitigating and aggravating circumstances, public interest, impact on the society as a whole will always be tilt in favour of the suitable higher punishment.

Ruling on facts

In the present case, the appellant was the sole bread earner of the family and was a poor man. In such circumstances, the Court held that "merely because the accused is a poor man and/or a carrier and/or is a sole bread earner cannot be such mitigating circumstances in favour of the accused while awarding the sentence/punishment in the case of NDPS Act."

Even otherwise, in the present case, the Special Court, has taken into consideration the fact that the accused is a poor person; that he is sole bread earner, that it is his first offence, while not imposing the maximum punishment of 20 years R.I and imposing the punishment of 15 years R.I. only.

[Sarabjit Singh v. State of Punjab, CRM-M No. 28183 of 2019, decided on 02-08-2021 - Huge recovery of contraband drug, failure to register FIR under NDPS Act; Punjab and Haryana HC senses attempt to protect the offender by the authority; hands over the case to CBI- HELD-](#)The Punjab and Haryana High Court, came down heavily on State Authorities for discrepancies in investigation of the NDPS cases in the State of Punjab. The Bench stated, "Even the recent reply by the Joint Commissioner (Drugs) Food and Drugs Administration acknowledged the fact of recovery of 12.00 lacs

tablets of 'TRAMADOL'. Shockingly, in the affidavits, nothing is stated where the recovered stock of 12.00 lacs of TRAMADOL tablets has gone and even no batch number, etc., is given." Slamming the State authorities, the Bench added, "This is a serious lapse and inaction on the part of the Punjab Police as well as the Drug Controller and this clearly reveals that everything is not normal with the investigation of the NDPS cases in the State of Punjab."

In view of the above, the investigation was handed over to the Central Bureau of Investigation as the Court opined that it was an exceptional case **as Punjab State functionaries for the reason best known to them are intentionally protecting the drug offenders**. The official of Punjab Police/office of the Joint Commissioner (Drugs), Food and Drugs Administration, were directed to hand over all the documents to C.B.I., along with the recovered 12.00 lacs 'TRAMADOL' tablets. The CBI, was directed to register an FIR and investigate the case. It was made clear that during the investigation, the CBI

- Shall ensure that the entire contraband recovered from M/s. Ravenbhel Pharmaceuticals Private Limited, is handed over to the CBI and in case, there is any shortage, C.B.I. will investigate whether the same is misused for implicating any innocent person;

- In case of shortage of recovery in possession of Punjab Police/Drug Department, CBI will prepare an inventory giving batch number, date of manufacture/expiry, name of manufacturer and will check from CFSL/FSL in State of Punjab if the 'TRAMADOL' tablets of same batch number are involved in any other FIR in the State to find out false implication of any innocent person by using this stock;

- In such eventuality, it will also be open to C.B.I. to check record of any Police Station or publish a notice in newspaper giving batch number and name of manufacturer, etc., so as to enable the defence counsels in different FIRs/cases to know about it and to take appropriate recourse before Court of law;

- To look into the involvement of any public servant under the aid of Section 120-B IPC in delaying the registration of an FIR or any other investigation, which it deem fit.

However, it was clarified that the directions were only with regard to the recovery from Ravenbhel Pharmaceuticals Private Limited.

[Rajkamal Namdev v. State of M.P., MCRC-25233 of 2021, decided on 02-08-2021](#) - Possession of cough syrup or medicine containing Codeine Phosphate without valid documents falls under S. 37 of the NDPS Act; Court rejects bail application- HELD- The

Madhya Pradesh High Court denied bail to the applicant who was arrested for the offence punishable under Sections 8, 21, 22 of the NDPS Act & Section 5/13 of M.P. Drug Control Act.

The Court relied on the Supreme Court judgment in *Mohd. Sahabuddin v. State of Assam*, (2012) 13 SCC 491. The Court further stated that the Supreme Court in *State of Punjab v. Rakesh Kumar*, (2019) 2 SCC 466 had relied on in an earlier judgment of *Union of India v. Sanjeev V. Deshpande*, (2014) 13 SCC 1 where it was held that *dealing in narcotic drugs and psychotropic substances is permissible only when such dealing is for medical purposes or scientific purposes. Further, the mere fact that the dealing in narcotic drugs and psychotropic substances is for a medical or scientific purpose does not by itself lift the embargo created under Section 8(c). Such a dealing must be in the manner and extent provided by the provision of the Act, rules or orders made thereunder. Sections 9 and 10 enable the Central and the State Governments respectively to make rules permitting and regulating various aspects (contemplated under Section 8(c), of dealing in narcotic drugs and psychotropic substances).*

It was made clear that if **anyone was found in possession of cough syrup or medicine containing Codeine Phosphate without valid documents, then the case will come under the stringent provisions of the NDPS Act.**

Central government notification dated 18-11-2009 stated that the percentage of a narcotic drug and psychotropic substance shall be inseparable and the whole contraband seized has to be taken into consideration that whether the same falls within the small quantity or commercial quantity or an intermediate quantity which was upheld in *Harjit Singh v. State of Punjab*, (2011) 4 SCC 441.

The Court also relied on *Heera Singh v. Union of India*, 2020 SCC Online SC 382 where it was held that in case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances.

The Court rejected the bail application stating that police seized 30 bottles (100 ml. each) of Onerex Cough syrup containing Codeine Phosphate (manufactured drugs) from the joint possession of applicant & Co-accused so provisions of Section 37 of the N.D.P.S. Act will come into force.

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NOTIFICATION

1. Government notifies Medical Termination of Pregnancy (Amendment) Rules, 2021: The Central Government notified Medical Termination of Pregnancy (Amendment) Rules, 2021 to amend the Medical Termination of Pregnancy Rules, 2003 on 12th Oct, 2021. Key amendments in the Medical Termination of Pregnancy Rules, 2003 are as follows:

- **Rule 3A** dealing with powers and functions of Medical Board : For the purposes of section 3,—
 - (a) the powers of the Medical Board shall be the following, namely:—
 - (i) to allow or deny termination of pregnancy beyond twenty–four weeks of gestation period under sub–section (2B) of the said section only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the foetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped;
 - (ii) co–opt other specialists in the Board and ask for any additional investigations if required, for deciding on the termination of pregnancy;
 - (b) the functions of the Medical Board shall be the following, namely :—
 - (i) to examine the woman and her reports, who may approach for medical termination of pregnancy;
 - (ii) provide the opinion of Medical Board in Form D with regard to the termination of pregnancy or rejection of request for termination within three days of receiving the request for medical termination of pregnancy;
 - (iii) to ensure that the termination procedure, when advised by the Medical Board, is carried out with all safety precautions along with appropriate counselling within five days of the receipt of the request for medical termination of pregnancy.
- **3B.** Women eligible for termination of pregnancy up to twenty–four weeks.— The following categories of women shall be considered eligible for termination of pregnancy for a period of up to twenty–four weeks, namely:—
 - (a) survivors of sexual assault or rape or incest;
 - (b) minors;
 - (c) change of marital status during the ongoing pregnancy (widowhood and divorce);
 - (d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];
 - (e) mentally ill women including mental retardation;
 - (f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and
 - (g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.”
- In **rule 4** of the said rules,— in clause (c) sub–clause (ii), for the words “twenty– weeks”, the words “twenty – four weeks” shall be substituted;
- **Rule 4 sub clause(ca)** is inserted. The provision provides the experience of Registered Medical Practitioner:

A Registered Medical Practitioner shall have the following experience and training for conducting termination of pregnancy upto nine weeks of gestation period by medical methods of abortion, namely:—

 - (i) experience at any hospital for a period of not less than three months in the practice of obstetrics and gynecology; or
 - (ii) has independently performed ten cases of pregnancy termination by medical methods of abortion under the supervision of a Registered Medical Practitioner in a hospital established or maintained, or a training institute approved for this purpose, by the Government.”¹

EVENTS

- The Trainee Judicial Officers came back from their Court Attachment on 11th October, 2021 for Institutional Training. This institutional training will continue online till November 18, 2021.
- Sh.Pradeep Mehta, Faculty Member, CJA gave a Webinar on “Inquiring Custodial Deaths: Law ‘n Procedure” on October 16, 2021 to the District Judiciary of Punjab, Haryana and UT Chandigarh.
- Sh.B.M.Lal, Faculty Member, CJA gave a Webinar on “Occupancy Tenants-Unraveling the Conundrum” on October 30, 2021 to the District Judiciary of Punjab, Haryana and UT Chandigarh.

¹ https://www.livelaw.in/pdf_upload/rules-mtp-402380.pdf