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FROM THE DESK OF CHIEF EDITOR

Judges are not engines of power. They are engines of Justice. In the journey of a judge, extraordinary situations come which need extraordinary handling. It is the roughs and toughs of this journey which make the path uneven. It is these situations which are really a challenge for a judge. One such situation arose in the matter of Dera Sacha Sauda Chief Gurmeet Ram Rahim. The matter was before the CBI Judge, Jagdeep Singh. It was August 25, 2017. Lacs of people had gathered near and around the District Courts, Panchkula. The order / judgment in the rape matters was to be pronounced. Emotions were high. The environment was surcharged. The air was filled with possibility of high magnitude violence. Sacha Sauda Chief was brought to the CBI Court. The Hon'ble High Court of Punjab and Haryana had directed to make every possible arrangement / effort to control the situation. The conviction in the two rape cases was announced. The violence took place. So many lives were lost. Property was damaged and destroyed. It was an ugly situation. The quantum of sentence was announced on August 28. The whole situation was given coverage on the television. People did see, what happened. I talked to the District Judge, Ms. Ritu Tagore. I was keen to visit District Court, Panchkula. Particularly, to meet the CBI Judge Jagdeep Singh and other companion Judicial Officers. The reason in my mind was that they had gone through a difficult situation. Therefore, I wanted to share my concern.

I am happy to record that I met the entire team on August 31. Spent good more than an hour with them. Talked to them. What they had gone through. I asked Jagdeep, what was crossing your mind when you were to pronounce the order. His response was spontaneous. The only concern was, before anything happens, I must pronounce the order. It was such a rare situation which demanded rare courage. Stressful situations should be handled with firmness. Judges do not surrender to a situation. They handle the situation. Effectively and firmly. Without fear or favour. Affection or ill-will. Caesar in his speech to his wife before he was assassinated says - 'Cowards die many times before their death. The valiant never taste of death but once'. It is this spirit of courage which has been demonstrated in the present situation. I told Jagdeep that you have done your duty. You have richly contributed in building up and strengthening the trust and confidence of the people in the Institution to which you all belong. It was such a situations which demanded positivity of mind. It was a war-like situation. You have come out as a decorated soldier of this Institution. It is the entire Judicial Fraternity which is now basking in the sunshine you have provided. I would urge the Judicial Fraternity to continue to illuminate the same courage. The same strength. The same sustenance. In War and in Peace, Justice must not be rationed. Laws must speak the same language. Justice is always violent to the party offending, for every man is innocent in his own eyes. Justice is truth-in-action.

Balram K. Gupta

Speech of Justice Madan B. Lokur at the Global Pound Conference held at Chandigarh Judicial Academy on 12th May, 2017

Hon'ble Mr Justice Misra, Hon'ble Mr. Justice Sikri, Hon'ble Chief Justice of the Punjab and Haryana High Court and all the Hon'ble Judges of High Courts present here today, dignitaries, mediators, trainers, distinguished participants, students, ladies and gentlemen.

It is a great pleasure being here once again in Chandigarh. It is a wonderful city and I am very glad to be here to participate in today's programme.

This programme has come at a very crucial stage in our justice delivery system. From the discussions that we have been having about justice delivery in the country over the last one year or so, all of us know that the system requires several reforms, whether it is in the area of civil justice delivery or in the area of criminal justice delivery. This is despite steps being taken at various levels by the Courts – by the Supreme Court, by the High Courts, by the Government of India and by NGOs, who are participating in helping out litigants in getting access to justice. Ultimately the discussion centres around two issues – namely, delays and costs. We have been discussing about huge delays such as cases pending for several years, which is thought to be pretty normal. The cost of litigation too has gone up dramatically – when I was a lawyer, the cost was still affordable but today it seems to have gone out of reach for many people. So when we discuss reforms, we should concentrate on these two issues of delays and costs.

What are the solutions proffered for expeditious and inexpensive justice delivery? One of the solutions that people tend to discuss is the appointment of more judges. This discussion originated from a report of the Law Commission which said that India has very few judges as compared to the population. I am not sure whether that theory is correct or applicable. A State may have a very large population but perhaps, it doesn't need so many judges. In Mizoram, if we had gone by the theory propounded by the Law Commission, we would need 60 judges in the State, which by the way, is the most peaceful State in the country. But there is not enough work for even 20 judges. Therefore, I am not sure if the theory of judge-population ratio is a good idea.

While there is talk of having more judges to speed up justice delivery and simultaneously reduce the cost for the litigant, we don't look at another side of having more judges – namely, the need for greater financial assistance from the Government and better infrastructure. As it is, the judiciary gets negligible funding – about 0.7% of the GDP – and yet, we do not discuss the necessity of having greater financial assistance and better facilities. Discussions on judicial reform have become somewhat limited over the years and have remained stagnant and stale on these issues. The time has now come to think out of the box. We need to look at different avenues and different solutions. Mere discussions on appointment of judges, infrastructure, delays and costs do not seem to be taking us anywhere.

One of the ways that we can think out of the box is by looking at some alternatives already available to us – Section 89 of the Code of Civil Procedure is one such alternative for civil justice; plea bargaining is an alternative available for criminal justice. Section 89 of the CPC gives us a variety of possibilities for improving our justice delivery system. It is crucial, so far as judicial reforms are concerned, to enhance the rule of law. Section 89 of the CPC persuades us to look at alternative dispute resolution mechanisms that are more appropriate to the litigant, to the litigation and to the culture of the people from where the litigation has originated. Litigants need choices and litigations need options. We cannot have a one-size-fits-all attitude. Section 89 is important because it gives a choice to the litigants, depending on the kind of litigation before the Court. This could vary from arbitration, to Lok Adalat, to judicial settlement to mediation. Lok Adalat has certainly caught the fancy of the people and it has existed for many years. It has been promoted

very actively by NALSA, especially with Justice Misra as its Chairperson. We are really going places by encouraging Lok Adalat in simple cases.

But we also need to look at mediation a little more seriously and closely as a viable alternative dispute resolution mechanism. Justice Sikri mentioned that the Senior Advocates Association was really the starting point – the match that lit the fire – for mediation. It has now been more than 10 years since that decision and since the first few mediation centres were established in Chennai, Bangalore and Delhi. We now need to think, as the theme of the conference suggests, about shaping the future of dispute resolution and improving access to justice. These go hand in hand. Litigation certainly does exist and will continue to exist, but we also need to look at the future of dispute resolution in the context of alternative methods and improving access to justice for the people of our country.

As one of the members of the Mediation and Conciliation Project Committee of the Supreme Court, I have had occasion to be a participant in several mediation related programmes. It can safely be said that today we are in a position where we have stabilized the number and content of mediation programmes in the country. We have stopped spreading ourselves too thin, but still have more than 100 trainers and are in the process of developing another set of more than 100 trainers. From January 2014 to March 2017, we have had about 300 programmes of different varieties – awareness programmes, refresher training programmes, advanced courses, mediation training programmes, referral judge training programmes and so on.

We are now at a cross road. At this stage, we need to sit back and introspect about whether we are taking the right steps and going in the right direction, or if there is something in the programmes in terms of content or in the manner of training. We need to assess whether there are any strengths we have developed over the years, and if so, what these are and how we can enhance and take advantage of them. So really, we need to audit our programmes to see whether they are proving useful to the public. We need to ensure that these programmes are being effectively carried out in various States across the country–not only in Tamil Nadu, Karnataka and Delhi, but in places like Punjab, Haryana, Jharkhand, Madhya Pradesh, Maharashtra, Telangana, Kerala, Andhra Pradesh and other places. We need to check whether we are doing as well as we think we are. We may say that in Maharashtra or Karnataka or Tamil Nadu, we have resolved 70,000 cases or that in Delhi we have resolved more than 1 lakh cases, but what is the nature of these cases? Is court annexed mediation really helping the justice delivery system and is it bringing access to justice to the common person? Has it had an impact on justice delivery as a whole? These are issues that we now need to debate and discuss.

This Global Pound Conference gives us the opportunity to think about these issues and about shaping the future of dispute resolution in our country. Over the next two days, there will be demonstrations on new techniques of obtaining feedback on various issues. Can we not use some of these techniques to evaluate and improve our own programmes? Can we not use technology for improving our programmes as well? For instance, one of the possibilities of encouraging mediation could be through online mediation on judicial websites. We speak about delivery of justice at the door step – resort to such technological innovations may well ensure this. Recently the Government of India launched a number of programmes on access to justice, including *pro bono* lawyering. One such programme, which is still in infancy but is an excellent initiative, is that of the *Nyaya Mitra*. Under this programme, paralegal volunteers speak to litigants and find out their problems and why their cases are getting delayed. This too is justice at the door step. These *Nyaya Mitras* will be able to help litigants understand what the justice delivery system is all about and how they can access it. It will also assist in giving a feedback to the Courts and to decision-makers within the judiciary, Parliament or the executive on how to improve justice

delivery. If we use the services of these *Nyaya Mitras* and of *pro bono* lawyers and combine this with existing methods of alternative dispute resolution including arbitration, mediation and Lok Adalats, the discussion on delayed justice could vanish.

This conference organized by the Punjab & Haryana High Court is going to be critical for the future of justice delivery, alternative dispute resolution and access to justice in this country. We have the experiences of people from different States, different experiences, different cultural backgrounds, different walks of life and different systems – some from foreign countries, and some from local institutions. We have this huge gathering of participants and with the assistance and cooperation of all the participants we can surely shape the future of dispute resolution in keeping with the theme of the conference and thereby also improve access to justice.

There is one more topic that I would like to highlight, which is that it is not only mediation between individuals or corporations that we should consider – we must also look at a larger and broader perspective. When I was travelling in Nagaland, near a place called Wokha, the Registrar of the High Court, who knew my interest in mediation, suggested that we take a small detour to see a pillar constructed there. On this pillar, it was engraved that two tribes in Nagaland who had been in conflict for about 60 years, during which time there was a lot of bloodshed, had settled their disputes through the intervention of the Church and society, as mediators. Therefore, it cannot be said that major conflicts are intractable – even they can be resolved.

I would also like to mention here, another very important mediation that took place in Chennai. Mr. Shriram Panchu, a mediator *par excellence* who is with us today, resolved a dispute between Standard Motors and its workmen. It was a wonderful effort which resolved a conflict that had been pending for many years with many people involved. Mr. Niranjan Bhatt another excellent mediator who has put in pioneering efforts is also present today. Recently he was appointed as a mediator in a very acrimonious matrimonial dispute. The parties were from Maharashtra and Gujarat but despite the best efforts of Mr. Niranjan Bhatt, the dispute between the parties could not be resolved. When the case came up before our Court a couple of days ago, both the lawyers, without it being put to them, stated that Mr. Niranjan Bhatt had spend about 70 hours trying to facilitate the resolution of the dispute and had put in great effort and that he deserved to be adequately remunerated. This is the kind of feeling that litigants have when a mediator has done his job seriously. It could be a matrimonial dispute or a dispute between labour and management such as the one Mr. Sriram Panchu resolved, or it could even be a dispute between two tribes as in Nagaland. I would also like to mention that Kerala too has had some wonderful success in the settlement of large disputes. I have read in the newspapers that a couple of years ago, a prolonged strike by nurses in all hospitals was resolved through mediation.

We need to see beyond what we have looked at in the last decade or so and recognize the need to find amicable solutions to conflicts. One view which I fully endorse is that mediation is the best possible way of amicable resolution. Therefore this conference has come at a significant time and with the right theme. I would appeal to all of you to put in your best efforts in this endeavour. I know that you have already been putting considerable effort – I have been in touch with almost all the States in the country to find out how mediation is progressing and I know it is doing very well. It has been a long journey of more than 10 years, but we are now at a stage where it can and must take off. So let us join together and ensure that this happens. I am sure we will succeed.

I would like to thank Punjab & Haryana High Court and all others who have come from different parts of the country, including some mediators from Assam who have taken two days to come here - this shows their commitment. It has been wonderful to meet with you here and all the best for a successful conference.

LATEST CASES : FAMILY LAW

"There is no warrant to import the concept of conclusiveness of divorce on the utterance of 'Talaq' thrice in interpreting the scope of jurisdiction of this Court under Art. 136. It is not the number of times that a finding has been reiterated that matters. What really matters is whether the finding is manifestly an unreasonable and unjust one in the contest of evidence on the record."

M.P. Thakkar, J. in *Indra Kaur* v. *Sheo Lal Kapoor,* (1988) 2 SCC 488

Krishna Veni Nagam vs. Harish Nagam : Transfer Petition (Civil) No. 1912 of 2014: (2017) 4 SCC 150 – Certain Guidelines with a view to enhance access to justice consistent with Article 39A – The present case pertains to a transfer petition filed by wife seeking the transfer of divorce case filed by her husband alleging that she cannot undertake long journey and contest the proceedings at Jabalpur by neglecting her minor child. Following which the Supreme Court Bench considered the question, **whether an order can be passed so as to provide a better alternative to each individual being required to move Supreme Court.** The Apex Court in answering the question and **in order to enhance access to justice consistent with Article 39A of the Constitution** has given **Certain Guidelines**:

i) **Legal Aid Committee of every district ought to make available** selected panel of advocates whose discipline and quality can be suitably regulated and who are ready to provide legal aid at a specified fee.

ii) Such **panels** ought **to be notified on the websites** of the District Legal Services Authorities/State Legal Services Authorities /National Legal Services Authority. **Every district court must have at least one e-mail ID.**

iii) Administrative instructions for directions can be issued to permit the litigants to access the court, especially when litigant is located outside the local jurisdiction of the Court. A designated officer/manager of a district court may suitably respond to such e-mail in the manner permitted as per the administrative instructions.

iv) Similarly, a manager/ information officer in every district court may be accessible on a notified telephone during notified hours as per the instructions.

Further, the Apex Court has also **Held that appropriate available technology of video conferencing should be used where both the parties have equal difficulty and there is no place which is convenient to both the parties. However,** in ***Santhini* vs. *Vijaya Venketesh* – Transfer Petition (Civil) No. 422 of 2017 –** A Bench comprising Justice Kurian Joseph and Justice R. Banumathi has requested the Chief Justice of India to expeditiously constitute a Bench for reconsideration of the decision in the case of *Krishna Veni Nagam* vs. *Harish Nagam* **observing that** the Court in *Krishna Veni Nagam* was not furnished with the required information, before passing the order. **Further**, while referring to various provisions under the Family Courts Act, Hindu Marriage Act, 1955 and Order XXXIIA of the Code of Civil Procedure raised a question doubting that how under video conferencing, confidence and confidentiality will be safeguarded and protected.

Amardeep Singh vs. Harveen Kaur : Civil Appeal No. 11158 of 2017 (arising out of Special Leave Petition (Civil) No. 20184 of 2017) : MANU/SC/1134/2017 – Six Months waiting priod in Section 13B(2) of Hindu Marriage Act for divorce by mutual consent not mandatory but discretionary – The question before the Court was that can a waiver of the period of six months for the

second motion be done away with- on the ground that parties have been living separately for the last more than eight years and there is no possibility of their re-union? The parties in the present case had contended that any delay will affect the chances of their resettlement. Therefore, the waiting period of six months period should be waived off. The Apex Court **held**, where **the Court** dealing with the matter is satisfied that a case is made out to **waive the statutory period under Section 13B(2)**, it **can do so** after **considering the following :** i) in addition to the statutory period of one year under Section 13B(1) of separation of parties is already over before the first motion itself; ii) all efforts for mediation/conciliation including efforts in terms of Order XXXIIA Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts; **iii)** the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties; **iv)** the waiting period will only prolong their agony. **Further**, if the above conditions are satisfied the waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. **It will be the discretion of the concerned Court to exercise its discretion in the facts and circumstances of each case** where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation. The Court **further held**, that in conducting such proceedings, the Court can also **use the medium of video conferencing and also permit genuine representation of the parties through close relations** such as parents or siblings **where the parties are unable to appear in person** for any just and valid reason as may satisfy the Court, to advance the interest of justice. It is noteworthy that a similar view of allowing parties to represent themselves through close relations on just and valid reasons has already been taken by Hon'ble Punjab and Haryana High Court in *Suraj Kumar Verma* v. *Gunita Verma,* Civil Revision No 3648 of 2007 (15.10.2007) and this was again retreated in *Navdeep Kaur* v. *Maninder Singh Ahluwalia*, FAO No. M-309 of 2009, Decided on 2.3.2010.

Shayara Bano vs. Union of India & Ors. : 2017 (9) SCALE 178 – Triple Talaq unconstitutional and not integral to religious practice – In one of its finest and iconic judgments the Supreme Court with 3:2 majority declared the practice of Triple Talaq also known as *Talaq-e-Biddat* as unconstitutional. The Majority view said that merely because a practice has continued for long, that by itself cannot make it valid if it has been expressly declared to be impermissible. Further, the whole purpose of the 1937 Act was to declare Shariat as the rule of decision and to discontinue anti-Shariat practices with respect to subjects enumerated in Section 2 which include talaq. Therefore, in any case, **after the introduction of the 1937 Act, no practice against the tenets of Quran is permissible.** Hence, there cannot be any Constitutional protection to such practice. Further held that **what is bad in theology was once good in law but after Shariat has been declared as the personal law, what is Quranically wrong cannot be legally right**. The majority also said that the Apex Court previously in ***Shamim Ara v. State of UP and Another,* (2002) 7 SCC518** has already held that triple talaq lacks legal sanctity. Therefore, in terms of Article 141, *Shamim Ara* is the law that is applicable in India. However, the Minority view held that the Court should exercise its discretion to issue appropriate directions under Article 142 of the Constitution and direct the Union of India to consider appropriate legislation, particularly with reference to 'talaq-e-biddat'.

LATEST CASES: CIVIL

"The Civil Procedure Code is really the rules of Natural Justice which are set out in great and elaborate detail. Its purpose is to enable both parties to get a hearing."

Markandey Katju, J. in Sumtibai vs. Paras Finance Co., (2007) 10 SCC 82

Prem Prakash vs. Santosh Kumar Jain & Sons (HUF) & Another: 2017 (10) SCALE 428 (SC) : Burden of proving Sub-Letting is on the Landlord but if the Landlord proves that the Sub-Tenant is in Exclusive Possession of the Suit Premises, then the onus is Shifted to the Tenant to Prove that it was not a Case of Sub-Letting – The learned single Judge of the High Court allowed the eviction petition filed by the original owner-Respondent No. 1 by setting aside the judgments and orders passed by the Courts below. The petitioner had challenged the final judgment and order passed by the High Court of Delhi before the Apex Court. The original owner-respondent No. 1 had proved beyond doubt that the property is in exclusive possession of the sub-tenant and the appellant had not been able to deny the claim of sub-tenancy in favour of Respondent No. 2. The absence of evidence and failure to discharge the onus lay heavy on appellant and there could be no presumption other than that the suit premises had been sublet and parted with possession by the appellant to the Respondent No. 2. It has been observed by the apex Court that it is well settled that the burden of proving sub-letting is on the landlord but if the landlord proves that the sub-tenant is in exclusive possession of the suit premises, and then the onus is shifted to the tenant to prove that it was not a case of sub-letting. It has been further held that it is well settled that the burden of proving sub-letting is on the landlord but if the landlord proves that the sub-tenant is in exclusive possession of the suit premises, and then the onus is shifted to the tenant to prove that it was not a case of sub-letting. Sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. The Apex Court upheld the judgment passed by High Court and laid down that it would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case.

Canara Bank represented by its Deputy General Manager vs. C.S. Shyam: 2017 (11) SCALE 1 (SC) : Service Details of Employees fall within the ambit of 'Personal Information' under Section 8(1)(J) of the Right to Information Act - The Supreme Court has held by allowing the appeal filed by Canara Bank Ltd., against the judgment of the High Court that service details of employees fall within the ambit of 'personal information' under Section 8(1)(j) of the Right to Information Act, and that such details cannot be furnished unless any nexus with larger public interest is shown. In this case an employee of the bank had sought information regarding transfer and postings of entire clerical staff during the period from 01.01.2002 to 31.07.2006. The Public Information Officer declined to furnish information stating it was personal information exempt under Sec.8(1)(j). On appeal, the Chief Information Commissioner (CIC) directed the Bank to furnish the information as sought for. Against the order of the CIC, the Bank approached the High Court. The Single Bench and the Division Bench concurrently held against the Bank, dismissing the writ petition. Reiterating Girish Ramchandra Deshpande vs. Central Information Commissioner & Ors., (2013) 1 SCC 212 and R.K. Jain vs. Union of India & Anr., (2013) 14 SCC 794, the Court held that the information sought for was exempted under RTI Act. It was held that in our considered opinion that, firstly, the information sought by respondent No.1 of individual employees working in the Bank was personal in nature; secondly, it was exempted from being disclosed under Section 8(j) of the Act and lastly, neither respondent No.1 disclosed any public interest much less larger public interest involved in seeking such information of

the employee and nor any finding was recorded by the Central Information Commission and the High Court as to the involvement of any larger public interest in supplying such information to respondent No.1.

Mihir Kumar Hazara Choudhury vs. Life Insurance Corpn. & Ors. (11.09.2017 - SC): MANU/SC/1133/2017 – Departmental Proceedings were conducted strictly in accordance with law. The Court cannot sit over the findings of the enquiry officer and find fault in it – It has been held by the Hon'ble Supreme Court that the departmental proceedings were conducted strictly in accordance with law by following the principle of natural justice in which the appellant duly participated. The appellant neither set up any defense nor denied the factum of charges, yet the respondent proved the charges with the aid of relevant evidence, which found acceptance by the Division Bench and this Court too. As an Appellate Court, neither court can sit over the findings of the Enquiry Officer and find fault in it nor can court re-appreciate the evidence of witnesses examined in departmental enquiry.

Bharvagi Constructions vs. Kothakappu Muthayam : 2017 (11) SCALE 169 : The Award of Lok Adalat can be challenged only by filing Writ Petition under Article 226/227 of the Constitution of India. The remedy of Civil Suit is not maintainable – The Supreme Court while upholding the order of rejection of plaint, held that the award of Lok Adalat can be challenged only by filing writ petition under Article 226/227 of the Constitution of India, and that civil suit seeking such remedy was not maintainable. The suit in question was filed seeking to set aside a settlement award of Lok Adalat passed in an earlier suit filed for specific performance of agreement of sale. The plaintiffs alleged that the award was obtained through fraud and misrepresentation. The trial Court rejected the plaint invoking powers under Order 7 Rule 11(d), which enables the Court to reject the plaint if the suit appears to be barred by any law. Reiterating the law laid down in State of Punjab v. Jalour Singh and others (2008) 2 SCC 660, the only remedy to challenge an award of Lok Adalat was writ petition under Article 226/227 of the Constitution of India. Relying on the said dictum, the plaint was rejected. However, the High Court set aside the order of rejection, and restored the suit and against the order of High Court, the defendants had approached the Supreme Court.

Bijoy Sinha Roy (D) by L.R. vs. Biswanath Das (30.08.2017-SC): MANU/SC/1146/2017 – Section 89 of the Code of Civil Procedure applicable to Consumer FORA–The Court referred to Section 89 of the Code of Civil Procedure, which lays down the mechanism for settlement of disputes outside the Court. "Even though strictly speaking, the said provision is applicable only to Civil Courts, there is no reason to exclude its applicability to Consumer Fora having regard to the object of the said provision and the object of the Consumer protection law. Accordingly, we are of the view that the said provision ought to be duly invoked by the Consumer Fora", further observed that the NCDRC to issue appropriate directions in this regard.

J. Vasanthi & Ors. vs. N. Ramani Kanthammal (D) Rep. by LRs : 2017 (8) SCALE 632 – Payment of the Court Fee is Mixed Question of Fact and Law and that has to be decided on the Basis of Evidence – The Supreme Court has observed that proper valuation of the suit property stands on a different footing than applicability of a particular provision of an Act under which court fee is payable and the defendant can raise the plea of jurisdiction in the latter case. The High Court, in the instant case, had upheld the trial court order wherein it held that the court fee is required to be paid on the sale consideration mentioned in sale deeds. The High Court also held that that payment of the court fee is mixed question of fact and law and that has to be decided on the basis of evidence. Reiterating the dictum in Rathnavarmaraja vs. Vimla, wherein it held that it was to be determined on the basis of evidence and is a matter for the benefit of the revenue and the state and not to arm a contesting party with a weapon of defence to obstruct the trial of an action, is not applicable in this case, as the controversy therein had arisen with regard to proper valuation, and not about applicability of particular provision of the court fee Act.

Narendra and Ors. vs. The State of Uttar Pradesh and Ors. (11.09.2017-SC) : MANU/SC/1205/2017 : Fairness Requires that all those Similarly Situated are Treated Similarly–In this case there were different categories of persons who were awarded the compensation at the rate of Rs.297/- per square yards by the High Court. The petitioners who were similar situated persons only claimed enhancement to Rs. 115/- per square yards and they were not given Rs.297/- per square. The Supreme Court observed that it is settled law that the compensation under the Act, 1894 had to be fair and just. Fairness requires that all those similarly situated are treated.

LATEST CASES: CRIMINAL

" …courts self-criminate themselves if they keep the gates ajar for culprits to flee justice under the guise of interpretative enlargement of golden rules of criminal jurisprudence."

V.R. Krishna Iyer, J. in Nandini Satpathy vs. P.L. Dani, (1978) 2 SCC 424

Rakesh Kumar Paul vs. State of Assam : 2017 (9) SCALE 24 : Law Finder Doc Id # 889381 (SC) – S.167 Cr.P.C. – (A.) The accused is arrested. The challan not put up within the statutory period. The court may grant default bail on oral or written application. However, oral request should not be made a Rule. It should also not be understood to suggest that procedures must always be given a go-by. This is certainly not the intention. If an accused files an application for grant of default bail and is willing to furnish bail, then he is deemed to have exercised his right to bail and this right cannot be defeated by filing the charge-sheet thereafter. If the offence is punishable with death or life imprisonment, or with a minimum sentence of 10 years, then section 167(2)(a)(i) will apply and the accused can apply for 'default bail' only if the investigating agency does not file charge-sheet within 90 days. However, in all cases where the minimum sentence is less than 10 years, but the maximum sentence is not death or life imprisonment, then Section 167(2)(a)(ii) will apply and the accused will be entitled to grant of default bail after 60 days in case charge-sheet is not filed.

State of Goa vs. Jose Maria Albert Vales : 2017 (9) SCALE 527: Law Finder Doc Id # 890581 (SC) – S.340, 341 and 343 (1) Cr.P.C, S.193 and 195 IPC – Held that a Trial Magistrate, on receipt of a complaint under Section 340 and/or Section 341 of the Code, if there is a preliminary inquiry and adequate materials in support of the considerations impelling action under the above provisions are available, would be required to treat such complaint to constitute a case, as if instituted on police report and proceed in accordance with law. However, in absence of any preliminary inquiry or adequate materials, it would be open for the Trial Magistrate, if he genuinely feels it necessary, in the interest of justice and to avoid unmerited prosecution to embark on a summary inquiry to collect further materials and then decide the future course of action as per law. In both the eventualities, the Trial Magistrate has to be cautious, circumspect, rational, objective and further informed with the overwhelming caveat that the offence alleged is one affecting the administration of justice, requiring a responsible, uncompromising and committed approach to the issue referred to him for inquiry and trial, as the case may be. In no case, however, in the teeth of Section 343(1), the procedure prescribed for cases instituted otherwise than on police report would either be relevant or applicable qua the complaints under Section 340 and/or 341 of the Cr.P.C.

State through Central Bureau of Investigation vs. Dr. Anup Kumar Srivastava: 2017 (8) SCALE 516: Law Finder Doc Id # 886532 (SC) – S.7, 13(2) and 13(1)(d) - what constitutes **illegal gratification** is a question of law; whether on the evidence that crime has been committed is a question of fact. If, therefore, the evidence regarding the demand and acceptance of a bribe leaves room for doubt and does not displace wholly, the presumption of innocence, the charge cannot be said to have been established. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder. Hence, the proof of demand has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the PC Act.

N. Harihara Krishnan vs. J. Thomas: 2017 (10) SCALE 417 : Law Finder Doc Id # 893969 (SC) – The scheme of the prosecution in punishing under Section 138 of The Negotiable Instrument Act, is different from the scheme of the Cr.P.C. Section 138 creates an offence and prescribes punishment. No procedure for the investigation of the offence is contemplated. The prosecution is initiated on the basis of a written complaint made by the payee of a cheque. Obviously such complaints must contain the factual allegations constituting each of the ingredients of the offence under

Section 138. Those ingredients are: (1) that a person drew a cheque on an account maintained by him with the banker; (2) that such a cheque when presented to the bank is returned by the bank unpaid; (3) that such a cheque was presented to the bank within a period of six months from the date it was drawn or within the period of its validity whichever is earlier; (4) that the payee demanded in writing from the drawer of the cheque the payment of the amount of money due under the cheque to payee; and (5) such a notice of payment is made within a period of 30 days from the date of the receipt of the information by the payee from the bank regarding the return of the cheque as unpaid. It is obvious from the scheme of Section 138 that each one of the ingredients flows from a document which evidences the existence of such an ingredient. The only other ingredient which is required to be proved to establish the commission of an offence under Section 138 is that inspite of the demand notice referred to above, the drawer of the cheque failed to make the payment within a period of 15 days from the date of the receipt of the demand. A fact which the complainant can only assert but not prove, the burden would essentially be on the drawer of the cheque to prove that he had in fact made the payment pursuant to the demand. Held that the offence under Section 138 is person specific. Therefore, the Parliament declared u/s 142 that the provisions dealing with taking cognizance contained in the Cr.P.C. should give way to the procedure prescribed under Section 142. Hence the opening of non-obstante clause u/s 142. It must also be remembered that Section 142 does not either contemplate a report to the police or authorise the Court taking cognizance to direct the police to investigate into the complaint.

Manish Tandon vs. Ankita Bhutam : 2017 (3) RCR (Civil) 955 : MANU/PH/0535/2017 (P&H): Law Finder Doc Id # 883803 – S.125 Cr.P.C. – application by wife under Section 125 Cr.P.C. dismissed as withdrawn – 2nd application under section 125 not barred – a right to maintenance is a recurring cause of action – further held : (1) The earlier petition filed was not decided on merits – It cannot be denied that once there is no adjudication on the merits of a case, the 2nd application would not necessarily be barred. (2) S. 125 Cr.P.C. is admittedly a piece of beneficial legislation – Therefore, a restricted or a hyper technical view in such matters is not to be countenanced.

Anand Singh vs. State : 2017 (3) RCR (Criminal) 870 : Law Finder Doc Id # 826749 (Delhi) (DB) – S.311 Cr.P.C. – Role of court – The courts have to take a participatory roll in a trial – They are not expected to be tape recorders to record whatever is being stated by the witnesses – S. 311 of the Cr.P.C. and S.163 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials while playing an active role in the evidence collecting process – They have to monitor the proceedings in aid of Justice in a manner that something which is not relevant, is not unnecessarily brought into record.

Tarandeep Singh etc. vs. State of Punjab & Ors: CRR-1980-2016 (O&M) : DoD 08.09.2017 (P&H) – In this case, after the presentation of the challan under the sections 307/406/498-A/ 342/ 506/ 120-B IPC, an application under section 294 Cr.P.C. was preferred by the petitioners herein before the Additional Sessions Judge stating that contents of the 3 Compact Discs, walk-in-sheet and bills issued by a restaurant Barbecue Nation in Sector 26 Chandigarh dated 13.01.2014, be put for admission or denial to the complainant. It was argued by learned counsel for the petitioners - accused that the contents of the CD, bills were material to be looked into before framing of the charges under section 307 IPC. Though no reply was filed to the said application, it was contested by counsel for the complainant and the Additional Public Prosecutor for the State that the application was not maintainable at this stage since charges had not been framed. The Learned Additional Sessions Judge by the impugned order dated 29.03.2016 dismissed the application holding that the accused could not lead defence evidence before framing of the charges. Aggrieved against the said order the instant revision petition has been preferred. The moot question posed before Hon'ble court was whether an application under Section 294 Cr.P.C is maintainable before charges have been framed at the instance of the accused/ defendant? Held – The accused facing trial has no right to adduce any evidence at the stage of framing of charges and it is obligated upon the trial Court to frame charges on the basis of evidence as produced after investigation by the prosecution. Further held – In the instant case, the said application has been moved even before the charges have been framed, which is not sustainable. Therefore, in view of the law laid down, the application for leading evidence by invoking Section 294 Cr.P.C. is not maintainable before the framing of charges, hence there is no infirmity in the order passed by the trial Court. Revision petition dismissed.

FIRE CRACKERS – SUPREME COURT ISSUES DIRECTIONS

FIRE CRACKERS – A Graded Regulation Necessary Which Would Eventually Result In Prohibition:SC:Issues Modified Directions

in Arjun Gopal and Ors. versus Union of India and Ors.: MANU/SC/1141/2017 : I.A. No. 52448 of 2017 in Writ Petition (Civil) No. 728 of 2015: DoD September 12, 2017:

Health of the people must take precedence over any commercial or other interest of the applicant or any of the permanent licensees, Continuing the suspension of licences might be too radical a step to take for the present – a graded and balanced approach is necessary that will reduce and gradually eliminate air pollution. A two judge Bench of the Supreme Court – Justice Madan B. Lokur and Justice Deepak Gupta issued modified directions on a plea seeking directions to ban the use of **fireworks**, **sparklers** and **minor explosives in any form, during festivals or otherwise in Delhi and NCR.**

Directions :

(1) The directions issued by this Court in Sadar Bazar Fire Works (Pucca Shop) Association shall stand partially modified to the extent that they are not in conformity with the Explosives Rules which shall be implemented in full by the concerned authorities. Safety from fire hazards is one of our concerns in this regard.

(2) Specifically, Rule 15 relating to marking on explosives and packages and Rule 84 relating to temporary shops for possession and sale of fireworks during festivals of the Explosives Rules shall be strictly enforced. This should not be construed to mean that the other Rules need not be enforced – all Rules should be enforced. But if the fireworks do not conform to the requirements of Rules 15 and 84, they cannot be sold in the NCR, including Delhi and this prohibition is absolute.

(3) The directions issued and restrictions imposed in the order passed by this Court on 18th July, 2005 in Noise Pollution (V) shall continue to be in force.

(4) The concerned police authorities and the District Magistrates will ensure that fireworks are not burst in silence zones that is, an area at least 100 meters away from hospitals, nursing homes, primary and district health-care centres, educational institutions, courts, religious places or any other area that may be declared as a silence zone by the concerned authorities.

(5) The Delhi Police is directed to reduce the grant of temporary licences by about 50% of the number of licences granted in 2016. The number of temporary licences should be capped at 500. Similarly, the States in the NCR are restrained from granting more than 50% of the number of temporary licences granted in 2016. The area of distribution of the temporary licences is entirely for the authorities to decide.

(6) The Union of India will ensure strict compliance with the Notification GSR No. 64(E) dated 27th January, 1992 regarding the ban on import of fireworks. The Union of India is at liberty to update and revise this notification in view of the passage of time and further knowledge gained over the last 25 years and issue a fresh notification, if necessary.

(7) The Department of Education of the Government of NCT of Delhi and the corresponding Department in other States in the NCR shall immediately formulate a plan of action, in not more than 15 days, to reach out to children in all the schools through the school staff, volunteers and NGOs to sensitize and educate school children on the health hazards and ill-effects of breathing polluted air, including air that is polluted due to fireworks. School children should be encouraged to reduce, if not eliminate, the bursting of fireworks as a part of any festivities.

(8) The Government of NCT of Delhi and other States in the NCR may consider interacting with established medical institutions for issuing advisories cautioning people about the health hazards of bursting fireworks.

(9) The interim direction issued by this Court on 31st July, 2017 prohibiting the use of compounds of antimony, lithium, mercury,

arsenic and lead in the manufacture of fireworks is made absolute. In addition, the use of strontium chromate in the manufacture of fireworks is prohibited.

(10) Fireworks containing aluminium, sulphur, potassium and barium may be sold in Delhi and in the NCR, provided the composition already approved by PESO is maintained. It is the responsibility of PESO to ensure compliance of the standards it has formulated.

(11) Since there are enough fireworks available for sale in Delhi and the NCR, the transport of fireworks into Delhi and the NCR from outside the region is prohibited and the concerned law enforcement authorities will ensure that there is no further entry of fireworks into Delhi and the NCR till further orders. In our opinion, even 50,00,000 kg. of fireworks is far more than enough for Dussehra and Diwali in 2017. The permanent licensees are at liberty to exhaust their existing stock of fireworks in Delhi and the NCR and, if that is not possible, take measures to transport the stocks outside Delhi and the NCR.

(12) The suspension of permanent licences as directed by the order dated 11th November, 2016 is lifted for the time being. This might require a review after Diwali depending on the ambient air quality post Diwali. However, it is made explicit that the sale of fireworks by the permanent licensees must conform to the directions given above and must be fully in compliance with the Explosives Rules. We were informed that the permanent licences were issued by PESO and therefore the responsibility is on PESO to ensure compliance.

(13) While lifting the suspension on the permanent licences already granted, we put these licensees on notice for Dussehra and Diwali in 2018 that they will be permitted to possess and sell only 50% of the quantity permitted in 2017 and that this will substantially reduce over the next couple of years. The permanent licensees are at liberty to file objections to this proposed direction within 30 days from today and thereafter the objections if any will be heard and decided. If no objections are filed, this direction will become absolute without any further reference to any licensee.

(14) Since there is a lack of clarity on the safety limits of various metals and constituents used in fireworks, a research study must be jointly carried out by the CPCB and the FDRC laying down appropriate standards for ambient air quality in relation to the bursting of fireworks and the release of their constituents in the air. While Schedule VII of the Environment (Protection) Rules, 1986 does deal with several metals, but as we have seen there are several other metals or constituents of fireworks that have not been studied by the CPCB and no standards have been laid down with regard to the concentration of these metals or constituents in the ambient air. The CPCB has assured us that it will complete the exercise by 15th September, 2017 but keeping in mind its track record subsequent to the order dated 11th November, 2016 this does not seem possible. Therefore, we grant time to the CPCB to come out with definite standards on or before 30th September, 2017.

(15) In any event, a research study also needs to be conducted on the impact of bursting fireworks during Dussehra and Diwali on the health of the people. We, therefore, appoint a Committee to be chaired by the Chairperson of the CPCB and consisting of officers at the appropriate level from the National Physical Laboratory, Delhi, the Defence Institute of Physiology and Allied Sciences, Timarpur, Delhi, the Indian Institute of Technology-Kanpur, scientists from the State Pollution Control Boards, the Fire Development and Research Centre, Sivakasi and Nagpur and the National Environment Engineering Research Institute (NEERI) nominated by the Chairperson of the CPCB to submit a report in this regard preferably on or before 31st December, 2017.

(16) Keeping in mind the adverse effects of air pollution, the human right to breathe clean air and the human right to health, the Central Government and other authorities should consider encouraging display fireworks through community participation rather than individual bursting of fireworks.

EVENTS OF THE MONTH

1. Punjab State Legal Services Authority organized a **workshop on : "Bridging the gap in Access to Justice : Role of Law Students and Judicial Officers"** on September 02, 2017 at Chandigarh Judicial Academy. All Secretaries, District Legal Services Authority, State of Punjab, Law Students and some Panel Advocates participated in the said workshop. HMJ S.S. Saron, Chairman, PSLSA was the Chief Guest. The Book : Courtroom Language and Common Man by Dr. Rajneesh was also released on this occasion.

2. Chandigarh Judicial Academy organized **Five Days Training Programme for District Attorneys, Deputy District Attorneys, Assistant District Attorneys (Assistant Public Prosecutors / Public Prosecutors) of Haryana from September 11-15, 2017.** This Training Programme was attended by 25 officers. The training programme coverd : Role of Public Prosecutors in the Dispensation of Criminal Justice, Maintenance of Cordiality between Police, Judiciary and District Administration, Custody of Accused during Investigation : Role of Prosecutor, Grant of Regular / Anticipatory Bail: Law & Procedure, Forensic Medicine and Medical Toxicology-I,II, Object and Scope of Scrutiny of Police Reports by Prosecutor-I,2, Sentencing in Criminal Trials: Law & Procedure, Fire Arms & Ballistic Comparison Report-I,II, Victims Rights in Criminal Justice System of India, Important Factors and Procedural Aspects for Effective Trials in NDPS Cases-I,II, Cyber Crimes a Challenge in today's World, Important Procedural Aspects of Electronic Evidence, Sanction to Prosecute Public Servants-Law & Procedure, Theft of Electricity – Conduct of Trial under Electricity Act, Hanling of Hostile Witness by Prosecutor, Questioined Documents & Handwriting Comparison-I, II, POCSO Act : Its Ramification in Trials, Role of Forensic Science in Criminal Justice System, Trial of Juvenile – Role of Prosecutor, DNA Evidence Collection and Admissibility-I, II. The different sessions were taken by the Resource Persons : Dr. Balram K. Gupta, Director (Academics), CJA, Inderjeet Mehta, Director (Admn.), CJA, Pradeep Mehta, H.S. Bhangoo, Ms. Mandeep Pannu, Faculty Members, Dr. Krishan Viz, HoD Forensic, Adesh Medical College, S.S. Baisoya, Senior Scientist, CFSL, Praveen Sinha, I.G., Cyber Crimes, Punjab, Y.P. Jain, Handwriting and Finger Print Export, Dr. Sanjeev Kumar, Deputy Director, CFSL.

3. **Refresher-cum-Orientation Course** for Civil Judges-cum-Judicial Magistrates of Punjab and Haryana with regard to important Criminal Matters was organised on 16.09.2017. The basic object of the Refresher Court was to sensitize the Judicial Officers with regard to important Criminal Matters. This one day programme covered: Law on Test Identification Parade Conduct and Relevance, Sentencing – Law and Procedural Aspects-I, II, Practical Difficulties in Admissibility and Appreciation of Electronic Evidence. A visit to the Paperless Court - A Guided Tour and Mock Demonstration was also organized. 56 Civil Judges participated in this programme.

4. Sh. Rattan Deep Singh, PCS (JB) was directed by the Hon'ble Punjab and Haryana High Court to report for **Three Months Capsule Course** on 18.09.2017. Accordingly, the Capsule Course was structured and commenced w.e.f. September 18, 2017. Presently, the Institutional Training is going on which would conclude on the completion of three months i.e. December 17, 2017.

FORTHCOMING EVENTS

1. **Refresher-cum-Orientation Course** for Civil Judges-cum-Judicial Magistrates of Punjab and Haryana, to sensitize them with regard to Criminal Matters, Mediation and use of Dragon Software is scheduled on 07.10.2017.

2. **One Day Programme** to impart training to the Ministerial Staff of District Courts has been tentatively scheduled for October 13, 2017.

3. In accrodance with the Memorandum of Understanding, Training and Capacity Building Programme for **Bangladesh Judicial Officers** has been planned from October 16-24, 2017. 40 Judicial Officers from Bangladesh will be coming to Chandigarh Judicial Academy on October 16. Various aspects relating to Criminal, Civil, Contracts, IPR, ADR and Plea-Bargaining, Crime Against Women, Protection of Child Rights, Environmental Laws and Role of District Judiciary in Protection of Forest, Widelife and Bio-diversity will be covered. Ministry of External Affairs, Government of India has agreed to sponsor the programme and reimburse the expenses.