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Guidelines for Streamlining Death Penalty Procedures

The Hon'ble Supreme Court of India has recently delivered a groundbreaking judgment that redefines the administration of death penalty executions, emphasizing the importance of swift action to uphold the rights of death row convicts. In its verdict in ***State of Maharashtra & Ors vs Pradeep Yashwant and Anr***,2024 INSC 947 pronounced on December 9, 2024, the Court firmly held that once a mercy petition is rejected by the President or Governor, the convict must not be subjected to prolonged uncertainty due to delays in executing the death warrant. Highlighting the need for procedural efficiency, the Court directed all States and Union Territories to set up dedicated cells to ensure prompt processing of mercy petitions within the timelines prescribed by law. Additionally, it mandated Sessions Courts to actively monitor pending appeals, review or curative petitions, or mercy pleas to guarantee the timely issuance of execution warrants, thus marking a pivotal step towards ensuring justice is both fair and prompt. The directions are as follows:

Directions to State Governments and Union Territories

1. **Dedicated Cells for Mercy Petitions**
    - State Governments and Union Territories must establish dedicated cells within their Home or Prison Departments to handle mercy petitions. These cells should promptly process mercy petitions within the prescribed timeframe.
    - An officer-in-charge of the dedicated cell shall be nominated by designation, and the contact details will be shared with all prisons.
2. **Attachment of Judiciary Officials**
    - An official from the Law and Judiciary or Justice Department will be attached to the dedicated cell.
3. **Information Sharing and Documentation**
    - Prison authorities must immediately forward mercy petitions to the dedicated cell and call for information from police stations and investigation agencies, including details about the convict's antecedents, family, economic condition, incarceration period and relevant legal documents.
    - Jail authorities must promptly forward various documents, including police reports, FIRs, arrest and chargesheet details, committal orders, trial evidence, convict conduct reports, and judgments from the Sessions Court, High Court

and Supreme Court, along with English translations where required, to the officer-in-charge of the dedicated cell and the Secretary of the Home Department.

4. **Coordination with Governor and President's Secretariats**
    - Mercy petitions must be forwarded to the Secretariats of the Governor or President immediately for further action.
5. **Electronic Communication**
    - As far as possible, all communication should be conducted via email to ensure efficiency, barring cases where confidentiality is required.
6. **Guidelines and Reporting**
    - State Governments are required to issue executive orders detailing procedures for handling mercy petitions. They must report compliance to the Supreme Court within three months.

Guidelines for Sessions Courts

The Court outlined specific responsibilities for Sessions Courts once a death sentence is confirmed by the High Court:

- Maintain a record of cases involving death sentences and ensure timely listing on the cause list after receiving High Court or Supreme Court orders.
- Issue notices to State Public Prosecutors or investigation agencies to ascertain the status of appeals, reviews, or mercy petitions.
- Ensure that a clear 15-day gap exists between the issuance of an execution warrant and its implementation. Convicts must be informed of their right to legal representation, and legal aid should be provided upon request. "*Copies of the order issuing the warrant and the warrant shall be immediately provided to the convicts, and the Prison authorities must explain the implications thereof to the convicts. If the convict so desires, legal aid be immediately provided to the convicts by the Prison authorities for challenging the warrant*."

The State government must immediately apply for an Execution Warrant once the death penalty becomes final and enforceable.

Ajay Kumar Sharda
Director (Administration)

LATEST CASES: CIVIL

"While enacting laws, the legislature can and does delineate the meaning of terms through explicit definitions. Specific meanings are assigned for precision, to distinguish words/expressions from loose or popular meanings, expand or restrict the scope of words or expressions, or to designate "terms of art", that is, words or phrases with specialised meanings. Explicit definitions are useful, but it is wrong to state that all words or expressions must be explicitly defined. Defining each word or expression that is part of normal or commercial vocabulary is neither possible nor expedient."

-Sanjiv Khanna, J., in All India Bank Officers' Confederation v. Central Bank of India, (2024) 9 SCC 664, para 13

Shyam Kumar Inani Vs. Vinod Agrawal &Ors. : Civil Appeal No. 2845/2015 Dt. 12.11.2024-HELD-The Hon'ble Supreme Court observed and discussed several principles. The brief but distinguished facts were that the six appellants-plaintiffs in a suit for specific performance of a contract got decree from the Trial Court but the High Court, on first appeal, dismissed the suit. A larger area was purchased by one Sushila Devi, on 29.04.1966 for consideration vide as registered sale deed. The appellants filed separate suits for specific performance in May, 1995 against the legal heirs of Sushila Devi as she being owner of the suit property had entered into an Agreement to Sell on 30.08.1990 with each of the appellants separately after receiving the entire sale consideration. The appellants had taken over actual possession, having paid the entire sale consideration, the suit property was agricultural land and cultivated by the appellants. The principles culled out are:

1. A power of attorney holder can depose on behalf of the principal in respect of acts and transactions that the attorney has personal knowledge of.The Court clarified that while an attorney holder can definitely testify regarding the acts he has personally carried out on behalf of the principal, he cannot testify about matters requiring personal knowledge of the principal, such as the principal's state of mind or readiness and willingness to perform obligations under a contract. In this case, the power of attorney was himself one of the vendees and all the transactions in the six suits having taken place simultaneously on the same day, same time and at the same place, he was well aware personally of all the facts.The fact that the plaintiffs did not enter the witness box to prove the Agreement to sell, does not always lead to adverse inference. One of the purchasers and plaintiff in his suit for

specific performance was also the Power of Attorney from the other plaintiffs and therefore, it was not necessary for each of the plaintiffs in separate suits to appear and prove the transaction as the said attorney holder in each of the suits in whatever capacity, was fully justified in establishing the facts;

2. When a party alleges fraud or that a transaction is benami, the onus is on that party to prove the allegation. The Court emphasized that the apparent tenor of a document is presumed to be true unless disproved by the party alleging otherwise. The burden does not shift to the party relying on the document to prove its validity beyond its face value;
3. The limitation for filing a suit for specific performance is three years from the date fixed for the performance or if no such date is fixed, when the plaintiff had notice that the performance is refused as stipulated in Article 54 of the Schedule to the Limitation Act, 1963;
4. The sale deeds executed during the pendency of the suit are not void ab initio, but under Section 52 of the Transfer of Property Act, the transferee's rights are subservient to those of the parties in the litigation and cannot prejudice the plaintiffs' rights under the prior Agreement to Sell. The Courts allow the impalement of the transferee to protect his interests, especially when there was a possibility of collusion between the original parties. If the transfer was made with knowledge of the pending proceedings and in violation of an injunction, the subsequent purchasers, who had further purchased the property from third parties, will inevitably get rights of their vendors. And if the vendors did not have any rights, the vendees cannot be said to be in any better position;
5. The conduct of the original defendants clearly indicates their desperation, as they wanted to further gain financial benefits by hook or by crook and, therefore, alienated the property in violation of the injunction order. Such sale deed would be a void document. The conduct of the original defendants disentitles them from any discretion being exercised in their favour, as they blatantly and knowingly violated the interim injunction order.

Ramachandra Reddy (D) through LRS.& Ors.Vs. Ramulu Ammal (D) through

LRS. : 2024 INSC 868-**HELD-**The Hon'ble SC while allowing an appeal, discussed the scope of interference in second appeal against the concurrent findings of facts. It was held:

1. The jurisdiction to interfere in findings where the Courts below have been ad idem, is limited and such limitation is well expounded;
2. There is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be, and they added a note of warning that no court in India has power to add to, or enlarge, the grounds specified in Section 100 of CPC;
3. An erroneous finding of fact is a different thing from an error or defect in procedure, and that there is no jurisdiction to entertain second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be. Nothing can be clearer than the declaration in the Code of Civil Procedure that no second appeal will lie except on the grounds specified in Section 100 of the Code and no court in India or elsewhere has power to add to or enlarge those grounds.
4. The principles regarding the exercise of jurisdiction under Section 100 of the Code of Civil Procedure, 1908 have also been recently summarised by the Court in Suresh LatarujiRamteke v. Sau. SumanbaiPandurangPetkar[2023 SCC OnLine SC 1210]. Referring to Santosh Hazari v. Purushottam Tiwari[(2001) 3 SCC 179], it was held that a substantial question of law, which is sine qua non for the maintainability of a second appeal, shall be so, if:-

   "a) Not previously settled by law of land or a binding precedent.

   b) Material bearing on the decision of case; and

   (c) New point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. Therefore, it will depend on facts of each case."

State of Haryana & Anr. Vs. Amin Lal&Ors .:

2024 INSC 875-**HELD-**The Hon'ble SC while dismissing an appealfiled by the state (original defendants) upheld the decree of the trial court and the HC.The original plaintiffs had filed a suit for possession of the suit property based on

revenue records and alleged that the defendants had unauthorizedly occupied the land. The defendants, the State of Haryana and PWD, asserted that they had been in continuous and uninterrupted possession of the suit land since 1879-80. They claimed that their possession was open, hostile, and adverse to the plaintiffs, and as such, they had become owners by way of adverse possession. The Court held:

1. The defendants primarily relied on the plea of adverse possession. Under Order VIII Rule 5 of the Code of Civil Procedure, 1908, allegations of fact not denied specifically are deemed to be admitted. By asserting adverse possession, the State have impliedly admitted the plaintiffs' title;
2. The revenue records are public documents maintained by government officials in the regular course of duties and carry a presumption of correctness under Section 35 of the Indian Evidence Act, 1872. While it is true that the revenue entries do not by themselves confer title, they are admissible as evidence of possession and can support a claim of ownership when corroborated by other evidence;
3. The documents establishing a chain of title and are on record, cannot be ignored;
4. The defendants did not dispute the plaintiffs' title in their pleadings or during the trial. The First Appellate Court's finding that the plaintiffs are not the true owners is based on conjecture and lacks evidentiary support. The defendants cannot now, at this appellate stage, challenge the plaintiffs' ownership without having raised a specific denial earlier;
5. The defendants failed to deny the plaintiffs' title specifically and instead relied on adverse possession, and thus the burden shifted to the defendants to prove their adverse possession;
6. It is a fundamental principle that the State cannot claim adverse possession over the property of its own citizens. In Vidya Devi v. State of H.P[(2020) 2 SCC 569], the Court emphatically held that the State cannot be permitted to take the plea of adverse possession. The relevant paragraphs from this judgement are reproduced hereunder:

"12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on

the judgment of this Court in Tukaram Kana Joshi v. MIDC [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in State of Haryana v. Mukesh Kumar [State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769] held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multifaceted dimension.

12.11. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to "adverse" possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case."

7. The permissive possession cannot be the basis for a claim of adverse possession.

8. The acts relied upon by the defendants, such as placing bitumen drums, erecting temporary structures, and constructing a boundary wall in 1980, do not constitute adverse possession. Adverse possession requires possession that is continuous, open, peaceful, and hostile to the true owner for the statutory period. In this case, the appellants' possession lacks the element of hostility and the requisite duration.

State of Punjab &Anr.Vs. M/s. Ferrous Alloy Forgings Pvt. Ltd. & Ors.: 2024 0 INSC 890-HELD-The Hon'ble SC dealt with question as to whether it is mandatory for the successful auction purchaser to deposit the stamp duty for the sale certificate to be issued to it in view of the provisions of the Stamp Act and the Registration Act. While dismissing the appeal, the court referred to as follows:

"14. This Court in Municipal Corporation of Delhi v. Pramod Kumar Gupta reported in AIR 1991 SC 401, after examining the relevant provisions of Order XXI of the Code of Civil Procedure, observed that the title to the property put on auction sale passes under the law when the sale is

held. The owners and certain other interested persons are afforded opportunity under the CPC to assail the sale and make a prayer for setting aside the sale on certain enumerated grounds.

However, once such objections are disposed of without disturbing the sale, the sale stands confirmed under Order XXI Rule 92 of the CPC. Thereafter, the sale certificate is issued under Order XXI Rule 94. The Court observed that this chronology of events made it clear that the transfer becomes final when an order under Rule 92 of Order XXI is made and the issuance of a sale certificate under Rule 94 is only a formal declaration of the effect of such confirmation. Such issuance of certificate does not create or extinguish any title and thus would not attract any stamp duty which is applicable qua an instrument of sale of immovable property.

15. In Smt. Shanti Devi L. Singh v. Tax Recovery Officer and Others reported in AIR 1991 SC 1880, this Court observed that since the certificate of sale is not a compulsorily registrable document in lieu of Section 17(2)(xii) of the Registration Act, the transfer of title in favour of the auction purchaser would not be vitiated on account of non-registration of the sale certificate.

16. In B. Arvind Kumar v. Govt. Of India and Others reported in (2007) 5 SCC 745, this Court observed that when a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute.

The sale certificate is merely the evidence of such title. It is well settled that when an auction-purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. Although in the said case, the sale certificate was registered yet this Court proceeded to observe that a sale certificate issued by a court or an officer authorized by the court, does not require registration.

Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a civil or revenue officer does not fall under the category of non-testamentary documents which require registration under sub-section (b) and (c) of Section 17(1) of the said Act.

17. The position of law is thus settled that a sale certificate issued to the purchaser in pursuance of the confirmation of an auction sale is merely evidence of such title and does not require registration under Section 17(1) of the Registration Act. It is

not the issuance of the sale certificate which transfers the title in favour of the auction purchaser. The title is transferred upon successful completion of the sale and its confirmation by the competent authority after all the objections against the sale have been disposed of.

18. Recently, a three-Judge Bench of this Court in M/s EsjaypeeImpex Private Limited v. The Asst. General Manager and Authorized Officer Canara Bank reported in (2021) 11 SCC 537 observed that the mandate of law that flows from a combined reading of Sections 17(2) (xii) and 89(4) of the Registration Act respectively is that the auction purchaser is entitled to receive the original sale certificate and a copy of the same is required to be forwarded to the Sub- Registrar for the purpose of filing in Book 1 as per the Registration Act.

19. In Inspector General of Registration and Another v. G. Madhurambal and Another reported in 2022 SCC Online SC 2079, a two- Judge Bench of this Court observed that the consistent position of law is that a certificate of sale cannot be regarded as a conveyance subject to stamp duty. The Court further observed that once a direction is issued for the duly validated certificate to be issued to the auction purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act, it has the same effect as registration and requirement of any further action is obviated.

20. The position of law discussed above makes it clear that sale certificate issued by the authorised officer is not compulsorily registrable. Mere filing under Section 89(4) of the Registration Act itself is sufficient when a copy of the sale certificate is forwarded by the authorised officer to the registering authority.

However, a perusal of Articles 18 and 23 respectively of the first schedule to the Stamp Act respectively makes it clear that when the auction purchaser presents the original sale certificate for registration, it would attract stamp duty in accordance with the said Articles. As long as the sale certificate remains as it is, it is not compulsorily registrable. It is only when the auction purchaser uses the certificate for some other purpose that the requirement of payment of stamp duty, etc. would arise".

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Additional District & Sessions Judge
-cum-Faculty Member, CJA

LATEST CASES: CRIMINAL

"The possibility of bias is real in situations where an arbitration clause allows a government company to unilaterally appoint a sole arbitrator or control the majority of the arbitrators. Since the government has control over the arbitral tribunal, it can chart the course of the arbitration proceedings to the prejudice of the other party. Resultantly, unilateral appointment clauses fail to provide an effective substitute for judicial proceedings in India. Further, a unilateral appointment clause is inherently exclusionary and violates the principle of equal treatment of parties and procedural equality."

-CJI Dr. DY Chandrachud in Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV), 2024 SCC OnLine SC 3219, para 162

P. Manikandan v. Central Bureau of Investigation: 2024 INSC 1007-HELD- The Apex Court after reversing the findings of the High Court held that a re-investigation could be ordered if there are lapses in an initial investigation. The Court said that faulty investigation cannot be a ground to initiate a fresh investigation against the accused, and the accused is entitled to the benefit of the doubt. It has been laid down that, the position of law that the principle applies is unquestionable. The three conditions laid down in T.P. Gopalakrishnan's case are: Firstly, there must have been previous proceedings before a court of law or a judicial tribunal of competent jurisdiction in which the person must have been prosecuted. The said prosecution must be valid and not null and void or abortive. Secondly, the conviction or acquittal in the previous proceeding must be in force at the time of the second proceeding in relation to the same offence and same set of facts, for which he was prosecuted and punished in the first proceeding. Thirdly, the subsequent proceeding must be a fresh proceeding, where he is, for the second time, sought to be prosecuted and punished for the same offence and same set of facts.

Ashok v. State of Uttar Pradesh :2024 INSC 919-HELD- While acquitting the accused under rape charges the Three Judges bench of Apex Court laid down certain guidelines while interpreting Sections 340 and 341 of the Bharatiya Nagarik Suraksha Sanhita, 2023 :

The role of the Public Prosecutor and appointment of legal aid lawyers is:

a. It is the duty of the Court to ensure that proper legal aid is provided to an accused;

b. When an accused is not represented by an advocate, it is the duty of every Public Prosecutor to point out to the Court the requirement of providing him free legal aid. The reason is that it is the duty of the Public Prosecutor to ensure that the trial is conducted fairly and lawfully;

c. Even if the Court is inclined to frame charges or record examination-in-chief of the prosecution witnesses in a case where the accused has not engaged any advocate, it is incumbent upon the Public Prosecutor to request the Court not to proceed without offering legal aid to the accused;

d. It is the duty of the Public Prosecutor to assist the Trial Court in recording the statement of the accused under section 313 of the CrPC, 1973. If the Court omits to put any material circumstance brought on record against the accused, the Public Prosecutor must bring it to the notice of the Court while the examination of the accused is being recorded. He must assist the Court in framing the questions to be put to the accused. As it is the duty of the Public Prosecutor to ensure that those who are guilty of the commission of offence must be punished, it is also his

duty to ensure that there are no infirmities in the conduct of the trial which will cause prejudice to the accused;
e. An accused who is not represented by an advocate is entitled to free legal aid at all material stages starting from remand. Every accused has the right to get legal aid, even to file bail petitions;
f. At all material stages, including the stage of framing the charge, recording the evidence, etc., it is the duty of the Court to make the accused aware of his right to get free legal aid. If the accused expresses that he needs legal aid, the Trial Court must ensure that a legal aid advocate is appointed to represent the accused;
g. As held in the case of Anokhilal, in all the cases where there is a possibility of a life sentence or death sentence, only those learned advocates who have put in a minimum of ten years of practice on the criminal side should be considered to be appointed as amicus curiae or as a legal aid advocate. Even in the cases not covered by the categories mentioned above, the accused is entitled to a legal aid advocate who has good knowledge of the law and has an experience of conducting trials on the criminal side. It would be ideal if the Legal Services Authorities at all levels give proper training to the newly appointed legal aid advocates not only by conducting lectures but also by allowing the newly appointed legal aid advocates to work with senior members of the Bar in a requisite number of trials;
h. The State Legal Services Authorities shall issue directions to the Legal Services Authorities at all levels to monitor the work of the legal aid advocate and shall ensure that the legal aid advocates attend the court regularly and punctually when the cases entrusted to them are fixed;
i. It is necessary to ensure that the same legal aid advocate is continued throughout the trial unless there are compelling reasons to do so or unless the accused appoints an advocate of his choice;
j. In the cases where the offences are of a very serious nature and complicated legal and factual issues are involved, the Court, instead of appointing an empanelled legal aid advocate, may appoint a senior member of the Bar who has a vast experience of conducting trials to espouse the cause of the accused so that the accused gets best possible legal assistance;
k. The right of the accused to defend himself in a criminal trial is guaranteed by Article 21 of the Constitution of India. He is entitled to a fair trial. But if effective legal aid is not made available to an accused who is unable to engage an advocate, it will amount to infringement of his fundamental rights guaranteed by Article 21;
l. If legal aid is provided only for the sake of providing it, it will serve no purpose. Legal aid must be effective. Advocates appointed to espouse the cause of the accused must have good knowledge of criminal laws, law of evidence and procedural laws apart from other important statutes. As there is a constitutional right to legal aid, that right will be effective only if the legal aid provided is of a good quality. If the legal aid advocate provided to an accused is not competent enough to conduct the trial efficiently, the rights of the accused will be violated.

Ravi Dhingra v. State of NCT of Delhi : 2024 INSC 1013-HELD-While reiterating law on the requirements to file criminal complaint under Section 138 NI Act it is held that the law enunciated in the decision in Ashok Shewakramani's case (supra) is that to maintain a complaint and to frame a charge under Section 138 of the NI Act, there must be a specific averment against the person concerned that he was in-charge of, and responsible for the company concerned in the matter of conduct of its business. This position is now well settled and is being followed

with alacrity. It is further observed that taking note of the law thus settled by this Court, we have carefully perused the complaints. Though, the learned counsel appearing for the second-respondent in all these cases, took pains to convince us that the complaint concerned carried necessary averments required statutorily to maintain them however, on perusing the said complaints,we have no hesitation to hold that the aforesaid mandatorily required averments to attract an offence under Section 138 of the NI Act are conspicuously absent in all the complaint(s). To make the appellant to stand the trial, in such circumstances, would be nothing but abuse of the process of the Court. When that be the position, they are liable to be set aside in the light of Ashok Shewakramani's case (supra).

Ashok Verma v. State of Chhattisgarh: 2024 INSC 1011-**HELD-** While confirming sentence of accused appellant Apex Court has touched the plea regarding medical jurisprudence and held that based on the decision in Satish Nirankari v. State of Rajasthan (2017) 8 SCC 497; 2017 INSC 479, and the relevant text at page 454 and 456 of Modi's Medical Jurisprudence and Toxicology, the contention(s) unsuccessfully raised before the High Court were reiterated before us and in other words, contended that non-rupture of hyoid bone would indicate that death of Pushpa(deceased) is suicidal and not homicidal in nature.We have already held that sturdy and sound reasons have been given by two Courts to conclude that it is a case of homicide. Non-rupture of hyoid bone of Pushpa would not and should not be taken as the sole reason to upturn the said concurrent finding that it is a case of strangulation. In this context, it is to be noted that in Satish Nirankari's case, this Court held even in the absence of non-rupture of hyoid bone cause of death can be of strangulation. The position and posture of the body of Pushpa when PW-8 and others came to the house of the appellant-convict, as deposed by PW-8, were not challenged in cross-examination. This was duly taken note of by the Courts. In view of the said decision and what is stated sin Taylor's Principles and Practice of Medical Jurisprudence, 13th Edn., Pp 307- 08, which were extracted in paragraph 14 of the impugned judgment and in view of the position obtained from the evidence of PW-8. It is further observed that we do not find reasons to proceed further with the said contention that owing to the non-rupture of hyoid bone the finding of homicidal death invites interference.

Bharti Arora v. State of Haryana : 2024 INSC 976-**HELD-**The trial was conducted by the Special Judge under NDPS Act and vide final judgment the judge convicted Ran Singh(who was discharged in police enquiry in final report) and acquitted Surjeet Singh, Angrez Singh and Mehar Deen(who were later on implicated for implanting recovered material). The learned Special Judge observed in the said judgment that the story wherein Ran Singh was implicated by the trio was made up by the Senior Police officials including the appellant herein and it has been found to be false and concocted, and hence Show-Cause Notice must be issued to them as to why proceedings under Section 58 of the NDPS Act must not be initiated against them. The appellant before the Apex court challenged the proceedings of special judge and high court and these were set aside on the ground of good faith that the presumption of good faith therefore could be dislodged only by cogent and clinching material and so long as such a conclusion was not drawn, a duty in good faith should be presumed to have been done or purported to have been done in exercise of the powers conferred under the statute. It has been held that there has to be material to attribute or impute an unreasonable motive behind an act to take away the immunity clause.

Bijoy Kumar Moni v. Paresh Manna &Anr.: 2024 INSC 1024-HELD-It has been held by Apex Court the authorised signatory of a company cannot be prosecuted under Section 138 of the Negotiable Instruments Act, 1881 for bouncing of a cheque drawn on the company's account until and unless the company is impleaded as the principal accused. It is further held that the encashment of the cheque for an amount of Rs 7,00,000/- issued by the complainant in favour of the accused stood proved during the course of the trial. Further, the conduct of the accused in not replying to the statutory notice of dishonour of cheque issued by the lawyer for the complainant and in not taking the plea of the cheque having been drawn on the account of the company in his capacity as a Director during the course of trial undoubtedly raises questions as regards his dishonest intention in not repaying the amount borrowed by him from the complainant. However, keeping in view the liability liberty was granted to the complainant and observed that it is open to the complainant to approach the jurisdictional police station and lodge an appropriate FIR against the accused. If the complainant lodges an FIR, the concerned police officer in-charge of the police station shall investigate the same in accordance with law.

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LATEST CASES: MISCELLANEOUS

"The object of the Arbitration Act is to provide an arbitral procedure that is fair, efficient, and capable of meeting the needs of specific arbitration. The object is to ensure that the arbitral proceedings and proceedings filed for challenging the award are concluded expeditiously. The proceedings have to be cost-effective. The supervisory role of the Courts is very restricted."

-Abhay S. Oka, J. in Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani, (2024) 7 SCC 218, para 32

State of Karnataka v. Chandrasha : 2024 SCC OnLine SC 3469- Presumption under Section 20 PCA does not require bribe amount to be 'substantial'; Operates only when there is no nexus between demand and action-HELD- Reiterating the settled law, the Court relied on C.M.Girish Babu v. CBI and in B.Jayaraj v. State of A.P., wherein, while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Act, it was reiterated that it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe; absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence; and the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved.

The Court also noted that the Constitutional Bench in Neeraj Dutta v. State (Govt of NCT of Delhi) (2023) 4 SCC 731 answered the issue 'whether in the absence of evidence of the complainant / direct or primary evidence of demand of illegal gratification, it is permissible to draw an inferential deduction of culpability / guilt of a public servant under Sections 7 and 13(1)(d) read with Section 13(2) based on other evidence adduced by the prosecution' in affirmative.

In the matter at hand, the Court said that the prosecution proved its case beyond reasonable doubt, in respect of the 'demand' and 'acceptance' of the bribe amount from the complainant and recovery of tainted currency notes from the possession of the accused. The said operation is preceded by recording of the demand in the tape recorder. Further, the Court added that accused failed to rebut of the presumption by disproving the case of the prosecution either in the cross-examination of the prosecution side witnesses or by adducing material evidence that the receipt of Rs.2,000/- was not a bribe amount, but a legal fee or repayment of loan.

The Court upheld the Trial Court's view holding that it rightly found the accused guilty of the offences punishable under Sections 7 and 13 (1) (d) r/w Section 13 (2) of the Act and sentenced him for the same and set aside the High Court's decision stating that by placing reliance on A.Subair's case (supra), the High Court held that since no work was pending with the accused as on the date of trap, the ingredient to attract and complete the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Act was not met- was unsustainable as the decision of this Court in A.Subair (supra) did not support the view. Insofar as the reference to Section 20(3) regarding the triviality of the gratification, the act sought or performed, and the amount demanded cannot be considered in isolation to each other, the Court said that the value of gratification is to be considered in proportion to the act to be done or not done, to forbear or to not forebear, favour or disfavour sought, so as to be trivial to convince the Court, not to draw any presumption of corrupt practice.

It is also not necessary that only if substantial amount is demanded, the presumption can be drawn. The overall circumstances and the evidence will also have to be looked into. The Court stated

that- Section 20 would come into operation only when there is no nexus between the demand and the action performed or sought to be performed. But, when the fact of receipt of payment or an agreement to receive the gratification stands proved, there is a clear case of nexus or corroboration and the presumption itself is irrelevant. Section 20 gets attracted when it is proved that the public servant has accepted or agreed to accept any gratification other than legal remuneration and in that case, the presumption is that it is the motive or reward for any of the acts covered under Section 7, 11 or 13(1)(b) of the Act.

The Court explained that the presumption under Section 20 is similar to Section 118 of the Negotiable Instruments Act, 1881, where the onus is on the accused to prove that he is not guilty of the offences charged. The first two limbs under sub-section (1) and (2) of Section 13 make it clear that adequacy of consideration is irrelevant to draw the presumption. Further, the Court added that Section 20(3) only grants a discretion to the Court to decline from drawing any presumption if the amount is so trivial that such inference of corruption is not fairly possible in the facts of the case. Therefore, it is not a rule but an exception available to the Court to exercise its discretionary power in the facts and circumstances of the case. The Court pointed that in the facts of the case, the Court was not inclined to exercise such discretion.

Lenin Kumar Ray v. Express Publications (Madurai) Ltd: 2024 SCC OnLine SC 2967 – Who is a "Workman"? Supreme Court clarifies the definition in Industrial Disputes context -**HELD-**The Court pointed out that the ID Act, 1947, was enacted by the legislature to settle the industrial disputes. It was brought with the object of ensuring social justice to both the employers and employees and advancing the progress of industry by bringing about the existence of harmony and cordial relationship between the parties. After perusing Section 2(s) of the ID Act, the Court noted that a person to be qualified as a "workman" has to do any work of manual, unskilled, skilled, technical, operational, clerical or supervisory in nature. But the latter part of the Section excludes four classes of employees including a person employed in a supervisory capacity drawing wages exceeding Rs.10,000/- after amendment (Rs.1,600/- before amendment) per month or exercises functions mainly of a managerial nature.

The Court noted that as per the employee, he comes within the meaning of "workman" as given in Section 2(s) of the I.D. Act and the management without following the legal procedure, relieved him from service abruptly and hence, the same is illegal termination. However, it was the case of the management that the nature of the duties and functions performed by the employee was in the supervisory capacity and he was drawing a salary of above Rs.1,600/- and therefore, he does not belong to the category of "workmen". The Court further noted that Clause 14 of the appointment order issued by the management makes it clear that after confirmation of the job, the termination of service will be by one month's notice, or one month's salary in lieu of notice by either side.

The Court reiterated that the determinative factor for "workman" covered under Section 2(s) of the I.D. Act, is the principal duties and functions performed by an employee in the establishment and not merely the designation of his post. Further, the onus of proving the nature of employment rests on the person claiming to be a "workman" within the definition of Section 2(s) of the I.D. Act.

The Court noted that in the present case, there is no specific document drawn up relating to the actual work and functions performed by the employee. In the absence of any concrete material to demonstrate the nature of duties discharged by the employee, the Court considered the employment orders issued by the management, and noted that, the

employee was appointed as Junior Engineer and was promoted as Assistant Engineer, on the administrative side. The employee was supervising the work of two junior Engineers, who were working under him, which was also admitted by the employee in his cross examination. Even according to the employee, the nature of duties and functions discharged by him was supervisory.

Further, the Court applied the pre-amended provision of section 2(s), since the employee was terminated from service on 08-10-2003 and was drawing salary of more than Rs.1,600/- and said that he does not come within the definition of "workman". Therefore, the Court held that the employee is not a "workman" as defined under section 2(s) and is not covered by the provisions of the I.D. Act. Therefore, the Court set aside the order of the High Court upholding the finding of the Labour Court that the employee was a "workman" within the definition of post-amended section 2(s).

Rajiv Varghese vs. Rose Chakkrammakkil Francis: 2024 SCC OnLine SC 3367- Wife entitled to maintain matrimonial home lifestyle during pendency of divorce petition - HELD- Perusing the matter, the Court observed that the Family Court took note of the evidence on both sides in order to fix interim maintenance, found that after desertion, the wife had no other place to reside and thus, chose to seek shelter with her 93-year-old mother-in law.

Later, considering the health of the mother-in-law, the wife started residing with her elder brother. The Division Bench further took note that the Family Court had observed that the husband failed to produce his income tax returns, and documents produced by the wife and other evidence produced by the parties clearly reflected the fact that the husband is a renowned expert in cardiology and has several properties of worth and is the only legal heir to his father who had passed away. Given that his mother is 93 years old, the husband had been accruing all the income from the properties owned by his mother and himself. The Court took note that the Family Court compared the status, standard of life, income source, properties, its possession, rights and liabilities of the husband and found that the wife cannot be denied the enjoyment of the privileges as enjoyed by the husband.

Meanwhile, the High Court, after its evaluation of the husband's income, concluded that his income was at least Rs 2.5 Lakhs per month. The High Court had further taken note of the wife sacrificing her employment after the marriage and determined that the reasonable amount of interim maintenance to be one third of the husband's income which was Rs.80,000. Taking note of the afore-stated evaluations, the Division Bench in the instant appeal found that the High Court erred in reducing the quantum of maintenance.

The High Court had considered only two sources of the husband's income- his income as cardiologist and rent from property jointly owned with his mother. However, the High Court did not deal with the aspect of the number of properties owned by the husband and looked at the rental income from one property. Furthermore, the High Court did not take into consideration that the husband was the sole legal heir of his father. The High Court also did not consider that the husband was found to be in possession of a school and could not substantiate his claim that the school was running in losses.

Hence, the Court allowed the appeal of the wife and set aside the order of the Madras High Court and restored the order of the Family Court. The husband was directed to pay a sum of Rs.1,75,000 per month as interim maintenance.

Dr. Mahima Tuli
Research Fellow

NOTIFICATION

1. **SEBI replaces requirement of 'notary attestation' with 'self-attestation' in various Regulations :** On 28-11-2024, the Securities and Exchange Board of India ('SEBI') notified the SEBI (Attestation of Documents) (Amendment) Regulations, 2024 to amend the SEBI (Custodian of Securities) Regulations, 1996, SEBI (Credit Rating Agencies) Regulations, 1999, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011, SEBI (Buy-back of Securities) Regulations, 2018, SEBI (Depositories and Participants) Regulations, 2018, SEBI (Settlement Proceedings) Regulations, 2018, SEBI (Delisting of Equity Shares) Regulations, 2021, and SEBI (Index Providers) Regulations, 2024. The 2024 amendment Regulations came into force on 28-11-2024.

Key Points:

1. Through the amendment, the requirement of attestation by a notary has been replaced with self-attestation in Form A of the First Schedule in the SEBI (Custodian) Regulations, 1996, in Form A of the First Schedule in SEBI (Credit Rating Agencies) Regulations, 1999, in Form A of the First Schedule in SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011, and in Form A of Schedule I in SEBI (Index Providers) Regulations, 2024.
2. The 2024 Regulations has amended Regulation 11(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 to provide that for seeking exemption as mentioned in Regulation 11(1), a self-attested application must be filed with the board. Earlier, the application had to be supported with a duly sworn affidavit.
3. Clause (ii) of Regulation 28 in the SEBI (Buy-back of Securities) Regulations, 2018 has been amended to provide that the application filed by the company for seeking relaxation should be self-attested. Earlier, the application had to be supported by a duly sworn affidavit.
4. The requirement of attestation by an authorized notary has been replaced with self-attestation in Forms A, C, and F in the First Schedule of the SEBI (Depositories and Participants) Regulations, 2018.
5. The 2024 Regulations have amended the requirement in the format for undertakings and waivers in Part C of Schedule I of the SEBI (Settlement

Proceedings) Regulations, 2018 whereby the undertaking by the applicants have to be submitted with a self-attested application.

6. Regulation 42(2) of SEBI (Delisting of Equity Shares) Regulations, 2021 has been amended to provide that the application to be filed for seeking relaxation has to be self-attested as opposed to the earlier requirement of being supported by a duly sworn affidavit.[1]

[1] https://taxguru.in/sebi/sebi-attestation-documents-amendment-regulations-2024.html

EVENTS OF THE MONTH

- As per the direction of the Hon'ble Punjab and Haryana High Court, Chandigarh Judicial Academy had organized a webinar on the Provisions of Sections 9, 15, 19 of Juvenile Justice (Care and protection of Children) Act, 2015 for all the Additional District and Sessions Judges from the states of Punjab, Haryana and UT, Chandigarh. The session was taken by was Dr. Mandeep Mittal, ADJ-cum-Faculty Member, CJA.
- An **ECT_13_2024: Computer skills enhancement programme-level I&II** in pursuance to the e-committee special drive training and outreach programme through the Chandigarh Judicial Academy was scheduled to be held at the District Headquarters on any three consecutive days between 10th to 20th December, 2024.
- In pursuant to a letter received from HIPA, Gurugram, Chandigarh Judicial Academy was requested to conduct one week attachment training programme for 07 HCS (EB) officer trainees from 16.12.2024 to 20.12.2024. The resource persons for the training were Justice Rajiv Sharma, Justice S.S.Saron former Judges Punjab & Haryana High Court, Ms.Keshni Anand, IAS Officer (Retd.), Sh.B.M.Lal, Faculty Member, CJA, (Course Coordinator) Sh. Pradeep Mehta, Faculty Member, CJA, Dr. Gopal Arora, ADJ-cum-Faculty Member, CJA, Ms.Parminder Kaur, ADJ-cum-Faculty Member, CJA, Ms.Harshali Chowdhary, ADJ-cum-Faculty Member, CJA and Dr. Mandeep Mittal, ADJ-cum-Faculty Member, CJA.
- A One day refresher training programme for capacity building of Chief, Deputy and Assistant Legal Aid Defense Counsels from the States of Punjab, Haryana and UT Chandigarh was organized at Chandigarh Judicial Academy on 22.12.2024. The resource persons for the said training were Sh. Pradeep Mehta, Faculty Member, CJA(Course Coordinator), Ms. Tanu Bedi, Advocate, Punjab and Haryana High Court, Sh. Sujjan Singh, Advocate, Gurugram, Sh. Arvind Khurania, Advocate, Kaithal and Sh. Ravinder Gupta, Chief LADC, Faridabad.