VOLUME : 03
ISSUE : 12

CJA e-NEWSLETTER

December 2018

Monthly Newsletter of
Chandigarh Judicial Academy of Punjab & Haryana High Court
For circulation among the stakeholders in Judicial Education

In this Issue:

FROM THE DESK OF CHIEF EDITOR

This issue of e-Newsletter of CJA ushers in the year 2019. In the year 2018, we did not have a regular group of Training Judicial Officers. The Judicial Officers from the State of Punjab (60 in number) have already been selected. CJA is keenly looking forward to have them for one year Institutional / Foundation Training. For them, strengthening the Judicial Human Fabric is important. Judicial Human Fabric and Judicial Culture are interwoven. They are inseparable. It is the Judicial Culture which weaves Judicial Human Fabric. The building and nurturing of Human Fabric and Judicial Culture is the recipe for strengthening the Justice Delivery System.

The Fountain of Justice in front of Court No. 1 of Punjab and Haryana High Court continues to flow 24x7. The continuous flow of this Fountain of Justice is the insignia and symbol of the role that has been played by the Judicial Coparcenary of this region. The Magna Carta of 1215 (804 years old) reminds us that justice is not to be sold, not to be delayed and not to be denied. 26th November was the Constitution Day. It was 69 years back that we the people of India adopted the Constitution of India.

The building up of the Human Fabric with the texture of sound Judicial Culture would in turn strengthen the Justice Delivery System. The Judicial Human Fabric must be durable, long lasting, founded on culture to build-up the trust and confidence of the people in the Institution of Judiciary. Our courtrooms are open houses. They are open to all. Accordingly, the manner in which our judges perform at all levels is being watched and observed by the public. It is imperative that the conduct and behaviour of the judges should be such which would go a long way in nurturing the trust and confidence of the people. Judges are not engines of power. They are engines of justice. They are social engineers and architects. They innovate new tools and techniques to make 3-diamansional justice – social, economic and political viable.

It has rightly been said that a judge should never exhibit arrogance. Only elegance. A judge should never lose temper. A judge should never be short-tempered. In fact, judge should only cultivate scientific temper. Coolness of mind should be integral part of judge's personality. A cool and balanced mind is essential for holding the scales of justice evenly. An angry mind is anti-thesis of justice. Temper is something, when kept under control, serves you the best. Moreover, a judge must blend his mind with humanism. Humanism and Compassion are integral part of Judicial Fabric and Culture. Harold Laski, the political thinker, once wrote a letter to Justice Holmes. He said: "*how much I wish if people could realize that judges are human beings.*" Justice Holmes responded by saying : "*how much I wish if judges could realize that they are human beings*." Humanism and Compassion are Constitutional Fundamental Duties. This is more in the case of judicial brethren. Judges divorced from humanism and compassion will not be able to render wholesome justice. It is only the well nurtured judicial human minds punctuated with compassion and humanism who can make justice *wholesome* and *complete* as envisaged under Article 142 of the Constitution of India. Judicial Human Fabric must be weaved in compassion and humanism.

Judges function in different situations. Difficult situations. This requires tuning and training of the judicial minds. This requires a lot of effort. There are some principles of judging. Be bold. Be fair. Be polite. Be firm. Be human. Be patient. The list is never ending. The fact remains that it is the collective effect and impact which makes the judge.

CJA looks forward to shape the future young judicial minds. Let us join hands together. Contribute to the maximum. **Wish you all a happy new year**.

Balram K. Gupta

Justice Madan B. Lokur

A Judge Extraordinaire

Justice Madan B. Lokur was born on the last day of the year 1953. He graduated with History (Hons.) from St. Stephen's College. He did law from Delhi University. He joined the legal profession in 1977. He was designated as Senior Advocate in 1997. He was appointed as Additional Solicitor General of India in 1998. He was appointed as Additional Judge of Delhi High Court in 1999. He was elevated as Chief Justice of Guwahati High Court in 2010. He was transferred as the Chief Justice of Andhra Pradesh High Court. He was elevated to the Supreme Court in 2012. He completed 65 years of his age on Dec.30, 2018 when he retired from the apex Court of the country. What a legal and judicial journey of more than four decades. Hugely contributory.

Justice Lokur is a judge with a difference. Different from other judges. Face to face. His smile. His silvery beard. His mind. His intellect. His demeanour. His communication. His humility. All sui generis. It is a feast to watch him in action. It is a treat to read his judgments. It is a joy to talk to him. It is a comfort to be in his company. What a fulfilling feeling one gets after meeting him. His capacity to work. 24 x 7. Monday to Friday in court. Evenings in his study. Inter-acting. Reading. Dictating. All going together at the same time. Week-ends on the move. Lectures in seminars and conferences. Conducting workshops. Monitoring different committees. Participating in national and international conferences and colloquiums. What rich contribution. What a dynamo. Justice Lokur is the epitome of Socrates four ways test : Hear courteously. Consider soberly. Answer wisely. Decide impartially. He conceives quickly. Delivers maturely. He is so fair. Not only complexion-wise. Equally fair in doing justice. What a blend of goodness and greatness. His magnanimity. His simplicity. His sincerity. His graciousness. All this blend him into a unique human being. A good judge. Above all, a good human being.

Justice Lokur was the presiding judge of the Social Justice Bench. Exclusively heard Public Interest Litigation Petitions. Primarily related to socio-economic matters. The concept of continuous mandamus was strengthened and effectively utilized by this Social Justice Bench. People admire Justice Lokur for protecting Aravalis, protecting the Taj Mahal and hauling up the industries for their large scale pollution. There are also days when people question his legitimacy for getting rid of 10 years old diesel cars and sealing their business/ residential premises. Justice Lokur has never wavered in the face of volatile public opinion. He has shaped Human Rights Jurisprudence, covering the right to food, shelter, health, dignity and livelihood. What a protective umbrella. He has nursed and monitored the 'Social Justice Bench' with compassion and humanism. He firmly believes that 'we are only as strong as we are united, as weak as we are divided'.

Justice Madan B. Lokur was elevated as Judge of the Supreme Court of India on June 4, 2012. It was sometime in Feb.2013, I met him at his residence in New Delhi. I was in the process of being appointed as Director, National Judicial Academy, Bhopal, India. I was told to meet Justice Lokur. During this meeting, I came to know that Justice Lokur while being a judge of Delhi High Court had acted as the Director, National Judicial Academy for couple of months. The Govt. of India could not spare a sitting judge of the High Court. Therefore, Justice Lokur returned to Delhi High Court. This short sojourn with NJA kindled a spark for judicial education in Justice Lokur. I took charge of NJA on April 01, 2013. My relationship with Justice Lokur which began in Feb. 2013 continues till date. I wish it to continue. This journey of almost six years into judicial education has been meaningful and useful. In Justice Lokur, I found a true mentor and a true path settler. Before I joined NJA, he was conscious of the problems which I was likely to encounter. Before and after joining NJA and even thereafter, I found in Justice Lokur, a friend and a guide, who would take pains. I had couple of meetings before I joined NJA. Immediately after joining (within a space of two months), we had Regional Conference at the Himachal Pradesh High Court. Justice Lokur reached in the evening before the inauguration of the Regional Conference next morning. Reaching, we took a walk and shared concerns concerning NJA. I briefed Justice Lokur. He gave me patient and full hearing. He was satisfied with the steps that I had taken. He expressed the desire that I should send him a report about the entire matter. Of course, I did so. It gave me a feeling of his concern which was, indeed, so comforting. This was the beginning. Sometime later, we had Regional Conference in Chennai. It was past 10:30 that we finished dinner along with some other justices. Rather than retiring to his room, he held my hand and took me to the lobby in the hotel. He discussed every possible detail. The meeting concluded past 2:00 a.m. How can you forget his generosity. His magnanimity. His concern to the cause of judicial education and the furtherance of the role of NJA. During my sojourn with NJA, he frequented NJA, made rich contribution as the ‘human resource’. It was the end of the year 2014 that my term came to a close in view of the age constraints. This did not mean snapping the ties with him. I took charge of Chandigarh Judicial Academy (CJA). He continued to be the mentor. Also the ‘human resource’. Continued to encourage to play different roles in order to ensure multifaceted role of judicial education. My association with him has been an education. I treasure this association. It has been an enriching experience.

Justice Lokur would begin his second innings with the new year 2019. He has played his strokes like the opening batsman throughout the first innings. He brings in rich experience. The second innings would also be full of strokes. We wish him to hit the century playing the second innings.

Balram K. Gupta

CONSTITUTIONAL CASES

"Our constitution has to be necessarily understood as imposing affirmative obligations on all organs of the state to protect the interests, welfare and security of India."

B.Sudershan Reddy, J. in GVK Industries Ltd. vs. ITO, (2011) 4 SCC 36

Roshan T. vs. Abdul Azeez K.T. and Ors.:2018 SCC Online SC 2654: Article 226 can't be used for deciding disputes for which civil and criminal remedies are available – **Held** – The Supreme Court has observed that a regular suit, and not a writ petition, is the appropriate remedy for settlement of the disputes relating to property rights between private persons. The High Court, in this case, had allowed a writ petition filed by a person, who was forcefully dispossessed by police, seeking restoration of possession. The High Court had observed that the police 'facilitated the eviction,' also observed that "it puts a premium on dishonesty to ask victim, to follow a due process of law against those who are precisely guilty of violating the due process of law". The court then directed the landlady to restore possession to victim, giving her liberty to have recourse to due process of law to recover her possession. In the appeal filed by the land lady, the Apex Court observed that this writ petition seeking relief of restoration of the possession of the flat in question was not maintainable and the same ought to have been dismissed in limine as being not maintainable. The Apex Court further said that the remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is alleged. The High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. Also, the jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant.

Reena Hazarika vs. State of Assam : 2018 SCC OnLine SC 2281:Section 313 Cr.P.C can well be considered as a constitutional right under Article 21– Held – Supreme Court allowed criminal appeal filed against the judgment of High Court whereby the trial court's decision convicting the appellant under Section 302 IPC was upheld. The appellant was accused of murdering her husband. She was convicted by the trial court which was affirmed by the High Court holding that the present was based upon circumstantial evidence. The last seen theory had established the presence of the appellant with the deceased at night. It was noticed that the courts below did not notice defence of the appellant under Section 313 Cr.P.C. Therefore, it was observed that **Section 313 cannot be seen simply as part of *audi alteram partem.* It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313 (2). If the accused takes a defence after the prosecution evidence is closed, under Section 313 (1)(b) the Court is duty bound under Section 313(4) to consider the same.** It was held that complete non-consideration of the appellant's defence had caused prejudice to her and the appellant was deserved to be acquitted.

Arjun Gopal vs. Union of India: 2018 SCC OnLine SC 2365: If a religious practice threatens people's health, it is not entitled to protection under Article 25 – Held – The Supreme Court, ruled against imposing complete ban on firecrackers, but said that only less polluting green crackers can be sold, that too only through licensed traders. The court also banned online sale of firecrackers. In doing so, the court examined the interplay between the right to health and environmental protection under Article 21 on one hand, and the rights under Articles 25 and 19(1)(g) on the other. It is observed that Article 25 should give way to Article 21 in such cases, explaining, "**We feel that Article 25 is subject to Article 21 and if a particular religious practice is threatening the health and lives of people, such practice is not to entitled to protection under Article 25. In any case, balancing can be done here as well by allowing the practice subject to those conditions which ensure nil or negligible effect on health.** It was further observed that, "We state at the cost of repetition that right of health, which is recognised as a facet of Article 21 of the Constitution and, therefore, is a fundamental right, assumes greater importance. It is not only the petitioners and other applicants who have

intervened in support of the petitioners but the issue involves millions of persons living in Delhi and NCR, whose right to health is at stake. However, for the time being, without going into this debate in greater details, our endeavour is to strive at balancing of two rights, namely, right of the petitioners under Article 21 and right of the manufacturers and traders under Article 19(1)(g) of the Constitution."

Pankaj Sinha vs. Union of India : 2018 SCC OnLine SC 1502: Union and States given directions to support and encourage leprosy patients to lead life with equality and dignity – Held – The Apex Court disposed of a writ petition filed under Article 32 of the Constitution wherein the Court issued various directions concerning the people suffering from leprosy. The court had issued various directions to the Union and the States, which, *inter alia*, include:-

- Periodical national surveys for determining the prevalence rate and new cases detection rate of leprosy;
- Organizing massive awareness campaigns to increase public awareness;
- MDT drugs to be available free of cost and not to go out of stock at all Primary Health Centers (PHCs);
- All-year awareness programs about National Leprosy Eradication Program (NLEP);
- The awareness campaigns must include information that a person affected by leprosy is not required to be sent to any special clinic etc and should not be isolated;
- Healthcare to leprosy patients, at both Government as well as private medical institutions, must be such that medical officials and representatives desist from any discriminatory behaviour while examining and treating leprosy patients;
- The possibility of including leprosy education in school curricula should be explored.

Shailesh Manubhai Parmar vs. Election Commission of India: 2018 SCC OnLine SC 1041:NOTA "Idea may look attractive but its application defeats fairness ingrained in indirect election" – Held – Supreme Court while deciding a petition challenging the availability of the option "None of the Above" (NOTA), stated that "it would not only undermine the purity of democracy but also serve the Satan of defection and corruption. Introduction of NOTA will be an anathema to the fundamental criterion of democracy." The facts of the case pertain to availability of the option of NOTA in the elections held for Rajya Sabha. The petitioner challenged a circular issued in relation to the conduct of elections for the Council of States (Rajya Sabha). The Supreme Court, while concluding its decision, allowed the petition and quashed the said introduction and emphasized that "In a democracy, the purity of election is categorically imperative". It opined that on exercising the choice of NOTA in the voting process of the Rajya Sabha, such choice would have a negative impact. Further, it was observed by the Court that provisions for introduction of NOTA as conceived by the Election Commission, on the basis of the judgment mentioned hereinabove, were absolutely erroneous and the introduction of NOTA would certainly lead to the aspect of defection that would indirectly usher in with immense vigour.

Rajendra PralhadraoWasnikvs. State of Maharashtra: 2018 SCC OnLine SC 2799: Criminals also entitled to life of dignity; probability of reformation/rehabilitation to be seriously & earnestly considered before awarding death sentence – Held – The Supreme Court commuted death sentence awarded to a man convicted for rape and murder of a 3-year-old girl and sentenced him to life imprisonment without release from custody for the rest of his normal life. The court observed that probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the trial court before awarding death sentence. The bench observed that the process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. It was observed that: "Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyze this information is certainly not an easy task but must nevertheless be undertaken. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social re-integration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible."

LATEST CASES : CIVIL

"The Civil Procedure Code is really the rules of natural justice which are set out in great and elaborate detail. It's purpose is to enable both parties to get a hearing"

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

Hukum Chandra vs. Nemi Chand Jain: 2018 SCC OnLine SC 2812 : Landlord cannot sit idle to wait eviction of property for personal need – Held – The Supreme Court has held that it would be inappropriate to expect that the landowner or his son (for whom the building is required) should sit idle and not to perform any work till the suit for eviction is decided on the basis of bona fide requirement. The landlord had filed suit under Section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961, seeking eviction of the tenant from the suit shop on the ground of bona fide requirement to settle his son. The trial court dismissed the suit holding that the son was already doing an independent business of utensils and he was not unemployed. The 1st appellate court reversed these findings and held that it would be inappropriate to expect that the landowner should sit idle and not to perform any work till the suit for eviction is decided on the basis of bona fide requirement and the findings remained intact upto supreme court.

Sabha Shanker Dube vs. Divisional Forest Officer: 2018 SCC OnLine SC 2440: Temporary employees entitled to minimum of the pay scales on parity with regular employees; Allahabad HC judgment holding contrary set aside – Held – The appellants were the daily workers employed in Forest Department and sought payment of minimum of the pay scales available to their counterparts working on regular posts. The Single Judge granted the relief as prayed for. However, the Division Bench, on an appeal by the State, reversed the judgment of the Single Judge. Aggrieved thereby, the appellants preferred the instant appeal. Supreme Court allowed an appeal and directed the State to pay minimum of pay scales to the appellants reiterating law laid down in State of Punjab v. Jagjit Singh, (2017) 1 SCC 148 and State of U.P. v. Putti Lal, (2006) 9 SCC 337. The Court, following the Jagjit Singh case, observed that "temporary employees are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post." The Court found itself unable to uphold the judgment of the Division Bench that the appellants were not entitled to be paid the minimum of the pay scales.

Rajasthan Housing Board vs. Chandi Bai: Civil Appeal No.11912 of 2018: DoD 7.12.2018 (SC): Civil suit challenging notification not maintainable – Held – In the suit for declaration and permanent injunction, the plaintiff contended that they had bought the property from a person who had expired before the Land Acquisition Notification was issued. Petitioners contended that since proceedings against the dead person were illegal, the land acquisition proceedings were to be declared as null and void and the defendants were to be restrained by a decree of permanent injunction from dispossessing the plaintiffs from the disputed land. The trial court decreed the suit and the appeal filed by the Rajasthan Housing Board was dismissed by the high court.The Apex Court observed that a civil suit to question notification issued under Section 4 and declaration under Section 6 of the Land Acquisition Act, 1894 was not maintainable and only remedy left to the aggrieved party is to file a writ petition before the high court under Article 226 of the Constitution of India or to approach the Supreme Court.

Rameshwar Prasad Shrivastava and Ors. vs. Dwarkadhis Projects Pvt. Ltd. and Ors.: 2018 SCC Online SC 2737: Notice Under Order 1 Rule 8(2) CPC Mandatory For Filing 'Class Action' Consumer Complaints U/s 12(1)(c) of Consumer Protection Act –Held– The Supreme Court observed that 'Class Action' consumer complaints filed by one or more consumers where there are numerous consumers having the same interest will be maintainable only where the complaint fulfils all the requisite conditions in terms of Section 12(1) (c) of the Consumer Protection Act read with Order I Rule 8 of the Code of Civil Procedure. It has been further held that the expression "with the permission of the District Forum" as appearing in Section 12(1)(c) must be read along with Section 13(6) which provides the context and effect to said expression. Further, it was held that Sections

12(1)(c) and 13(6) are not independent but are to be read together and they form part of the same machinery"

State of M.P. vs. Abhijit Singh Pawar : 2018 SCC OnLine SC 2555: Employer entitled to consider antecedents and suitability of candidate for appointment even after disclosure made by candidate – Held – Supreme Court allowed an appeal filed against the judgment of the High Court whereby the State was directed to appoint the respondent on the post concerned in case his name was found a place in the merit list. The Court held that even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt. Following the **Avtar Singh's case**, the Court held that the employer, in instant circumstances, could not be compelled to appoint the respondent. Therefore, the appeal was allowed and the judgment impugned was set aside.

Emaar MGF Land Ltd. vs. Aftab Singh : 2018 SCC OnLine SC 2771:Amended Section-8 of A&C Act does not inundate entire regime of special legislation in non-arbitrable cases – **Held** – While dismissing review petition the Supreme Court discussed the object of the Consumer Protection Act as well as the A&C Act and also the position before and after the Arbitration and Conciliation (Amendment) Act, 2015. Reference was made to various decisions including, National Seeds Corporation Ltd. v. M. Madhusudan Reddy, (2012) 2 SCC 506. It was observed, "….complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on….". The Court noted several categories of cases, which are not arbitrable. It is also said that "The words notwithstanding any judgment, decree or order of the Supreme Court or any Court added by amendment in Section-8 were with intent to minimise the intervention of judicial authority in the context of arbitration agreement. The Court cannot refuse to refer the parties to arbitration "unless it finds that prima facie no valid arbitration agreement exists."

Biswajit Sukul vs. Deo Chand and Ors. : 2018 (2) RCR (Rent) 458 (SC): The scope of appellate court is limited – **Held** – In a appeal against the civil suit for ejectment, the appellate court had decided the legality and correctness of the issue which was not challenged by the respondent by way of counter claim or otherwise. The Supreme Court in the instant case has held that the issue in dispute was partly decided in favour of the plaintiff and partly in favour of the defendant. On appeal the appellate court exceeded its jurisdiction and decided the correctness of said issue i.e. both parts of the issue. The Supreme Court has remanded the case back and directed the appellate court to decide afresh the said issue.

North East Karnatak Road Transport Corporation vs. Smt. Sujatha: 2018 (4) SCT 787 (SC): Date of accident is material – **Held**– The Supreme Court has held that in an award under Workman Compensation Act, the employer is liable to pay interest from the date of accident and not from the date of order of compensation.

M/s Bee Gee Corporation Pvt. Ltd. vs. Punjab Financial Corporation & Anr.: 2018 (4) RCR (Civil) 607 (SC): Set off decree money of auction purchase–Held –While interpreting order 21 Rule 85 and Rule 72 (2), the Supreme Court has held that if the auction purchaser is a decree holder, there is no need of the deposit of auction money and the amount under decree can be set off**.**

M/s Hindon Forge Pvt. Ltd. &Anr. vs. State of Uttar Pradesh through District Magistrate Ghaziabad &Anr.: 2018 (4) RCR (Civil) 948 (SC): The apex court while interpreting Section 17 of SRFAESI Act, it has been held that the borrower can move an application even before taking of the physical or actual possession of secured assets by the financial institution.

Smt. Surjit Kaur vs. Union of India and others : 2018 (4) RCR (Civil) 592 (P&H): The division bench of Punjab & Haryana High Court while dealing with the issue of grant of AGI Insurance scheme to the wife/mother of deceased employee, has observed that there is no need for succession certificate. It is further held that both would get equal shares as per the succession act.

LATEST CASES : CRIMINAL

"It is well established that if a finding of fact is arrived at ignoring important and relevant evidence, the finding is bad in law."

A.C. Gupta, J. in Damadilal vs. Parashram, (1976) 4 SCC 855

State of Punjab vs. Rakesh Kumar : 2018 SCC OnLine SC 1930 – **Unauthorized bulk possession of manufactured drugs containing narcotic drugs or psychotropic substances triable under NDPS act as well –** The State had approached the apex court assailing some observations made by the High Court that 'manufactured drugs', containing narcotic drugs or psychotropic substances, if manufactured by a manufacturer, must be tried, if violation is there, under the Drugs and Cosmetics Act and not under the NDPS Act, except those in loose form by way of powder, liquid etc. – **Held** – The Supreme Court has held that persons who are found in bulk possession of manufactured drugs without any valid authorization can be tried under the NDPS Act, apart from the Drugs and Cosmetics Act. Taking note of both the legislations, it is observed that, while the Drugs and Cosmetics Act deals with drugs which are intended to be used for therapeutic or medicinal usage, the NDPS Act intends to curb and penalize the usage of drugs which are used for intoxication or for getting a stimulant effect. It also highlighted that Section 80 of the NDPS Act clearly lays down that application of the Drugs and Cosmetics Act is not barred, and provisions of NDPS Act can be applicable in addition to that of the provisions of the Drugs and Cosmetics Act. The Court further stated that "the NDPS Act, should not be read in exclusion to Drugs and Cosmetics Act. Additionally, it is the prerogative of the State to prosecute the offender in accordance with law. In the present case, since the action of the accused-Respondents amounted to a prima-facie violation of Section 8 of the NDPS Act, they were charged under Section 22 of the NDPS Act."

Mohammed Zakir vs. Shabana & Others : 2018 SCC OnLine SC 819 – **Even 'patently erroneous' orders can't be recalled by criminal courts**–The appellant approached the Supreme Court against the order of the High Court under Section 362 Cr.P.C. recalling its own order. The order reads as under:- "Notwithstanding Section 362 of Cr.P.C. the order rendered by this Court earlier on 18.04.2017 is found to be patently erroneous and therefore the order is withdrawn." –**Held** – The High Court should not have exercised the power under Section 362 Cr.P.C. for a correction on merits. However, patently erroneous the earlier order be, it can only be corrected in the process known to law and not under Section 362 Cr.P.C. The whole purpose of Section 362 Cr.P.C. is only to correct a clerical or arithmetical error. What the High Court sought to do in the impugned order is not to correct a clerical or arithmetical error. It sought to rehear the matter on merits as the earlier order was patently erroneous.

Pradeep Bisoi @ Ranjit Bisoi vs. The State of Odhisa: 2018 SCC OnLine SC 1866–**The statement of an injured recorded under Section 161 of Code of Criminal Procedure can be treated as dying declaration** –This observation of Supreme Court came in appeal against the judgment of High Court vide which it dismissed the criminal appeal filed by the appellant questioning his conviction under Section 304 Part II of the Indian Penal Code and sentence of five years imprisonment awarded by the trial court – **Held** – The Supreme Court held that statement of injured recorded under section 161 Cr.P.C can be treated as dying declaration after his death. The facts are that the accused threw a bomb towards the deceased, which hit the right leg of the deceased & after that accused dealt a kati blow on right shoulder of the deceased, on which he fell down. Thereafter, the accused poured acid on head, face and chest of deceased. The I.O. recorded the statement of the deceased under Section 161 Cr.P.C. in which, the deceased named the accused. The Supreme Court re-iterated that the statement of an injured recorded under Section 161 of Code of Criminal Procedure can be treated as dying declaration admissible under Section 32 of the Indian Evidence Act.

Mallikarjun Kodagali vs. State of Karnataka &Ors. : 2018 SCC OnLine SC 1941 – A victim has a right of appeal against an order of acquittal where offence took place prior to 31st of December, 2009 but if the order of acquittal was passed by the trial court after 31st of December 2009 – victim need not apply for leave to appeal against the order of acquittal –**Held**– The Supreme Court held that date of offence has no relevance. Significant date is the date of order of acquittal passed by the trial court. Cause of action arises in favour of

the victim of an offence only when an order of acquittal is passed and if that happens after 31st of December, 2009, the victim has a right to challenge the acquittal through an appeal. It was further held that right extends not only to challenging the order of acquittal but also challenging the conviction of the accused for a lesser offence or imposing inadequate compensation. The Supreme Court further observed that even today the rights of an accused far outweigh the rights of the victim of an offence in many respects and there needs to be some balancing of the concerns and equalizing their rights so that the criminal proceedings are fair to both. In this case The High Court had dismissed the appellant's appeal as not maintainable because the date of commission of the alleged offence was prior to 31.12.2009 (the acquittal was dated 28.10.2013). The majority sought to confer "realistic, liberal, progressive" interpretation to Section 372 and fruitfully recognized the victim's right to appeal. In doing so, the majority opinion laid down two important points. *First*, that the relevant date for determining the maintainability of appeal was the date of the trial court judgment as opposed to any other date such as the date of commission of the offence or the date of registration of the FIR. *Second*, that there was no procedural fetter placed on the victim's right under the proviso to Section 372, Cr.P.C.

Maqbool vs. State of Uttar Pradesh and Another : 2018 SCC OnLine SC 1930 – Section 326-A & 326-B IPC – Acid Attack–No requirement of the provision that injuries caused should be grievous-mere act of throwing acid or attempt would attract offence. The issue before the Supreme Court was that, if the injury was simple in an acid attack, whether an offence under Section 326-A of the Indian Penal Code was attracted and if the injury was only simple, whether charge could be framed under Section 326-B IPC – **Held**– The basic difference between Sections 326-A and 326-B of IPC is the presence of actual injury under Section 326-A. The resultant injury has made the offence more serious with a mandatory minimum punishment of ten years which may extend to imprisonment for life. Under Section 326-B, the mere act of throwing or attempt to throw or attempt to administer or attempt to use any other means with the intention of causing any of the injuries referred to in the Section, is to be visited with a mandatory minimum imprisonment of five years, which may extend to seven years and fine. In the present case, the appellant sought discharge under Section 326-A of IPC on the ground that the injury caused was simple as per the medical report. The trial court rejected the application and was upheld by the High Court. The apex court observed that "it is not the percentage or gravity of injury, which makes the difference. Be it simple or grievous, if the injury falls under the specified types under Section 326-A on account of use of acid, the offence under Section 326-A is attracted. Section 326-B would be attracted in case the requirements specified are met on an attempted acid attack". The appeal was dismissed. It was clarified by the apex court "that the observations and findings in this Judgment are only for the purpose of reaching the conclusion as to whether charge under Section 326-A of IPC has been correctly framed and whether the trial court committed an error in rejecting the application for discharge under Section 326-A of IPC. All other aspects would remain to be considered during the trial which shall be conducted uninfluenced by any of the observations on the merits of the matter".

Sukh Lal vs. State of M.P: Criminal Appeal No. 1563-1564 of 2018:DoD 20.11.2018–Even heinous/brutal crimes may not be rarest of rare – The apex court gave this observation in appeal against the judgement of the HC**,** which had affirmed the judgment of the trial court. The Trial court had held the accused guilty under Section-302 IPC & sentenced him to death by hanging–**Held**–It was observed by the apex court that, "Time and again, this Court has categorically held that life imprisonment is the rule and death penalty is the exception and even when the crime is heinous or brutal, it may not still fall under the category of rarest of rare". The Supreme Court while invoking Bachan Singh judgment, said that the "decision to impose the highest punishment of death sentence in the instant case does not fulfil the test of "rarest of rare case where the alternative option is unquestionably foreclosed" and commuted the death sentence to that of life imprisonment with a cap of 18 years.

Sazid Khan vs. State of Haryana: 2018 SCC OnLine P&H 1733: Section 138 of NI Act and Section 420 IPC not exclusive to each other, a person can be charged with both offences simultaneously in complaint case and FIR. The Court found no application of Section 300 of Criminal procedure code and Article 20 of the Constitution of India. Therefore, the petition was dismissed as no ground to quash the FIR was found.

NOTIFICATION

The Prevention of Corruption (Amendment) Act, 2018: The Prevention of Corruption Act, 1988 (the "**Act**") was recently amended by the Prevention of Corruption (Amendment) Act, 2018 (the "**Amendment Act**"). Most of the amendments are aimed at tightening up the existing provisions in the Act and expanding the coverage of the offences. Following are the main highlights of the Amendments;

Key changes in the Definitions

The Amendment Act includes the following definitions:

a. The term "**Prescribed**" has been introduced to mean rules that may be drafted by the Central Government under the Act. Given that, we anticipate the following rules:

- Rules for organizations and companies to form internal guidelines and procedures to prevent its employees from affording undue advantage to public servants; and
- Rules for prosecution of a public servant under the Act.

b. The term "**Undue Advantage**" has been defined to mean any gratification other than legal remuneration. The term "**gratification**" has been clarified to *include all forms of gratifications* estimable in money besides pecuniary gratification.

c. The term "**legal remuneration**" has been clarified to include all remuneration a public servant is permitted to receive by the concerned authority.

KEY AMENDMENTS

(a) **Time extensions:** Under Section 4(4), the courts no longer have complete trails for offences under the Act within 2 years, failing which the judges will need to record the requirement for extension in time. A trial can now be extended by 6 months at a time for up to a maximum of 4 years.

(b) **Exemptions for compulsion:** Section 8 prescribes punishment for persons abetting a bribe or attempting to indulge in corruption with a public servant. The Amendment Act exempts those acts committed out of compulsion, provided a person so compelled files a complaint with the police or investigating agency within 7 days of giving a bribe under compulsion.

(c) **Commercial organizations:** Section 9 now specifically deals with commercial organizations and persons associated with commercial organizations. The term commercial organization is clarified to include all forms of business structures and the phrase 'persons associated with commercial organization' is wide enough to include employees and vendors.

(d) **Punishment:** Section 10 now imposes specific terms for imprisonment and a fine where the commercial organization's directors, officers in default or a person with control over the organization has consented to the corrupt act violating the provisions of the Act. It may be useful to note that when amendments to Section 10 and Section 9 (please see above) are read together – the amended Act seems to penalize both the commercial organizations for violation of the Act by levying of a fine and the officers in charge of such commercial organization under Section 10 for criminal liability.

(e) **Corruption by public servants:** The Amendment Act seems to have diluted the instances where a public servant can be accused of alleged criminal misconduct. The amended Section 13 of the Act only refers to the misuse of property and unjust enrichment as grounds for misconduct (which is assessed by disproportionate assets). Earlier, Section 13 accounted for general tendencies to seek bribes or indulge in corrupt practices as grounds of criminal misconduct.

(f) **Permission to prosecute by an investigative authority:** The Amendment Act appears to make it more difficult to prosecute government employees. The amendment under Section 19 states that for prosecution of a public servant under Sections 7, 11, 13 and 15 of the Act, firstly a sanction must be obtained from an authority that has the right to dismiss them. Secondly, an investigative authority (such as a police officer) must seek an application for permission, or else there are multiple layers of compliances that need to be cleared before the court can take cognizance of the offence.

EVENTS OF THE MONTH

1. **Ten Days Training Programme of Fifth Batch of 32 Public Prosecutors**, 30 from Punjab and 2 from Chandigarh commenced on Nov.26 (Constitution Day) and concluded on Dec.6, 2018. The details of this programme, in fact, have already been covered in the issue of the month of Nov., 2018. Therefore, the same are not being repeated.

2. The **Second National Conference of the Computer Committees of the High Courts** was inaugurated on Dec. 8 at Chandigarh Judicial Academy. It was two days conference. On this occasion, HMJ Hemant Gupta, Judge, Supreme Court of India, HMJ Krishna Murari, Chief Justice, High Court of Punjab and Haryana, HMJ Surya Kant, Chief Justice, High Court of Himachal Pradesh spoke. They also released the book – **IT Initiatives** authored by HMJ Rajesh Bindal, Judge, Jammu and Kashmir High Court. Justice Hemant Gupta spoke about the journey of Judicial System from "Courts to e-Courts". He touched upon the initial resistance to the infusion of information and communication technology into the judicial system. In the ultimate, he was appreciative about the successful journey and the benefits being reaped by the public from the e-Court Project. Chief Justice Murari shared that the judicial system has become more transparent. The detailed information regarding case status and history is now available on the electronic platform. Chief Justice Surya Kant cautioned against over dependence upon technology in the arena requiring application of mind. The speakers duly acknowledged the contribution made by Hon'ble Mr. Justice Madan B. Lokur, Judge, Supreme Court in making the e-Courts Project a great success. On this occasion, the High Court of Punjab and Haryana launched Case Information Software 1.0 for better connectivity with a National Judicial Data Grid. A Souvenir containing articles from all the High Courts compiled by Justice Rajesh Bindal was also released. HMJ Mahesh Grover, Chairman of organizing committee gave the expression of gratitude.

3. It was on Dec. 14, 2018 that **Ms. Shalini Singh Nagpal, District & Session Judge** joined as Director (Administration). She was accorded a very warm welcome by the Faculty, the Registrar and the staff of CJA.

4. Refresher-cum-Orientation Course through video-conferencing for ADJs from the State of Haryana and UT, Chandigarh was organized on Dec. 20, 2018 at Chandigarh Judicial Academy. The presentation and discussion on the topic "Role of Children's Court under Juvenile Justice Act" was piloted by Dr. K.P. Singh, DGP, Human Rights Commission, Haryana.

FORTHCOMING EVENTS

1. 60 Judicial Officers belonging to PCS (JB) have been selected. Accordingly, CJA is keenly looking forward to this group of Trainee Judicial Officers (TJOs) in Jan. 2019 for one year Institutional / Foundation Training Programme. Equally, CJA is looking forward to four months Institutional Training of newly selected ADJs and one month training for Promotee ADJs.

2. Two Refresher Courses for ADJs are proposed to be conducted on Jan.12 and 26, 2019 for ADJs and Civil Judges of States of Punjab, Haryana and Chandigarh.

3. Sixth Group of Public Prosecutors from the State of Punjab for ten days training at CJA is also expected.