FEBRUARY 2022

CJA e-NEWSLETTER

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

VOLUME : 07
ISSUE : 02

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FROM THE DESK OF CHIEF EDITOR

LIVE STREAMING OF COURT PROCEEDINGS

The issue of Live Streaming came up before the apex court in the case of Swapnil Tripathi vs. Supreme Court of India (2018) by way of Public Interest Petition. The lead petition was by a student. A student keen to watch the proceedings of the court. It was not practically feasible because of the sitting space in court. As also the security reasons and time constraints. There were other petitions by public spirited persons. It was a matter of Constitutional and national importance. It was heard by a bench of three judges. Live streaming and access to justice, they go in hand in hand. The right to access to justice flows from Article 21 of the Constitution. Access to justice is possible when we have a system of open courts. Open courts provide an opportunity to the litigants to watch the proceedings. Hardly ever anyone else goes to the court to watch the proceedings. Therefore, if live streaming is made possible, it would be open to the public to watch live, how the proceedings in courts are being conducted. How the judges communicate with lawyers. How lawyers assist the courts. How the two wheels, the Bar and the Bench blend together to adjudicate issues of Constitutional and national importance. The top court has upheld that live streaming effectuates the right of access to justice and the right to open justice. The physical access to court room is not enough. Live streaming would make it possible while sitting in the comfort of your home.

Live streaming will make Justice more visible. More accessible. More transparent. More accountable. More disciplined. More participative. The sunlight is the best disinfectant. In fact, exposure is the best tool. The fact that the judges and lawyers are being watched is in itself a big step forward. The rest would follow itself. We have instances reported where judges have reacted so sharply. The lawyers have not lagged behind. This is not healthy for the judicial institution. Nor good for the justice delivery system. The judges are expected to use measured language. The lawyers have to perform so that they contribute richly. I recall, Chief Justice S.R.Dass telling Advocate General, K.L.Misra, why do not you come more often to the Supreme Court! Whenever you argue a case, the level of the judgment goes up. In fact, the lawyers would be much better prepared. The better the assistance by the Bar, the better for the Bench. It is said that good Bar produces good judges on the Bench. This would be the positive impact of live streaming.

The public exposure of court proceedings will not be negative. The public image of judges will improve. It would, in turn build up more trust and confidence of the people in our system of courts. This is most important. Of course, the judges and the lawyers will conduct themselves in a more orderly manner. It would require, initially, an effort. Gradually, it would become daily routine. It is said that live streaming will make our judges less innovative and less contributory. They will adopt back seat attitude. No drive. No initiative. Just complete the roster attitude. I have my own reservations. Judges are human beings. The zeal to excel is part of every human being. This is inherent. Public exposure will help to put in an extra effort. The healthy spirit to contribute more is the best recipe. To develop jurisprudence in different domains of law.

The work of the judges is extremely tough. Even otherwise also, they have to work so hard day and night. They have to make difficult choices in highly complex situations. They may not be necessarily making popular decisions. Therefore, the observers of the courts will be required to be educated on the role of the courts. As also their independence and impartiality. This is an extremely important aspect. Different ways and means will have to be worked out.

I recall my university teaching days. We had morning and evening shifts for law classes. The morning students used to be get free before lunch. The practicing lawyers used to take early classes so that they could be free to attend to their cases in courts. I always used to tell the students that they should make it a point to go to the High Court as also the District Court. To watch the proceedings in court. Whenever an important case and a good counsel, local or from Delhi was to ague the matter, I used to tell the students. Some students would go and watch the proceedings. It was a good learning process. It used to help them to cultivate the skills of a good lawyer. The court craft. How to respond. Even now, the law schools are not the laboratories to nurture the future lawyers and judges. With live streaming, the law students will have the required exposure to the court proceedings. Sitting at home or in their hostel rooms or the class-rooms. This would be a real boon for the law students. What the law faculties have not been able to achieve over the decades, live streaming would make it possible. Live streaming will also strengthen the law professors. Constitutional matters being argued before the Constitution Benches will be the best dose to learn the finer constitutional aspects. This learning will not be available in the best of books on Constitution. This would also be true in many other fields of law.

There would still be another component of live streaming. Judicial education/training and live streaming are like the siamese twins. They are inseparable. I have been wanting for good sometime that the class-rooms of Judicial Academies around the country be converted into court-rooms. Live streaming of the district court proceedings would be the best medium of imparting training to the young newly selected judicial officers. So far, a genuine effort was being made to conduct mock-trials. It would, indeed, be a practical way out to expose the young officers to the actual live court proceedings. There cannot be a better learning exposure. The component of the

court attachment could be reduced. The duration of the stay with the Judicial Academies could be increased. The lecture sessions could be mixed with live streaming of the court proceedings. This two way traffic will result in achieving what we had been struggling to achieve.

The live streaming would also require the microphones and the speakers for the Bench and the Bar. This is important. Some judges speak so softly. They are hardly audible. Unless the lawyer hears clearly, what the judge is asking, he would not be able to respond accurately and effectively. A lawyer needs to pick up even a whisper of the judge. The two judge Benches share their concerns and consult each other. They do it in whispers. So that the lawyers may not hear the same. The lawyers need to pick up even that. I recall my Bar days. A young lady lawyer had come from Delhi to argue a matter before a bench of two judges. The senior judge was inclined to dismiss the petition. The other judge softly said, let us issue notice of motion. She would come again. The lady lawyer smiled and said, please my lords. This was a lighter situation. There are difficult situations too. Some of the court-rooms are big. There is problem of audibility of judges and lawyers. Sometimes, when an interim order is dictated which is beyond the hearing reach of even the arguing counsel. The counsel comes out of the court-room thinking that the stay has been granted. Later, he finds that the case had been dismissed. With live streaming, public address system in courts will have to be in place. Therefore, the live streaming will make the court-room proceedings more audible and reachable. No stress. Justice would become easily accessible.

Live streaming of the court proceedings is already being carried out in U.K., Australia, China, South Africa and the International Criminal Court. Brazil's Supreme Court even owns and operates a broadcast channel. The US Supreme Court only provides audio recordings and transcripts of the arguments. The apprehension in US is that it may curtail free flowing of arguments. It may also change the nature of questions which the judges may ask. The judges may also be more reserve in asking questions. These apprehensions are understandable. Initially, some changes may be felt. It is believed that this would be only temporary. With passage of time, the judges and the lawyers will adapt themselves. May be that the court proceedings become more wholesome. Both the Bar and the Bench would like to be at their best when they are being watched. There is no justification to think negatively about live streaming. The e-Committee of the Supreme Court of India is in the process of finalizing the live streaming rules. The High Courts of Gujarat, Karnataka, Madhya Pradesh and Orissa have already taken the steps necessary for introducing live streaming. It is hoped that we would soon be completing the process across the country. It would be a dream coming true.

Balram K. Gupta

LATEST CASES: CIVIL

"*Element of transparency is always required in such tenders because of the nature of economic activity carried on by the State, but the contours under which they are to be examined are restricted. The objective is not to make the Court an appellate authority for scrutinising as to whom the tender should be awarded. Economics must be permitted to play its role for which the tendering authority knows best as to what is suited in terms of technology and price for them*."

- *Sanjay Kishan Kaul, J. in Uflex Ltd. v. State of T.N., (2022) 1 SCC 165, para 42*

Prakash Corporates v. Dee Vee Projects Limited : Civil Appeal No(s). 1318 of 2022 dated 14.02.2022 -Is the general order of the Hon'ble Supreme Court granting extension of period of limitation applicable to commercial courts?-HELD- The mandates of Rule 1(1) of Order V, Rule 1 of Order VIII as also Rule 10 of Order VIII, as applicable to the Commercial dispute of a Specified Value, do operate in the manner that after expiry of 120th day from the date of service of summons, the defendant forfeits the right to submit his written statement and the Court cannot allow the same to be taken on record but, these provisions are intended to provide the consequences in relation to a defendant who omits to perform his part in progress of the suit as envisaged by the rules of procedure and are not intended to override all other provisions of CPC like those of Section 10.

Samruddhi Co-operative Housing Society Ltd v. Mumbai Mahalaxmi Construction Pvt. Ltd: 2022 SCC Online SC 35- Failure to provide occupancy certificate a deficiency in service under the Consumer Protection Act and also a continuing wrong- HELD- that failure on the part of the builder to provide occupancy certificate is a continuing breach under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 and amounts to a continuing wrong. Section 2(1)(d) of the Consumer Protection Act defines a 'consumer' as a person that avails of any service for a consideration. A 'deficiency' is defined under Section 2(1)(g) as the shortcoming or inadequacy in the quality of service that is required to be maintained by law.

In the present case, the NCDRC had held that the appellant is not a 'consumer' under the provisions of the Consumer Protection Act as they have claimed the recovery of higher charges paid to the municipal authorities from the respondent. Extending this further, the NCDRC observed that the respondent is not the service provider for water or electricity and thus, the complaint is not maintainable. The respondent was responsible for transferring the title to the flats to the society along with the occupancy certificate. The failure of the respondent to obtain the occupation certificate is a deficiency in service for which the respondent is liable. Thus, the members of the appellant society are well within their rights as 'consumers' to pray for compensation as a recompense for the consequent liability (such as payment of higher taxes and water charges by the owners) arising from the lack of an occupancy certificate.

K. Arumuga Velaiah v. PR Ramasamy: 2022 SCC OnLine SC 95- Unreasoned Not mandatory to register partition document only detailing how the properties are to be dealt with in future- HELD- held that a document of partition which provides for effectuating a division of properties in future would be exempt from registration under section 17(2)(v) of the Registration Act, 1908.

The Court explained that the test in such a case is whether the document itself creates an interest in a specific immovable property or merely creates a right to obtain another document of title. If a document does not by itself create a right or interest in immovable property, but merely creates a right to obtain another document, which will, when executed create a right in the person claiming relief, the former document does not require registration and is accordingly admissible in evidence.

The Supreme Court observed that the said award was a mere arrangement to divide the properties in future by metes and bounds as distinguished from an actual deed of partition under which there is not only a severance of status but also division of joint family properties by metes and bounds in specific properties. Hence it was exempted from registration under Section 17(2)(v) of the Act.

Jogi Ram v. Suresh Kumar: 2022 SCC OnLine SC 127 - Can a Hindu male execute a Will giving a limited estate to a wife if all other aspects including maintenance are taken care of?-HELD- held that the objective of Section 14(1) of the Hindu Succession Act, 1956 is to create an absolute interest in case of a limited interest of the wife where such limited estate owes its origin to law as it stood then. The objective cannot be that a Hindu male who owned self-acquired property is unable to execute a Will giving a limited estate to a wife if all other aspects including maintenance are taken care of.

"If we were to hold so it would imply that if the wife is disinherited under the Will it would be sustainable but if a limited estate is given it would mature into an absolute interest irrespective of the intent of the testator."

The Court, hence, observed that the testator in the present case had taken all care for the needs of maintenance of his wife by ensuring that the revenue generated from the estate would go to her alone. He, however, wished to give only a limited lift interest to her as the second wife with the son inheriting the complete estate after her lifetime.

Hence, it would be the provisions of Section 14(2) of the said Act which would come into play in such a scenario and Ram Devi only had a life interest in her favour.

DEVAS Multimedia Pvt. Ltd.v. Antrix Corporation Ltd.: 2022 SCC OnLine SC 46- Does failure to publish an advertisement lead to the automatic dismissal winding up petition? - HELD- The Court analysed Rule 5 of the the Companies (Transfer of Pending Proceedings) Rules, 2016 which prescribes the procedure to be followed by the Tribunal, upon the filing of a petition for winding up.

The step-by-step procedure prescribed in Rule 5 is as follows:-

(1) The petition should first be posted before the Tribunal for admission.

(2) The purpose of posting the petition for admission is threefold, namely,

(i) fixing a date for hearing of the petition;

(ii) issuing appropriate directions as to the advertisement to be published; and

(iii) indicating the persons upon whom the copies of the petition are to be served.

(3) On the date when the petition is posted for admission, **the Tribunal may direct notice to be given to the company and also provide an opportunity of being heard before giving directions as to the advertisement of the petition.**

The Court noticed that **the essence of Rule 5 is to provide an opportunity of being heard to the company sought to be wound up, even before directions as to the advertisement of the petition are given**.

Two purposes:

- it provides an opportunity to all the stakeholders such as (i)creditors; (ii)workers; (iii) suppliers; (iv) customers; and (v) the general public, either to support or oppose the proceedings for winding up.
- it serves as a warning/notice or red alert to all those dealing with the company so that they know that there could be an element of risk in dealing with the company.

Explaining why an opportunity of being heard is contemplated in Rule 5, before ordering the advertisement of the petition, the Court said, "After all, the winding up of a company is like the insolvency of an individual. The advertisement of the petition for winding up, not merely serves as an opportunity to support or oppose winding up, but also harms the reputation of the company and sends shock waves in the stock market, if it is a listed company or among the stakeholders who have dealings with the company."

The Court went through a number of authorities where the Court took a view that advertisement is mandatory, not only in view of the prescription contained in the Rules, but also in view of the specific order passed by the Company Court at the time of admission, directing the publication of the advertisement in specified newspapers. The Court, however, observed that even in such cases the failure to publish an advertisement was not seen as something that would lead to the automatic dismissal of the petition for winding up.

Arunachala Gounder v. Ponnusamy : 2022 SCC OnLine SC 72 -Who can claim share in the inherited property of a female Hindu dying issueless and intestate? -HELD- that if a female Hindu dies intestate without leaving any issue, then the property inherited by her from her father or mother would go to the heirs of her father whereas the property inherited from her husband or father-in-law would go to the heirs of the husband. However, if she dies leaving behind her husband or any issue, then Section 15(1)(a) of the Hindu Succession Act, 1956 comes into operation and the properties left behind including the properties which she inherited from her parents would devolve simultaneously upon her husband and her issues as provided in Section 15(1)(a) of the Act.

Keshav v. Gian Chand : 2022 SCC OnLine SC 81- Gift deed by an old illiterate woman: SC approves not legalistic but holistic approach by lower courts to determine validity of deed- HELD- In an issue relating to the alleged gift deed by an old illiterate woman the SC has held that when a person obtains any benefit from another, the court would call upon the person who wishes to maintain the right to gift to discharge the burden of proving that he exerted no influence for the purpose of obtaining the document. While the corollary to this principle finds recognition under sub-section (3) to Section 16 of the Contract Act, 1872 which relates to pardanashin ladies, the courts can apply it to old, illiterate, ailing or infirm persons who may be unable to comprehend the nature of document or contents thereof.

The fact in issue in the present case is the voluntariness and animus necessary for the execution of a valid gift deed, which is to be examined on the basis of evidence led by the parties who could depose for the truth of this fact in issue. Decision and determination of the fact in issue is by examination of the oral evidence of those persons who can vouchsafe for the truth of the facts in issue.The impugned judgment in the second appeal by the High Court, unfortunately, chose to ignore and not deal with the fact in issue in the background of the case, but was completely influenced by the evidence led to support execution and registration of the document, and not whether execution was voluntary and in exercise of unfettered will to effect gratuitous transfer of land in favour of the plaintiffs.

Concurrent findings of facts arrived at in the present case were based upon a holistic examination of the entire evidence relating to execution and validity of the gift deed. The lower courts did not adopt a legalistic approach but took into account not one but several factual facets to accept the version given by Keshav that the gift deed was not a valid document.

"These concurrent findings are not perverse but rather good findings based upon cogent and relevant material and evidence on record. These findings of the facts can be interfered in the second appeal only if they are perverse or some gross illegalities have been committed in arriving at such findings. To reverse the findings is not only to assess errors but also deal with the reasons given by the court below and record findings and grounds for upsetting the conclusion."

The Court hence held that the views and findings recorded by the lower courts are well reasoned and have taken into account several factors that repel and contradict the claim of a valid execution of the gift deed by Hardei favouring the plaintiffs.

Mahima Tuli
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LATEST CASES: CRIMINAL

"*There can be no doubt that for "public order" to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects "law and order" but before it can be said to affect "public order", it must affect the community or the public at large*."

- *R.F. Nariman, J. in Banka Sneha Sheela v. State of Telangana, (2021) 9 SCC 415, para 14*

Smruti Tukaram Badade Vs. State of Maharashtra and Another: 2022 SCC OnLine SC 78-Need for creating a safe and barrier free environment for recording the evidence of vulnerable witnesses?-HELD-Emphasising the need for and importance of setting up facilities which cater to the need for creating a safe and barrier free environment for recording the evidence of vulnerable witnesses, the Hon'ble Supreme Court has passed directions under Article 142 of the Constitution in furtherance of the earlier decisions rendered in Sakshi v. Union of India, (2004) 5 SCC 518, State of Punjab v. Gurmit Singh, (1996) 2 SCC 384, State of Maharashtra v. Bandu @ Daulat, (2018) 11 SCC 163 and Mahender Chawla v. Union of India, (2019) 14 SCC 615, to facilitate the implementation of the earlier directions.

K. Shanthamma Vs. State of Telangana, 2022 SCC OnLine SC 213 -Whether the proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the PC Act?-HELD-Hearing a Criminal Appeal in conviction for the offences punishable under Sections 7 and 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, the Hon'ble Supreme Court answering the same in affirmative has reiterated the law summarised in *P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another, (2015) 10 SCC 152.*

Babu Venkatesh and Ors. Vs. State of Karnataka and Anr.: 2022 SCC OnLine SC 200 -How the power under Section 156 (3) of Cr.P.C. has to be exercised?-HELD-Hearing a Criminal Appeal dismissing the criminal petitions filed under Section 482 of the Code of Criminal Procedure, the Hon'ble Supreme Court answering the same has reiterated the law summarised in *Priyanka Srivastava and Another v. State of Uttar Pradesh and Others, (2015) 6 SCC 287.*

Manoj @ Monu @ Vishal Chaudhary Vs. State of Haryana & Anr.: [Criminal Appeal No. 207 of 2022 arising out of S.L.P. (Criminal) No. 8423 of 2019], Decided on 15.02.2022-Requirements of bonafide in raising the plea of juvenility?-HELD-Hearing a Criminal Appeal setting aside an order passed declaring the appellant as juvenile in conflict with law and ordering to stand trial as an adult, the Hon'ble Supreme Court has held that the plea of juvenility has to be raised in a bonafide and truthful manner. The Hon'ble Supreme Court has further held that if the reliance is on a document to seek juvenility which is not reliable or dubious in nature, the appellant cannot be treated to be juvenile keeping in view that the Act is a beneficial legislation. The Hon'ble Supreme Court has further held that in terms of Rule 12(3)(iii) of the Rules, Birth Certificate issued by corporation or Municipal Authority or a Panchayat is a relevant document to prove the juvenility. The Family Register is not a Birth Certificate. Therefore, it would not strictly fall within

clause (iii) of Rule 12(3) of the Rules. Even Section 94(2)(ii) of the 2015 Act contemplates a birth certificate issued by a Panchayat to determine the age.

Pappu Vs. State of Uttar Pradesh: 2022 SCC OnLine SC 176:Aggravating circumstances/Mitigating circumstances - (Criminal test)?-HELD-Hearing a Criminal Appeal against the judgment and order affirming the upholding of conviction for offences punishable under Sections 376, 302, 201 of the Indian Penal Code, 18601 and Section 5/6 of the Protection of Children from Sexual Offences Act, 2012, the Hon'ble Supreme Court answering the same pointing out the requirement of applying 'crime test', 'criminal test' and 'rarest of rare test', has reiterated the law summarised in *Shankar Kisanrao Khade v. State of Maharashtra: (2013) 5 SCC 546.*

Kahkashan Kausar @ Sonam & Ors. Vs. State of Bihar & Ors.: 2022 SCC OnLine SC 162 -Proceeding against the relatives and in-laws of the husband under section 498A IPC?-HELD-Hearing a Criminal Appeal against the judgment and order passed under Section 482 of the Code of Criminal Procedure challenging the FIR implicating the Appellants for offences under Sections 341, 323, 379, 354, 498A read with Section 34 of the Indian Penal Code, the Hon'ble Supreme Court warning the Courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them, has reiterated the law summarised in *Rajesh Sharma and Ors. Vs. State of U.P. & Anr., (2018) 10 SCC 472, Arnesh Kumar Vs. State of Bihar and Anr., (2014) 8 SCC 273, Preeti Gupta & Anr. Vs. State of Jharkhand & Anr., (2010) 7 SCC 667, Geeta Mehrotra & Anr. Vs. State of UP & Anr., (2012) 10 SCC 741 and K. Subba Rao v. The State of Telangana, (2018) 14 SCC 452.*

Serious Fraud Investigation Office Vs. Rahul Modi & Ors.: 2022 SCC OnLine SC 153 -Whether an accused is entitled for statutory bail under Section 167(2), CrPC on the ground that cognizance has not been taken before the expiry of 60 days or 90 days, as the case may be, from the date of remand?-HELD-Hearing a Criminal Appeal against the order granting bail assailed by the Serious Fraud Investigation Office ("SFIO"), the Hon'ble Supreme Court scrutinising the law laid down in *Suresh Kumar Bhikamchand Jain v. State of Maharashtra & Anr., (2013) 3 SCC 77, Sanjay Dutt v. State, (1994) 5 SCC 410, Mohamed Iqbal Madar Sheikh & Ors. v. State of Maharashtra, (1996) 1 SCC 722 and M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence, (2021) 2 SCC 485*, has held that in all the said judgments the Court had categorically laid down that the indefeasible right of an accused to seek statutory bail under Section 167(2), CrPC arises only if the charge-sheet has not been filed before the expiry of the statutory period.

Rajesh Yadav & Anr. Etc. Vs. State of Uttar Pradesh: 2022 SCC OnLine SC 150-Principles of Law: Hostile Witness: Evidentiary Value of a Final Report: Chance Witness: Related and Interested Witness?-HELD-Hearing a Criminal Appeal against the judgment convicting the appellants for life, while acquitting all of them for the offence charged under Section 307 of the Indian Penal Code, with the confirmation of conviction and sentence under Section 25 of the Arms Act except one, the Hon'ble Supreme Court has scrutinised the law laid down on the subjects.

State of Uttarakhand Vs. Sachendra Singh Rawat : 2022 SCC OnLine SC 146-Factors for determining the

intention to cause death?-HELD- Hearing a Criminal Appeal against the judgment, for the offence punishable under Section 302 IPC, holding that culpable homicide in the instant case is not murder, the Hon'ble Supreme Court noted that the intention to cause death can be gathered generally from a combination of a few or several circumstances, among other, as laid down in *Pulicherla Nagaraju vs. State of A.P., (2006) 11 SCC 444.*.

Suresh Chand Vs. Ajit Singh Dahiya and others: CRM-M-48159-2021(P&H), Date of decision: 17.12.2021-Awarding multiple sentences of imprisonment in a trial? – HELD - Noting that the observations of the Hon'ble Supreme Court, passed in *Sunil Kumar @ Sudhir Kumar and Another Vs. State of Uttar Pradesh, 2021(5) SCC 560*, retreating the law laid down in *Nagaraja Rao v. Central Bureau of Investigation: (2015) 4 SCC 302,* are either not in the knowledge of, or are not being diligently followed by the trial Judges who are deciding the original trial, the Hon'ble Punjab & Haryana High Court has reiterated that the Court of first instance while awarding multiple sentences of imprisonment in a trial, must specify, in clear terms, as to whether the said sentences would run concurrently or consecutively and in case, they were to run consecutively, the order (sequence) in which the same would run.

Sakina Begum Vs. State Of Haryana And Ors.: Crm-M-46709-2019, Date Of Interim Decision: 27.11.2019-Disposal of articles lying in the Judicial Malkhana?-HELD-Seeking the affidavits of the Chief Secretary of both the States as well as Home Secretary of U.T., Chandigarh, the Hon'ble Punjab & Haryana High Court has reiterated judgment rendered by Hon'ble Supreme Court in *Sunderbhai Ambalal Desai vs. State of Gujarat, (2002) 10 SCC 290*, wherein a direction was issued that articles lying in the Judicial Malkhana should not be kept for more than a period of one month and the same be disposed of under the provisions of Sections 451, 457, 458 and 459 of the Cr.P.C. without awaiting the completion of trial and judgment rendered by Hon'ble Supreme Court in *General Insurance vs. State of A.P., (2010) 6 SCC 768,* noticing that the police and the investigating agencies are not taking adequate steps for compliance of the directions issued in *Sunderbhai Ambalal Desai's case (supra)* which is resulting into loss of hundreds of vehicles as the recovered vehicles are reduced into junk by the time they are released.

Rajbir Vs. State of Haryana, CRM-M-25786-2021 (O&M) (P&H), Date of Decision: 30.11.2021-Definition of 'Ganja' contained under Section 2 (iii) (b) of the NDPS Act?-HELD-Elaborating the definition of Section 2(iii) (b) of the NDPS Act, the Hon'ble Punjab & Haryana High Court has reiterated judgment rendered by Hon'ble Supreme Court in *'Shiv Kumar Mishra Versus State of Goa' [2009(3) SCC 797]* while referring to the definition of 'Ganja' contained under Section 2 (iii) (b) of the NDPS Act observing that when the seized Ganja consisted of greenish brown colour leafy and flowery parts of the plant, then it will fall within the definition of Ganja and would include the seeds and leaves of the cannabis plant since the seized Ganja was accompanied by the flowery parts of the plant. Furthermore, the moisture content is not to be excluded while ascertaining the total weight of seized material.

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

LATEST CASES: NDPS ACT

"When a person is preventively detained, it is Articles 21 and 22 of the Constitution that are attracted and not Article 19. Further, preventive detention must fall within the four corners of Article 21 read with Article 22 and the statute in question. To therefore argue that a liberal meaning must be given to the expression "public order" in the context of a preventive detention statute is wholly inapposite and incorrect. On the contrary, considering that preventive detention is a necessary evil only to prevent public disorder, the Court must ensure that the facts brought before it directly and inevitably lead to a harm, danger or alarm or feeling of insecurity among the general public or any section thereof at large."

— R.F. Nariman, J. in Banka Sneha Sheela v. State of Telangana, (2021) 9 SCC 415, para 19

Union of India v. Shaikh Istiyaq Ahmed: 2022 SCC OnLine SC 36 : No scaling down of sentence to 10 years as per NDPS Act for man sentenced to 26 years in prison by Mauritius SC for being in possession of over 150 gms of heroin: SC-HELD-In a case where a man was arrested in Mauritius after being found to be in possession of 152.8 grams of heroin and was sentenced to 26 years in prison by the Supreme Court of Mauritius, the SC bench has upheld the Central Government's decision rejecting the request for scaling down the sentence from 26 years to 10 years and has found it to be in accordance with the provisions of the Repatriation of Prisoners Act, 2003 and the agreement entered into between India and Mauritius.

Considering the law and the facts of the case, it was held that the sentence imposed by the Supreme Court of Mauritius in this case is binding on India. A warrant of detention was issued in which it was specified that the Respondent has to undergo a sentence of 26 years. As per Section 13(4), the sentence shall be 26 years.

"The question of adaptation of the sentence can only be when the Central Government is convinced that the sentence imposed by the Supreme Court of Mauritius is incompatible with Indian law."

Reference to Indian law in Section 13 (6) of the 2003 Act is not restricted to a particular Section in NDPS Act. Incompatibility with Indian law is with reference to the enforcement of the sentence imposed by the Supreme Court of Mauritius being contrary to fundamental laws of India. It is only in case of such an exceptional situation, that it is open the Central Government to adapt the sentence imposed by the Supreme Court of Mauritius to be compatible to a sentence of imprisonment provided for the similar offence.

"Even in cases where adaptation is being considered by the Central Government, it does not necessarily have to adapt the sentence to be exactly in the nature and duration of imprisonment provided for in the similar offence in India. In this circumstance as well, the Central Government has to make sure that the sentence is made compatible with Indian law corresponding to the nature and duration of the sentence imposed by the Supreme Court of Mauritius, as far as possible."

The adaptation of sentence from 26 years to 10 years as per Section 21 (b) of the NDPS Act was rejected by the Central Government on the ground that it would amount to reduction of sentence by 16 years which would not be in consonance with Section 13 (6) of the 2003 Act and Article 8 of the Agreement. The Court held that te reasons recorded by the Central Government to reject the request for scaling down the sentence are in accordance with the provisions of the 2003 Act and the agreement entered into between India and Mauritius as discussed above. Hence, the Court upheld the order of the Central Government.

Mahesh v. State (GNCTD): 2022 SCC OnLine Del 394: Del HC grants bail to accused under S. 37(b)(ii) of NDPS Act- HELD-The Delhi HC granted bail to an accused on being satisfied with "reasonable grounds" as per Section 37 (b)(ii) of the NDPS Act, 1985. In view of the gravity of the consequences of drug trafficking, the offences under the NDPS Act have been made cognizable and non-bailable, High Court expressed while referring to Section 37 of the NDPS Act.

Section 37 NDPS Act does not allow granting bail for offences punishable under Section 19 or Section 24 or Section 27A and for offences involving commercial quantity unless the two-

fold conditions prescribed under the Section have been met.

Before granting bail, the Court must be satisfied with the scheme of Section 439 CrPC.

The Court under Section 37(b)(ii) of the NDPS Act is not required to be merely satisfied about the dual conditions i.e., prima facie opinion of the innocence of the accused and that the accused will not commit a similar offence while on bail, but the court must have "reasonable grounds" for such satisfaction.

Elaborating further on the term "reasonable grounds", Court expressed that, the said term is not capable of any rigid definition nor of being put into any straight-jacket formula, but its meaning and scope will be determined based on the surrounding facts and circumstances of each case. Thus, what may be reasonable in one set of facts may not be reasonable in another set of facts.

High Court noted that the main accused was charged with the possession of a larger quantity of contraband and on the basis of whose statement the applicant was arraigned and raised has already been released on bail. Hence the applicant's application merited indulgence of this Court on the ground of parity.

"Reasonable Grounds" in the present matter were found by the Court.

The applicant had been incarcerated for more than 4 years as an undertrial, whereas on date, two of the witnesses have been examined and the trial remains pending.

On observing the above, Court expressed that,

Speedy Justice is a Fundamental Right enshrined under the ambit of Article 21 of the Constitution of India, and the same needs to be given effect by this Court in letter and in spirit, else it will remain as a dead letter of law.

Supreme Court's decision in *Abdul Rehman Antulay v. R.S. Nayak,* (1992) 1 SCC 225 was cited wherein detailed guidelines were laid down with respect to speedy trial. The said guidelines were also upheld by a 7- Judge Bench of the Supreme Court in *P. Ramachandra Rao v. State of Karnataka,* (2002) 4 SCC 578.

Applicant was in jail for more than 4 years and out of 14 witnesses only 2 were examined to date and no possibility of trial to be concluded in the near future

Hence, the applicant cannot be incarcerated for an indefinite period and the Court must step in to ensure speedy justice to the applicant.In view of the above discussion, the applicant was granted bail and the Court laid down emphasis on parity and clean antecedents of the applicant.

The applicant was directed to furnish a personal bond of Rs 50,000, with two sureties of like amount and bail conditions, were laid down.

Sandeep Kumar v. State of Punjab :2022 SCC OnLine P&H 325: "Drug menace has become deep rooted and is taking its toll like a slow poison for the young generation"; HC expresses anguish over callously casual approach of officers-HELD-In a case exposing callous attitude of authorities while dealing with drug menace in the State of Punjab,The Punjab and Haryana HC observed that in some paras of the Statu sreports/Reply, the police officers concerned had mentioned the tablets, allegedly recovered as 'CLAVIDOL-100 SR' whereas in certain other paras the same had been described as 'CLOVIDOL-100 SR'. Criticizing the lackadaisical attitude of officers, the Bench remarked,

"…the said discrepancy reflects nothing else but their callously casual approach towards their official duty which is least expected from them because they are duty bound to check the crime graph in the State specially in the circumstances when the drug menace has become deep rooted and is taking its toll like a slow poison for the young generation upon which every nation pins hopes for a bright and secure future."

Further, noticing that the Assistant Commissioner Drugs, Food & Drug Administration had issued a letter to M/s Yorks Pharma for cancelling the permission to manufacture the formulations containing 'Tramadol Hydrochloride' salt including 'CLAVIDOL 100-SR' tablets, on account of the alleged contravention of the Drugs and Cosmetics Act, 1940 and Rules 1945, while further directing it to stop the manufacturing of all the drug formulations containing the said salt and observing that as per FSL reports, the 'CLAVIDOL-100 SR' tablets, i.e the tablets with the same brand name, contain 'Pregabalin', the Bench ordered that Department is supposed to check and supervise the manufacturing of the drugs in the State so as to ensure the strict compliance

of the relevant law/Rules. The Bench remarked,

"Subsequent use of the same brand name, i.e 'CLAVIDOL-100 SR' by the above-said manufacturer for manufacturing the tablets containing a different salt is likely to lead to grave consequences as the same can result in serious health hazards for the patients as well as the public at large."

However, on being reprimanded by the Court the authorities concerned had issued another letter to the afore-named manufacturer qua the cancellation of the permission granted to it for manufacturing the drug formulations containing 'Pregabalin'.

Criticizing the conduct of on the part of the Authorities, the Bench stated,

"It is highly deplorable and it speaks volumes of their questionable acts and omissions which pose a serious challenge for the State in tackling with the drug menace which seems to be touching new heights with every passing day."

Aryan Shah Rukh khan v. Union of India: 2021 SCC OnLine Bom 4127: Whether there is enough material to ascertain whether there is enough material on record to prima facie infer that the applicants have hatched a conspiracy and that the prosecution was justified in invoking provisions of Section 29 of the NDPS Act?-HELD- For inferring the act of hatching conspiracy on the part of the applicants and co-accused, there has to be positive evidence about:

- An agreement to do an unlawful act or to do lawful act by unlawful means
- Such agreement must precede with meeting of minds.
- Agreement can be expressed or implied or in parts.

High Court stated that on perusal of having gone through WhatsApp chats extracted from accused 1's phone, nothing objectionable could be noticed to suggest that applicants 1 and 2 or all three applicants along with other accused persons in the agreement have meeting of minds and have hatched conspiracy committing the offence in question.

"Hardly any positive evidence on record to convince this Court that all the accused persons with common intention agreed to commit unlawful act."

A very significant observation was that the investigation carried out till this date suggested that applicant/accused's 1 and 2 were travelling independent of accused 3 and there was no meeting of minds on the aforesaid issue.

Conspiracy

With respect to conspiracy against the applicants, there was an absence of material on the record of applicants having such meeting of minds with other accused who were named in the offence.

Applicants were not even subjected to medical examination so as to determine whether at the relevant time, they had consumed drugs.

Bench stated that Additional Solicitor General was justified in relying on the Supreme court decision in *State of Orissa v. Mahimananda Mishra,* (2018) 10 SCC 516, to claim that a high degree of evidence was not required at this stage of the proceedings to establish the case of conspiracy, however, this Court is required to be sensitive to the fact that there has to be the presence of basic material in the form of evidence so as to substantiate the case of conspiracy against the applicants.

Court prima facie did not notice any positive evidence against the applicants.

High Court opined that the claim put forth by the respondent that applicants should be considered to have intention to commit an offence under NDPS Act, having found in possession of commercial quantity, in the backdrop of case of hatching conspiracy is liable to be rejected.

Claim put forth by the Respondent that Accused persons have accepted their involvement in the crime was also liable to be rejected in view of the Supreme Court decision in *Tofan Singh v. State of Tamil Nadu,* (2013) 16 SCC 31.

"…such confessional statements can be considered by the investigating agency only for the investigation purpose and cannot be used as a tool for drawing an inference that Applicants have committed an offence under the NDPS Act…"

Concluding the matter, Bench held that Section 37 prima facie will not be attracted as this Court had already observed that there was no material on record to infer that applicants hatched a conspiracy to commit an offence.

"Difficult to infer that applicants are involved in an offence of commercial quantity."

Mahima Tuli
Research Fellow

NOTIFICATION

1. <u>SEBI issues circular on change in control of the asset management company involving scheme of arrangement under Companies Act, 2013</u>: On January 31, 2022, SEBI issues circular on change in control of the asset management company involving scheme of arrangement under Companies Act, 2013 in order to streamline the process of providing approval to the proposed change in control of an AMC involving scheme of arrangement which needs sanction of National Company Law Tribunal ("NCLT") in terms of the provisions of the Companies Act, 2013.

Key points:

1. Application seeking approval for the proposed change in control of the AMC under Regulation 22(e) of MF Regulations shall be filed with SEBI prior to filing the application with the NCLT;
2. Upon being satisfied with compliance of the applicable regulatory requirements, an in-principle approval will be granted by SEBI;
3. Aalidity of such in-principle approval shall be three months from the date of issuance, within which the relevant application shall be made to NCLT.
4. Within 15 days from the date of order of NCLT, applicant shall submit the following documents to SEBI for final approval:
   a. Application for the final approval;
   b. Copy of the NCLT Order approving the scheme;
   c. Copy of the approved scheme;
   d. Statement explaining modifications, if any, in the approved scheme vis-à-vis the draft scheme and the reasons for the same; and
   e. Details of compliance with the conditions/ observations mentioned in the in-principle approval provided by SEBI.[1]

2.<u>Food Safety and Standards (Packaging) First Amendment Regulations, 2022:</u> On January 25, 2022, the Food Safety and Standards Authority of India (FSSAI) has issued the Food Safety and Standards (Packaging) First Amendment Regulations, 2022 to further amend the Food Safety and Standards (Packaging) Regulations, 2018.

Key amendment:

- Regulation 4(4)(a) which specify "Specific Requirements for Primary food packaging" the following proviso has been inserted namely: –

"Provided further that food grade packaging materials as specified in regulation 4(1) to (3), which may or may not contain plastic as component compatible with the water to be packaged may also be used. In such cases requirements of transparency would not apply"[2]

[1] https://www.sebi.gov.in/legal/circulars/jan-2022/change-in-control-of-the-asset-management-company-involving-scheme-of-arrangement-under-companies-act-2013_55745.html
[2] https://fssai.gov.in/upload/notifications/2022/01/61f2431e10029Gazette_Notification_Water_27_01_2022.pdf

EVENTS OF THE MONTH

- Sh.Amrinder Singh Shergill, Additional District & Sessions Judge-cum-Faculty Member, Chandigarh Judicial Academy gave a Webinar on “Expeditious Disposal of Execution Cases” on February 5, 2022 to the District Judiciary of Punjab, Haryana and UT Chandigarh including Trainee Judicial Officers.
- Chandigarh Judicial Academy organized online two days workshop on the Family Courts Act, 1984 during February 19-20, 2022. Dr.Balram K Gupta, Director (Academics), CJA, while making the opening remarks observed: the purpose of the Family Courts is to make all possible efforts to resolve family disputes through conciliation and mediation. This in turn will build up happy homes, happy families and happy children. He also gave the overview of the Family Courts Act. This workshop was divided into 07 academic sessions plus the valedictory session. Each session was devoted to cover specific aspects of the Family Courts Act. In each session, the hon’ble judges made either the opening or the concluding remarks. Accordingly, Hon’ble Ms. Justice Ritu Bahri, Hon’ble Mr.Justice Anupinder Singh Grewal, Hon’ble Mr.Justice Arun Monga, Hon’ble Mrs. Justice Meenakshi I Mehta, Hon’ble Mr.Justice Vivek Puri & Hon’ble Mr. Justice Vikas Bahl, Judges of Punjab & Haryana High Court were associated in different sessions. Ms.Ritu Tagore, DSJ-cum-Principal Judge, Family Court, Ambala, Ms.Sangeeta Rai Sachdev, ADJ-cum-Addl. Judge, Family Court, Ambala, Ms.Madhu Khanna Lalli, ADJ-cum-Faculty Member, CJA, Mr.Anil Malhotra, Advocate & Author, Punjab & Haryana High Court, Sh.Hemraj Mittal, ADJ-cum-Principal Judge, Family Court, Fatehabad, Dr.Sudhir Kumar Jain, Judge-Trainer, Delhi, Ms.Aarzu Gupta, Assistant Professor, Clinical Psychology, Deptt. Of Psychiatry, GMCH-32, Chandigarh, Ms.Harshali Chowdhary, ADJ-cum-Faculty Member, CJA took different sessions covering different aspects of the Family Courts Act. Dr.Balram K Gupta, Director (Academics), CJA gave the summing up of the two days workshop. HMJ Amol Rattan Singh, Judge, Punjab & Haryana High Court, President, BoG, CJA while delivering the valedictory address appreciated the effort put in by Chandigarh Judicial Academy in organizing this two days workshop. He desired that these workshops should be a regular fixture so that the judicial officers and judges of district judiciary are updated periodically. This in fact, is an important component of continuous judicial education. Ms.Shalini Singh Nagpal, Director (Administration), CJA while giving the expression of gratitude thanked the President, BoG and all the other Hon’ble Judges of the High Court. She equally expressed her gratitude to all other resource persons of the workshop.