CJA
e-NEWSLETTER
OCTOBER-2020
Monthly Newsletter of
Chandigarh Judicial Academy of Punjab & Haryana High Court
For circulation among the stakeholders in Judicial Education

VOLUME : 05
ISSUE : 10

In this Issue:

FROM THE DESK OF CHIEF EDITOR

Justice is the first promise of the Indian Constitution. There is one basic commandment: Justice cannot be rationed. The people are hungry. Therefore, the Constitution must ensure Justice. Justice in adulterated form cannot be served. When it comes to Justice, there is no compromise. The Magna-Carta, more than 8 centuries old ordains: Justice not to be sold, nor denied or delayed. Justice is the ligament which joins and binds all human beings.

The framers of the Constitution were truly visionary. Article 142 mandates the Supreme Court to pass such decree or make such order as is necessary for doing **Complete Justice** in any cause or matter. It is the summit court which alone has been trusted with this extra ordinary jurisdiction to do **Complete Justice**. It would be relevant to make reference to the Constituent Assembly (CA) Debates. Article 118 of the Draft Constitution became Article 142 of the present Constitution. No debate took place in the CA when Article 118 of the Draft Constitution was considered. It was referred (Article 118) to when Article 112 (now Article 136) of the Draft Constitution was debated. Pt. Thakur Dass Bhargava expressed his views as follows:

> This **Natural Justice** in the words of the Privy Council is above law, and I should like to think that our Supreme Court will also be above law in this matter……. I beg to submit before the House that this is a very important Section and gives almost unlimited powers and as we have got political Swaraj, we have Judicial Swaraj certainly…… I should therefore think that the Supreme Court shall exercise these powers and will not be deterred from doing justice by the provision of any rule or law, executive practice or executive circular or regulation etc. Thus, the Supreme Court will be in this sense above law.

In the CA, **Natural Justice** and **Complete Justice** were equated. Both were considered and treated above law. This means that the statute cannot limit the scope of the two concepts. They are inter-woven. They both grow through judicial process. Both are flexible. Ever expanding. One supplements the other. Pt. Bhargava added:

> At the same time, jurisdiction of the article is almost divine in its nature, because I understand that this Supreme Court will be able to deliver any judgment which does **Complete Justice** between states and between persons before it.

Alladi Krishnaswami Ayyar also referred to **Complete Justice** in the following terms:

> If only we realize the plenitude of the jurisdiction under Article 112, if only, as I have no doubt, the Supreme Court is able to develop its own jurisprudence according to its own light, suited to the conditions of the country, **there is nothing preventing the Supreme Court from developing its own jurisprudence in such way that it could do Complete Justice in every kind of cause or matter.**

These two views unfold the minds of the framers of the Constitution, why the concept of **Complete Justice** was introduced in the Constitution. **Complete Justice** has been described as 'almost divine' in its nature. Secondly, the framers believed that Supreme Court will develop its own jurisprudence of **Complete Justice** in every kind of cause or matter.

A clear reading of Article 142 would leave nothing to doubt that no limitations had been prescribed while mandating the Supreme Court to do **Complete Justice**. This position would also be evident from what was debated in the CA. This article has existed in the Constitution right from the beginning (1950). During the last 7 decades, the summit court of the country has exercised its jurisdiction of doing **Complete Justice** in variety and varied situations. The apex court has invoked this jurisdiction reasonably frequently. Its scope and ambit has also been the serious concern of even the Constitution Benches. The basic controversy which continues is, whether the top court while doing **Complete Justice** is restricted by the statutory provisions or not. The normal constitutional rule is justice according to law. It is a historic fact that justice according to law is not necessarily always the best kind of justice. There is every possibility of space and gap between law and justice. In the first instance, if the Supreme Court was bound by the statutory provisions while doing **Complete Justice**, there was no rationale or reasonable justification to introduce the concept of **Complete Justice**. In fact, the basic recipe is: justice according to law is sufficient. If the framers thought it prudent to introduce the concept of **Complete Justice**, obviously it was something more than justice according to law. It is important to add that the normal rule is to do justice as per the statute. The **Complete Justice** jurisdiction arises in extra ordinary situations. It is totally understandable that the Parliament while enacting the law cannot possibly envisage all possible situations which may arise in future to be dealt within the ambit of law. It is true of every legislation. If there was no Article 142, even the Supreme Court was bound to do justice within the strict letter of law unless the Supreme Court had found that the law itself was unconstitutional. Therefore, the summit court would have been handicapped to do **Complete Justice** in many of the situations which may not have been envisaged within the ambit of a particular law. **It was precisely because of this context that Alladi Krishnaswami Ayyar had categorically expressed his view in the CA that there is nothing preventing the Supreme Court from developing its own jurisprudence of doing Complete Justice in every kind of cause or matter**. Thus, this leaves nothing to doubt. In *Re: Cognizance For Extension of Limitation (2020)*, the Supreme Court exercised its jurisdiction under Article 142 read with Article 141 of the Constitution and extended the limitation period of appeals on account of Corona Virus (COVID-19) situation. In order to ensure that lawyers/litigants do not have to come physically to file petitions/applications/suits/appeals/all other proceedings in respective Courts/Tribunals across the country including the SC, the apex court directed: "a period of limitation in all such proceedings irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended w.e.f. 15th March, 2020 till further

orders to be passed by this court in present proceedings". Two points need to be noticed. Inspite of the specific statutory provisions of limitation, yet the SC under Article 142 passed a blanket order extending the limitation period keeping in view the extra ordinary situation because of COVID-19. If the statutory limitation period had to be taken to be binding, **Complete Justice** could not have been done in this kind of extra ordinary situation. People across the country would have suffered injustice. Secondly, the SC also directed that this order shall be binding on all Courts/Tribunals/Authorities under Article 141. This, in fact, is the beauty of Article 142 of doing **Complete Justice**. If Article 142 was not in the Constitution, it would have become a difficult situation to deal within the strict statutory provisions. Therefore, in extra ordinary situations, even the statutory provisions would not be a hindrance in doing **Complete Justice** in exercise of its jurisdiction under Article 142.

Article 142 is to do **Complete Justice**. This is the best recipe to cover silences in different statutory provisions. The letter of law may not be specifically covering certain situations. Coupled with this, there is no specific statutory bar either. Resultantly, it would be open to the summit court to fill in the silences by doing **Complete Justice** in such situations. The filling up of silences from time to time would make the law wholesome. In turn, such law would become wholesome in order to ensure **Complete Justice** in different situations.

Article 142 is unique jurisdiction. The framers have trusted the judges of the summit court to do **Complete Justice**. This jurisdiction has neither been given to the High Courts nor to the District courts. This is understandable. This trust could be reposed only in the apex court. The exercise of this jurisdiction would in due course of time give birth to **new Jurisprudence of Complete Justice** under the Constitution. A question of importance arises. Will this new Jurisprudence of **Complete Justice** be binding on all other courts and tribunals or not. So far, the view was that the cases under Article 142 decided by the summit court cannot be treated as precedents to be followed by the High Courts and other courts and tribunals. Even this view would not be justified. In the matter relating to limitation, the SC exercised its jurisdiction under Article 142 read with Article 141. Therefore, **Complete Justice** done in extra ordinary situations would be precedents to deal with similar/such extra ordinary situations by all other courts. The advantage of this would be that one will not be required to wait till the matter is taken to the apex court to ensure **Complete Justice**. There is of course, a danger whether the precedent has been rightly followed or not by other courts. Similar danger is in regard to the law laid down in all other situations as well. There is a system of checks and balances. If the District Court decides a matter as per the precedent laid down by the summit court under Article 142, the appeal would come before the High Court. Similarly, the matter decided by the High Court, the appeal would lie before the SC. Consequently, the law laid down by the SC would be followed by all other courts in the country. The benefit of this would be that the new jurisprudence of **Complete Justice** would perculate across the country through the medium of different courts and tribunals. It would be good for the health of doing **Complete Justice**. The High Courts under Article 226 mould the relief keeping in view the statutory provisions and the facts and circumstances of each case. Lot of flexibility has been used in issuing writs in the nature of habeas corpus……. The High Courts are not hampered by the strict principles of each writ. Therefore, the High Courts under Article 226 would further be able to mould relief. Keeping in view the new Jurisprudence developed under Article 142.

There is still another aspect. If the apex court feels that within the provisions of the statute, it is not possible to do **Complete Justice**, what are the options open to the court? Article 142

is the mandate of the Constitution. Therefore, the statutory provisions cannot restrict the constitutional mandate. Obviously, it is the Constitution which prevails over the statute. In *Delhi Judicial Service Association (1991)* matter, the Supreme Court took the view:

> Under the constitutional scheme this Court has a special role, in the administration of justice and the power conferred on it under Articles 32, 136, 141 and 142 form part of **Basic Structure** of the Constitution. The amplitude of the power of this Court under these Articles of the Constitution cannot be curtailed by law made by Central or State Legislature.

Thus, in exceptional cases where the Supreme Court finds that the statutory provision hampers the doing of **Complete Justice**, such statutory provision would be liable to be declared unconstitutional. The top court has equated Article 142 with Articles 32, 136 and 141. Consequently, such a provision would be liable to be declared invalid. The general principle is that a legislation is considered to be constitutional unless it is found otherwise. The same principle would be applicable in the case of Article 142 also. The statute must meet the test of Article 142. After all, the doing of **Complete Justice** is the Constitutional mandate. However, it is added that if Article 142 is found to be in conflict with a Fundamental Right under the Constitution, it cannot be declared to be unconstitutional. The two provisions of the Constitution will have to be harmoniously interpreted. The Constitution is one wholesome organic document. Therefore, different provisions must be read together harmoniously.

It would be equally important to exercise Jurisdiction under Article 142 where there is no legislation. The court had in *Vishaka case (1997)* issued guidelines providing the protection of women from sexual harassment at the workplace in the absence of any enacted law. Once these directions are issued, they are binding till the legislation is enacted. Article 141 leaves nothing to doubt. It reads: The law declared by the Supreme Court shall be binding on all courts within the territory of India. Under Article 142, the Supreme Court cannot make an exception. Article 141 is loud and clear. It does not accept any exception.

It needs to be acknowledged that the Judiciary plays a productive role. Both in the field of Constitution and the other laws. It infuses life and blood into the provisions of the Constitution and the laws. It creates a living organism to meet the changing and challenging needs of the people. It prevents ageing of the Constitution and the laws. Article 142 is a specific example itself. How innovatively and creatively Article 142 has been invoked under different challenging situations including Corona-19. It has become an exportable item, Article 187 of the Constitution of Pakistan, 1973 and Article 104 of the Bangladesh Constitution, 1972 are materially the same as Article 142 of the Indian Constitution. In Article 88(2) of the Constitution of Nepal, 1990, the expression **Full Justice** has been used in place of **Complete Justice.** If the framers had not included Article 142, it is difficult to imagine, how the summit court would have dealt with extra-ordinary situations.

A new Jurisprudence of **Complete Justice** is emerging. It would not be wrong to say that Article 142 is yet to bloom fully. As visioned by the framers of the Constitution. **Complete Justice** is a Constitutional plant. It is rooted in Constitutional Morality. It is hoped that the apex court will continue to manure it well.

Balram K. Gupta

CASES UNDER ARTICLE 142

"Law has to cater to wide variety of situations as appear in society. Law being dynamic, the certainty of the legislation appears rigid at times whenever a circumstance (set of facts) appears which is not catered for explicitly. Expediency then dictates that the higher judiciary, while interpreting the law, considers such exception(s) as are called for without disturbing the pith and substance and the original intention of the legislature. This is required primarily for the reason to help strike a balance between competing forces—justice being the end—and also because the process of fresh legislation could take a long time, which would mean failure of justice, and with it erosion of public confidence and trust in the justice delivery system."

— Navin Sinha, J. in Varinder Kumar v. State of H.P., (2020) 3 SCC 321, para 13

Prem Chand Garg v. Excise Commissioner, U.P.: 1963 Supp (1)SCR 885–Purpose of Ar. 142 –HELD-In this case the Supreme Court established the precedent that Article 142 must be issued with the concurrence of the majority of judges hearing the matter. "The powers of this Court are no doubt very wide and they are intended to be and will always be exercised in the interest of justice. But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. That Court made a significant observation: "*Article 142 would not entitle a Judge sitting on a Bench of two Judges, who differs from his colleague to issue directions for the enforcement of his order although it may not be the agreed order of the Bench of two Judges. If this were to be permitted, it would lead to conflicting directions being issued by each Judge under Article 142, directions which may quite possibly nullify the directions given by another Judge on the same Bench. This would put the Court in an untenable position. Because if in a Bench of two Judges, one Judge can resort to Art 142 for enforcement of his directions, the second Judge can do likewise for the enforcement of his directions. And even in a larger Bench, a Judge holding a minority view can issue his order under Article 142 although it may conflict with the order issued by the majority. This would put this Court in an indefensible situation and lead to total confusion. Article 142 is not meant for such a purpose and cannot be resorted to in this fashion."*

A.R. Antulay v. R.S. Nayak : 1988(2)SCC 602–Ar. 142 and Complete Justice : SC-HELD-the Supreme Court held that to transfer cases from the Court of Special Judge, Greater Bombay to a sitting judge of the Bombay High Court was violative of the relevant statutory scheme (Criminal Law Amendment Act, 1952) read with Articles 14 and 21 of the Constitution, and could not have been passed.The court based its decision on the principle that the powers under Article 142(1) were indeed wide, but an order to do 'complete justice' under this provision, "must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws."

Union Carbide Corporation vs. Union of India: (1991) 4 Supreme Court Cases 584 –"Complete Justice" could even override the laws made by the Parliament: SC-HELD-The Hon'ble Supreme Court invoked Article 142 during the infamous case of Union Carbide and provided relief to the thousands of people who were affected during the black night of Bhopal Gas Tragedy. In the said judgment, the Hon'ble Supreme Court while awarding the compensation of $470 million to victims observed that to do "complete justice" it could even override the laws made by Parliament. It is held:*" prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142……..But we think that such prohibition*

should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of —"complete justice" of a cause or matter, the apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not 'complete justice' of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise."

The abovementioned statement of the Supreme Court of India placed itself above the laws made by Parliament or the legislatures of the States.

Supreme Court Bar Assn. vs. Union of India: (1998) 4 SCC 409 –Art. 142 further interpreted -HELD The powers under Article 142 of the Constitution were held to be supplementary in nature; not those which could be used to "supplant" the applicable substantive law, as constitutional powers were not meant to be exercised when such exercise came in directly conflict with express statutory provisions in a statute expressly dealing with the subject. And it was held that Article 142, "even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly." Thus, while dealing with contempt proceedings, suspension of a contemnor advocate's right to practice – statutorily exercised only by the Bar Council – was held to be impermissible in exercise of jurisdiction under Article 142.

The State of Tamilnadu and Ors. vs. K. Balu and Ors.: MANU/SC/1602/2016 - Sale Of Liquor /Alcohol Banned On State And National Highways-HELD-A three-judge bench of the Supreme Court issued directions to the states and union territories to desist from granting licenses for the sale of alcohol along national and state highways, and also directed that no liquor shop be located within five hundred metres of the highway. Although the Court began its judgment with a nod to judicial review, in my view, it failed to demonstrate the legal source of its power to pass the directions that it did. This is evidenced by its reference, in paragraph 24(vii), to the constitutional catch-all:*"These directions issue under Article 142 of the Constitution."*

Article 142 is not a *carte blanche*; it specifies that "*the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.*" A preliminary condition for the applicability of Article 142, therefore, is that the Supreme Court act within its jurisdiction. One aspect of this, surely, is that the Court act in accordance with the separation of powers, even if it is the loose and flexible separation of powers that exists under the Indian Constitution. Now, under the Constitution, the power to grant liquor licenses rests with the states (under List II of the Seventh Schedule), and indeed, this legal fact was admitted by the Court in paragraph 13. Directions to the state governments *not* to grant licenses for alcohol shops appear to encroach directly upon the legislative function, and therefore – *prima facie* – fall outside the "jurisdiction" of the Court.

ONGC v. Gujarat Energy Transmission Corporation Ltd: 2017 SCC OnLine SC 223: **If the delay is not condonable statutorily, it cannot be condoned taking recourse to Article 142 of the Constitution-HELD-**In an appeal preferred under Section 125 of the Electricity Act, 2003, the Three Judge Bench of the Supreme Court held that the Act is a

special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and hence, the delay cannot be condoned taking recourse to Article 142 of the Constitution.In the present case, it was argued by the respondents that the appeal was barred by 71 days and hence, the Court erred in condoning the delay of 71 days in view of the language employed in Section 125 of the Act. Accepting the contention of the respondents, the Court noticed that as per Section 125 of the Act, this Court, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period of 60 days from the date of communication of the decision or order of the appellate tribunal to him, may allow the same to be filed within a further period not exceeding 60 days. Hence, this Court has the jurisdiction to condone the delay but a limit has been fixed by the legislature, that is, 60 days. The Bench held that when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act.The appeal was listed before the Bench on 29.1.2010 on which date this Court condoned the delay and admitted the appeal. In light of the said facts it was contended that when the delay in review was condoned by this Court, the parties should not be permitted to raise a preliminary objection. The Court, however, rejected the said contention and said that if the delay is statutorily not condonable, the delay cannot be condoned. There is no impediment to consider the preliminary objection at a later stage.

In Re: Cognizance For Extension Of Limitation: 2020 Scc Online Sc 343: **SC extends limitation period for filingpetitions/applications/suits/appeals, etc.-HELD-** The three judge bench of the Supreme Court invoked its power under Article 142 read with Article 141 of the Constitution of India and extended limitation period of appeals from high courts or tribunals on account of coronavirus (COVID-19) pandemic. The said order of the Court came after taking suo motu cognizance of the situation arising out of the challenge faced by the country on account of COVID-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws.The order of the Court order is binding on all Courts/Tribunals and authorities.Earlier today, the same bench had said that it was mulling a shutdown amid rising coronavirus cases in the country. The Court opted to hold video-conference to hear extremely urgent matters in an unprecedented move.

M.Siddiq (Dead) vs. Mahant Suresh Das and others: (2020) 1 Supreme Court Cases 1 - Relief Of Specific Performance Of Contract Is No Longer Discretionary After 2018 Amendment: SC-HELD-TheHon'ble Supreme Court recently invokedArticle 142 while passing a unanimousjudgment on Ayodhya case wherein thebench handed over the disputed land of2.77 acres to a trust to be formed by thecentral government within three months for the construction of a temple, under theAcquisition of Certain Area at Ayodhya Act,1993. Another 5 acres of land was allottedfor the construction of a mosque inAyodhya.The Hon'ble Supreme Court described itspower under Article 142 – *"The phrase 'is necessary for doing complete justice' is of a wide amplitude and encompasses a power of equity which is employed when the strict application of the law is inadequate to produce a just outcome. The demands of justice require a close attention not just to positive law but also to the silences of positive law to find within its interstices, a solution that is equitable and just. The legal enterprise is premised on the application of generally worded laws to the specifics of a case before courts."*

LATEST CASES : CIVIL

"The rights which the citizens cherish deeply, are fundamental — it is not the restrictions that are fundamental."
— S. Ravindra Bhat, J. in Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1, para 86

Satish Chander Ahuja Vs. Sneha Ahuja : 2020 SCC OnLine SC 841: **'Residence Order' Is Not An Embargo For Initiating Or Continuing Civil Proceedings In Relation To Same Subject Matter: SC-HELD-**The Supreme Court has held that the pendency of proceedings under Domestic Violence Act or any Residence order interim or final, passed under it, is not an embargo for initiating or continuing any civil proceedings, which relate to the subject matter of such orders/proceedings. Referring to the statutory provisions of the Domestic Violence Act, the bench observed that the initiation of the proceedings in Civil Court and relief available under Section 19 of the Act, 2005 is contemplated by the statutory scheme delineated by the Act, 2005 and observed that "*Section 17(2) itself contemplates eviction or exclusion of aggrieved person from a shared household in accordance with the procedure established by law. Therefore, initiation of the proceedings in Civil Court and relief available under Section 19 of the Act, 2005 is contemplated by the statutory scheme delineated by the Act, 2005.*"

Satish Chander Ahuja Vs. Sneha Ahuja : 2020 Scc Online Sc 841: **Mere Fleeting Or Casual Living At Different Places Does Not Make A 'Shared Household' U/s 2(s) Domestic Violence Act: SC-HELD-** While overruling the 2006 S R Batra judgment which had adopted restrictive interpretation of 'shared household', the Supreme Court has clarified that the 'shared household' under Section 2(s) of Domestic Violence Act means the shared household of aggrieved person where she was living at the time when application was filed or in the recent past had been excluded from the use or she is temporarily absent. *Mere fleeting or casual living at different places shall not make a shared household*, said the Supreme Court adding that 'the living of woman in a household has to refer to a living which has some permanency'.

Raghunath v. Radha Mohan: 2020 SCC OnLine SC 828: **Is right to pre-emption a recurring right or exercisable only the first time? - HELD-**On the question as to whether the right of pre-emption can be enforced for an indefinite number of transactions or it is exercisable only the first time, the court has held that *"… it is only exercisable for the first time when the cause of such a right arises, in a situation where the plaintiff-pre-emptor chooses to waive such right after the 1966 Act becoming operational. Section 9 of the said Act operates as a bar on his exercising such right on a subsequent transaction relating to the same immovable property."*

State Of Madhya Pradesh Vs. Amit Shrivas:2020 SCC OnLine SC 789: No Inherent Right To Compassionate Appointment, Reiterates SC -HELD- There cannot be any inherent right to compassionate appointment, the Supreme Court has reiterated in a judgment. It observed that the compassionate appointments has to be in terms of the applicable policy as existing on the date of demise, unless a subsequent policy is made applicable retrospectively. The court allowed an appeal filed by the State of Madhya Pradesh against the High Court judgment which had directed it to grant compassionate appointment to the son of an employee, who was working as a Driver in the Tribal Welfare Department. The state, in its appeal, contended that the employee was employed as a work-charged/contingency employee in the Tribal Welfare Department and was thus not entitled to the compassionate appointment as per the existing policy on the date of his demise.

Branch Manager, Bajaj Allianz Life Insurance Company Ltd and Others Vs Dalbir Kaur: 2020 SCC OnLine SC 848 - Held-A proposer who seeks to obtain a

policy of life insurance is duty bound to disclose pre existing medical condition to the insurer, the Supreme Court. It has been observed by the Apex Court that "A contract of insurance is one of utmost good faith. A proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It is with this principle in view that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk. In the present case, as we have indicated, the proposer failed to disclose the vomiting of blood which had taken place barely a month prior to the issuance of the policy of insurance and of the hospitalization which had been occasioned as a consequence. The investigation by the insurer indicated that the assured was suffering from a pre-existing ailment, consequent upon alcohol abuse and that the facts which were in the knowledge of the proposer had not been disclosed. This brings the ground for repudiation squarely within the principles which have been formulated by this Court in the decisions to which reference has been made earlier"

Asian Resurfacing Of Road Agency Pvt. Ltd. & Anr. Vs. Central Bureau Of Investigation: (2020) 1 SCC (Cri) 686 - **Held**-The Supreme Court has reiterated that whatever stay has been granted by any court including the High Court on civil or criminal proceedings will automatically expire within a period of six months, unless an extension is granted for good reason within the next six months.

State Of U.P Vs. Sudhir Kumar Singh And Ors. : 2020 SCC OnLine SC 847-**Held**-The Supreme Court has observed that the breach of the audi alteram partem rule cannot by itself, lead to the conclusion that prejudice is thereby caused. The following principles are laid down:
(1)Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.
(2)Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.
(3)No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission off acts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.
(4)In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.
(5)The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.

T.K. David v. Kuruppampady Service Co-operative Bank Ltd.: 2020 SCC OnLine SC 800: **Is SLP against an order rejecting the review petition maintainable when main judgment is not under challenge?- HELD-**The Supreme Court has reiterated that when the main judgment of the High Court has not been challenged, no relief can be granted by this Court in the special leave petition filed against order rejecting review application to review the main judgment of the High Court.

LATEST CASES : CRIMINAL

"Parliament has not thought it appropriate to curtail the power or discretion of the courts, in granting pre-arrest or anticipatory bail, especially regarding the duration, or till charge-sheet is filed, or in serious crimes. Therefore, it would not be in the larger interests of society if the Court, by judicial interpretation, limits the exercise of that power: the danger of such an exercise would be that in fractions, little by little, the discretion, advisedly kept wide, would shrink to a very narrow and unrecognisably tiny portion, thus frustrating the objective behind the provision, which has stood the test of time, these 46 years."— S. RavindraBhat, J. in SushilaAggarwal v. State (NCT of Delhi), (2020) 5 SCC 1, para 87

Karulal V. State of MP: 2020 SCC OnLine SC 818: Related Witnesses' Testimony, If Found Truthful, Can Be The Basis Of Conviction: SC-HELD-The Supreme Court has observed that testimony of the related witness, if found to be truthful, can be the basis of conviction. If the witnesses are otherwise trustworthy, past enmity by itself will not discredit any testimony. The court while upholding conviction of five persons accused in a murder case observed thus. The court dismissed the appeal against Madhya Pradesh High Court judgment upholding their conviction under Section 148, 302 read with Section 149 of the Indian Penal Code, 1860. The court further noted that, being related to the deceased does not necessarily mean that they will falsely implicate innocent persons. The court added that an unrelated witness had deposed supporting the testimony of related witnesses in this case.

Miss A V. State of Uttar Pradesh: 2020 SCC OnLine SC 817:Filing Of The Charge-sheet By Itself, Does Not Entitle An Accused To Copy Of Statement Recorded U/s 164 CrPC-HELD-Filing of the charge-sheet by itself, does not entitle an accused to copies of any of the relevant documents including statement under Section 164 of the Code, the Supreme Court observed while setting aside the Allahabad High Court order which allowed the plea of former Union Minister and BJP leader Chinmayan and to seek a certified copy of the statement of the rape victim. The right to receive a copy of such statement will arise only after cognizance is taken and at the stage contemplated by Sections 207 and 208 of the Code and not before. The court observed that the High Court 'completely erred and failed' in appreciating the directions issued in the judgment State of Karnataka vs. Shivanna alias TarkariShivanna(2014) 8 SCC 913, especially in a matter where the offences alleged against accused are of sexual exploitation.

KaushikChatterjee V. State of Haryana: 2020 SCC OnLine SC 793:Words "Tries An Offence" Are More Appropriate Than The Words "Tries An Offender" In Section 461(l) CrPC: SC-HELD-The words "tries an offence" are more appropriate than the words "tries an offender" in section 461 (l), the Supreme Court opined while considering a Transfer Petition filed on the ground of lack of territorial jurisdiction. It was observed that there seems to be some incongruity between Section 461(l) and Section 462 of the Code of Criminal Procedure. Under Clause (l) of Section 461 if a Magistrate not being empowered by law to try an offender, wrongly tries him, his proceedings shall be void. However, under Section 462, no finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

The court also noted that Section 460, which lists out nine irregularities that would not vitiate the proceedings, uses the word

"offence" in three places namely clauses (b), (d) and (e). Section 460 does not use the word "offender" even once. "On the contrary Section 461 uses the word 'offence' only once, namely in clause (a), but uses the word "offender" twice namely in clauses (l) and (m). Therefore, it is clear that if an offender is tried by a Magistrate not empowered by law in that behalf, his proceedings shall be void under Section 461. Section 462 does not make the principle contained therein to have force notwithstanding anything contained in Section 461.", the court further noted. Referring to Section 26 CrPC and some precedents which dealt with the old CrPC.

Subed Ali V. The State of Assam: 2020SCC OnLine SC 794:Not Necessary That Accused Must Be Actively Involved In Physical Activity Of Assault To Convict Him On The Ground Of Common Intention: SC-HELD-The Supreme Court has observed that it is not necessary that an accused must be actively involved in the physical activity of assault to convict him on the ground of common intention. A common intention to bring about a particular result may also develop on the spot as between a number of persons deducible from the facts and circumstances of a particular case.

Satish @ Sabbe V. State of Uttar Pradesh: 2020 SCC OnLine SC 814:Length Of Sentence Or Gravity Of Original Crime Cannot Be Sole Basis For Refusing Premature Release: SC-HELD- Length of the sentence or the gravity of the original crime can't be the sole basis for refusing premature release, the Supreme Court observed while directing release of two convicts on probation. The Three Judge Bench of the Supreme Court observed that any assessment regarding predilection to commit crime upon release must be based on antecedents as well as conduct of the prisoner while in jail, and not merely on his age or apprehensions of the victims and witnesses. While directing their release, the bench emphasized the reformative theory. It said that "*Whilst it is undoubtedly true that society has a right to lead a peaceful and fearless life, without free roaming criminals creating havoc in the lives of ordinary peace loving citizens. But equally strong is the foundation of reformative theory which propounds that a civilized society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first time offenders ought to be liberally accorded a chance to repent their past and look forward to a bright future. The Constitution of India through Articles 72 and 161, embodies these reformative principles by allowing the President of India and the Governor of a State to suspend, remit or commute sentences of convicts. Further, Section 432 of the Code of Criminal Procedure, 1973 ("CrPC") streamlines such powers by laying down procedure and pre conditions for release. The only embargo under Section 433A of CrPC is against the release of persons sentenced to life imprisonment till they have served at least fourteen years of their actual sentence."*

MaheshwarTigga V. The State of Jharkhand: 2020 SCC OnLine SC 779:Rape - Misconception Of Fact About Promise To Marry Has To Be In Proximity Of Time To The Occurrence: SC -HELD- The Supreme Court, in its judgment acquitting a man accused of raping a woman on the pretext of marriage, observed that misconception of fact arising out of promise to marry has to be in proximity of time to the occurrence and cannot be spread over a long period of time coupled with a conscious positive action not to protest. The allegation by the Prosecuterix in this case was that the accused has been promising to marry her and on that pretext continued to establish physical relations with her as husband and wife. It was also alleged that she had also stayed at his house for fifteen days during which also he established physical relations with him. The Trial Court convicted him under sections 376, 323 and 341 of the Indian Penal Code.

WEBINARS OF THE MONTH

S. No.	Date	Topic	Speaker
1	October 10, 2020	General Shortcomings and Flaws in Criminal Proceedings	Justice S.S.Saron (Retd.) Punjab & Haryana High Court
2	October 18, 2020	Constitutional Vision of Justice	Dr.Balram K Gupta, Director (Academics), CJA
3	October 24, 2020	Computation of Compensation in Acquisition of Land-I	Dr. Gopal Arora, Faculty Member

NOTIFICATION

1. **Taxation & Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020:** President gave assent to the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 on 29-09-2020.
   The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (Ord. 2 of 2020) was promulgated on the 31-03-2020 which, *inter alia*, relaxed certain provisions of the specified Acts relating to direct taxes, indirect taxes and prohibition of Benami property transactions. Further, certain notifications were also issued under the said Ordinance.
   The said Act will provide for the extension of various time limits for completion or compliance of actions under the specified Acts and reduction in interest, waiver of penalty and prosecution for the delay in payment of certain taxes or levies during the specified period.
   Amendments to Income-tax Act, 1961 will also be made:

- Providing of tax incentive for Category-III Alternative Investment Funds located in the International Financial Services Centre (IFSC) to encourage relocation of foreign funds to the IFSC.
- deferment of a new procedure of registration and approval of certain entities introduced through the Finance Act, 2020.
- providing for the deduction for donation made to the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND) and exemption to its income,
- Incorporation of Faceless Assessment Scheme, 2019 therein, empowering the Central Government to notify schemes for faceless processes under certain provisions by eliminating physical interface to the extent technologically feasible and to provide deduction or collection at source in respect of certain transactions at a three-fourths rate for the period from 14th May, 2020 to 31st March, 2021.
- Amendment to the *Direct Tax Vivad se Viswas Act, 2020* to extend the date for payment without additional amount to 31-12-2020 and to empower the Central Government to notify certain dates relating to filing of declaration and making of the payment.
- Finance Act, 2020 is also proposed to be amended to clarify regarding capping of the surcharge at 15% on dividend income of the Foreign Portfolio Investor.
- Central Government empowered to remove any difficulty up to a period of 2 years and provide for repeal and savings of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020.[1]

[1] http://egazette.nic.in/WriteReadData/2020/222110.pdf