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FROM THE DESK OF CHIEF EDITOR

THE IMPORTANCE AND PURPOSE OF JUDGMENT

Judgment writing is both an Art and Science. Science means systemic study. A study based upon rational and reasoned basis and foundation. Accordingly, a Judgment is structured on systemic analysis of human disputes/problems. Live issues come before the courts. Involving different factual situations. Requiring the application of different laws. The Judge is required to decide different issues considering the arguments made by the different parties. The conclusions are to be dressed with cogent reasoning. Adjudication is a complex domain. A judgment, therefore, is a container. Shaping the contents of the container is an art. These contents are to be weaved in a pattern showing the due application of judicial and judicious mind. The contents of the judgment need to be easily comprehensible, digestible and understandable. No Judge is born with the skill of writing good judgments. This skill is acquired over a period of time with experience.

Court room is a laboratory. Accordingly, the court room findings in each case are recorded in the form of a judgment. A judgment speaks and unfolds the mind of the Judge. So that, all concerned, must know, why this judgment.

The top court of the country in the recent case of ***Shakuntala Shukla v. State of Uttar Pradesh*** (decided on September 7, 2021) has focused on the importance and the purpose of the judgment. As also, what should be contained in the judgment. This, indeed, was required. Why? What was the context and the background which prompted the apex court to pronounce on this.

The summit court found itself at pains to note that **the order granting bail to the accused pending appeal by the High Court :**

i. Lacks total clarity;
ii. Which part of the judgment and order can be said to be submissions and which part can be said to be the findings/reasonings.
iii. It does not even reflect the submissions made on behalf of the Public Prosecutor opposing the bail pending appeal.
iv. The state had filed a detailed counter affidavit opposing the bail pending appeal. The same was not even referred to by the High Court.

The finding of the Supreme Court even on merits is that the High Court has committed a grave error in releasing the accused on bail pending appeal against the judgment and order of conviction.

What is Judgment? The Supreme Court says **:** a Judicial Opinion which tells the story of the case. What the case is about? How the court is resolving the case? And why? The top court while elaborating holds that it is **not adequate that a decision is accurate**. It must also be reasonable, logical and easily comprehensible. A judgment has to be written in a convincing manner. It should leave no doubt that the verdict is righteous and judicious. It needs to be noted **:** what the court says! How it says! And, what the court decides! The summit court holds that every judgment has four basic elements **:**

i. The statement of material (relevant) facts.
ii. The legal issues or questions
iii. The deliberation to reach at the decision
iv. The ratio or the conclusive decision

These four elements should be covered in a manner which makes the judgment coherent, systematic and logical. The reader of the judgment should be able to co-relate the facts and the legal principles. A judgment has to formulate findings of fact. It has to decide what the relevant principles of law are. It has to apply those legal principles to the facts. The important elements of a judgment are **:** (i) Caption, (ii) Case number and citation, (iii) Facts, (iv) Issues, (v) Summary of arguments by both the parties, (vi) Application of law, (vii) Final conclusive verdict.

The summit court has emphasized that the judgment replicates the individuality of the judge. It speaks the mind of the judge. Each judge has his own way of writing a judgment. **A judgment mirrors the Judge**. Therefore, the judgment should be written with care and caution. The reasoning in the judgment should be intelligible and logical. Clarity and precision should be the goal. The conclusions should be supported by recording the reasons. The findings and the directions should be precise and specific. A party to the litigation must know what actually he has got by way of final relief. The other party must know, why he has lost. The appellate court must know the reasons for reaching the specific conclusions. In the absence of the same, it would be difficult for the appellate court to exercise its jurisdiction effectively. It is a matter of common knowledge that some judgments get overruled at the appellate stage. It should not happen because of non recording of reasons. The appellate court can certainly take a different view for reasons to be recorded. There is nothing wrong if a judgment is not upheld. What is required is, the erroneous judgments need to be set-aside at the appellate stage. A judgment should not be required to be set-aside because the same had not been written in the manner a judgment ought to have been written.

Judges come and go. Judgments remain. Judges live through their judgments. Good judgments never die. Therefore, good judges also never die.

Balram K. Gupta

LATEST CASES: CIVIL

"*The shift in the way disability is viewed as a social construct rather than an individual pathology must also translate into linguistic shift in the way such persons are referred to. The Tribunal, in its judgment, couched the disability of the appellant in terms of "suffering" and "disease", though unintentional, must be avoided. Viewing disability as an affliction that causes suffering, or that views it as a God-given fate is rooted in the medical model of disability. The discourse must be couched in terms that reflect the recognition of human rights model to viewing disability. Insensitive language offends the human dignity of persons with disabilities*."

- *Dr D.Y. Chandrachud, J. in Vikash Kumar v. UPSC, (2021) 5 SCC 370, paras 84 and 85*

Balasubramanian v. M. Arockiasamy, 2021 SCC OnLine SC 655- SC restates law on second appeal under S. 100 CPC - HELD-The SC upheld the judgment of the Madras High Court passed in a second appeal whereby it had reversed the order of the first appellate court granting injunction in favour of the appellant−plaintiff in a property dispute. The judgment rendered by the trial court, the nature of contentions as noted would disclose that the plaintiff except contending that the suit schedule property was being enjoyed for the past 40 years by paying kist has not in fact referred to the manner in which such right had accrued so as to suggest or indicate unassailable right to be in physical possession. On the other hand, the defendant while denying the right of the plaintiff to claim the relief had traced the manner in which the property had devolved and the right which is being claimed by the defendant. It was also contended that the defendant No. 1 is residing in the thatched house which is on the property. It is in that light the trial court having taken note of the assertions made by the defendant No. 1 and lack of evidence by the plaintiff had arrived at the conclusion that the possession of the plaintiff as claimed cannot be accepted and that the plaintiff has not sought for declaration despite the defendant having disputed the claim of the plaintiff.

One other aspect which is also to be noted is that the plaintiff himself had filed applications before the trial court claiming that the defendant No. 1 had trespassed into the suit property and encroached the house after grant of temporary injunction. In another application filed it was contended by the plaintiff that the defendant had trespassed and is residing in the thatched house. Whereas the defendant No. 1 in his written statement itself had stated that he is residing in the thatched house situate in the suit schedule property. The said applications have not been pressed to its logical conclusion nor has any other step been taken to seek restoration of possession by establishing that the possession in fact had been taken by the defendant No. 1 subsequent to the interim injunction. Therefore, on all counts the possession of the suit schedule property was also not established.

Though the lower appellate court had reversed the judgment of the trial court, this aspect of the matter relating to the grievance of the plaintiff that he had been dispossessed had not been addressed and despite the plaintiff not being in possession the injunction being granted by the lower appellate court would not be justified. On the conclusion that there is no clinching proof on behalf of the defendant that he has paid kist to the suit property as also the observation that the defendant has miserably failed to prove his possession over the suit property, on the face of it indicate that the learned District Judge has misdirected himself and proceeded at a tangent by placing the burden on the defendant. Though there was no issue to that effect before the trial court, the learned District Judge with such

conclusions has ultimately set aside the well-considered judgment and decree, which will indicate perversity and material irregularity in misdirecting itself in wrongly expecting the defendant to discharge the burden in a suit for bare injunction and arriving at a wrong conclusion.

Salim D.Agboatwala and others v.Shamalji Oddavji Thakkar and others: 2021 SCC OnLine SC 735- Order VII Rule 11 CPC - Plaint Can't Be Rejected If Limitation Is A Mixed Question Of Law & Fact - HELD- The Supreme Court has held that a plaint cannot be rejected under Order VII Rule 11(d) of the Code of Civil Procedure if the issue of limitation is a mixed question of law and fact. The SC bench observed so while reversing a Bombay High Court's judgment which had upheld a civil court's order to reject a plaint.

The suit in question was filed essentially to set aside an order passed by the Agricultural Land Tribunal to issue sale certificate in respect of a tenancy under the Maharashtra Tenancy and Agricultural Lands Act, 1948.

"...the rejection of plaint under Order VII Rule 11 is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order VII Rule 11", the Supreme Court observed.

Rajendra Bajoria Vs. Hemant Kumar Jalan - 2021 SCC OnLine SC 764- Order VII Rule 11 CPC: Plaint Has To Be Rejected If Reliefs Claimed In It Cannot Be Granted Under Law- HELD- The Supreme Court observed that a court has to reject a plaint if it finds that none of the reliefs sought in it can be granted to the plaintiff under the law.

In such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted, the bench observed.

While dismissing the appeal, the court further observed:

"20. It could thus be seen that this Court has held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. However, under Order VII Rule 11 of CPC, the duty is cast upon the court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. This Court has held that the underlying object of Order VII Rule 11 of CPC is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted."

Sudhir Kumar @ S. Baliyan vs. Vinay Kumar G.B.: 2021 SCC OnLine SC 734 - Commercial Suits & Requirement Of Establishing Reasonable Cause For Non Disclosure Of Documents Under Order XI Rule 1 (4) CPC: Supreme Court Explains - HELD- The Supreme Court held that taking note of the provisions of the Code (Order XI Rule 1 (4) read with Order XI Rule 1 (5),) as

applicable to Commercial Suits, the Apex Court bench noticed the following:(i) in case of urgent filings the plaintiff may seek leave to rely on additional documents;(ii) within thirty days of filing of the suit;(iii) making out a reasonable cause for non disclosure along with plaint.

The court observed that a further thirty days time is provided to the plaintiff to place on record or file such additional documents in court and a declaration on oath is required to be filed by the plaintiff as was required as per Order XI Rule 1(3) if for any reasonable cause for non disclosure along with the plaint, the documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore plaintiff has to satisfy and establish a reasonable cause for non disclosure along with plaint.

Jamia Masjid vs. K V Rudrappa (Since Dead): 2021 SCC OnLine 792- Plea Of Res Judicata Can Be Determined As A Preliminary Issue When It Only Involves Adjudication Of Question Of Law - HELD- The Supreme Court observed that

(i) The Issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of *res judicata* if there arises a new fact which has to be proved. However, the plea of *res judicata* may in an appropriate case be determined as a preliminary issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it

(ii) A suit under section 92 CPC is of a representative character and all persons interested in the Trust would be bound by the judgment in the suit, and persons interested would be barred by the principle of *res judicata* from instituting a subsequent suit on the same or substantially the same issue

(iii) While a compromise decree in a prior suit will not bar a subsequent suit by virtue of *res judicata*, the subsequent suit could be barred by estoppel by conduct.

DLF Home Developers Limited vs. Rajapura Homes Private Limited : 2021 SCC OnLine SC 781 - Arbitration Reference Can Be Declined If Dispute In Question Does Not Correlate To Arbitration Agreement - HELD- The Supreme Court observed that prayer for reference to Arbitration under Section 11 of the Arbitration and Conciliation Act can be declined if the dispute in question does not correlate to the arbitration agreement.

The bench observed that it is not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen Arbitrator.

The Court referred to earlier judgments including ***Vidya Drolia and Others v. Durga Trading Corporation,*** **and observed:** ***"19. To say it differently, this Court or a High Court, as the case may be, are not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen Arbitrator. On the contrary, the Court(s) are obliged to apply their mind to the core preliminary issues, albeit, within the framework of Section 11(6-A) of the Act. Such a review, as already clarified by this Court, is not intended to usurp the jurisdiction of the Arbitral Tribunal but is aimed at streamlining the process of arbitration. Therefore, even when an arbitration agreement exists, it would not prevent the Court to decline a prayer for reference if the dispute in question does not correlate to the said agreement***."

Karuna Sharma
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LATEST CASES: CRIMINAL

"*Part III of our Constitution does not explicitly include persons with disabilities within its protective fold. However, much like their able-bodied counterparts, the golden triangle of Articles 14, 19 and 21 applies with full force and vigour to the disabled. The 2016 RPwD Act seeks to operationalise and give concrete shape to the promise of full and equal citizenship held out by the Constitution to the disabled and to execute its ethos of inclusion and acceptance*."

- *Dr D.Y. Chandrachud, J. in Vikash Kumar v. UPSC, (2021) 5 SCC 370, para 41*

Suo Moto Writ (Crl) No.(S) 1/2017 In Re: To Issue Certain Guidelines Regarding Inadequacies And Deficiencies In Criminal Trials Versus The State Of Andhra Pradesh & Ors. : Date of Decision 20.04.2021 - Common deficiencies which occur in the course of criminal trials and certain practices adopted by trial courts in criminal proceedings?-HELD-The Hon'ble Supreme Court noticed certain common deficiencies which occur in the course of criminal trials and certain practices adopted by trial courts in criminal proceedings as well as in the disposal of criminal cases and causes, relating to the manner in which documents (i.e. list of witnesses, list of exhibits, list of material objects) referred to are presented and exhibited in the judgment, and the lack of uniform practices in regard to preparation of injury reports, deposition of witnesses, translation of statements, numbering and nomenclature of witnesses, labeling of material objects, etc.

The Hon'ble Supreme Court gave opinions and asked for finalizing the Draft Rules of Criminal Practice, 2021.

The necessary directions were also issued to all High Courts and State Governments.

Harjit Singh Versus Inderpreet Singh @ Inder And Another: Criminal Appeal No. 883 Of 2021 (Arising From S.L.P.(Criminal) No.3739/2021): Date Of Decision:24.08.2021-How to exercise the discretionary power for grant of bail? - HELD- The Hon'ble Supreme Court noted the relevant decisions on how to exercise the discretionary power for grant of bail and the duty of the appellate court, particularly when bail was refused by the court(s) below and the principles and considerations for granting or refusing the bail.

Manjeet Singh Versus State Of Haryana & Ors, Criminal Appeal No.875 Of 2021: Date Of Decision:24.08.2021-The scope and ambit of Section 319 CrPC?-HELD- The Hon'ble Supreme Court summarized the law on the scope and ambit of the powers of the Court under Section 319 CrPC.

Jasveer Singh Versus State of Punjab and others, CRM-M-44143-2020(O&M) Date of decision: 11.08.2021- Long delay in filing of cancellation/untraced reports by the police and disposal of the same by the concerned Judicial Magistrate/Court?-HELD-The Hon'ble Punjab & Haryana High Court noticed that thousands of cases involving long delay in filing of cancellation/untraced reports by the police and disposal of the same by the concerned Judicial Magistrate/Court are pending in the State of Punjab. The cause of justice suffers by delay in filing of cancellation/untraced reports by the Police and disposal of the same by the Courts.

The Hon'ble Court considered twenty questions to answer the relevant law on the subject dealing with FIR, Complainant/Victim fundamental right to access of justice, duty of Police in expeditious investigation, obligation of the Court, remedies available to the complainant/victim of a crime during investigation, giving notice of cancellation/untraced reports to the first informant-complainant/ injured person or relative of deceased, powers of the Court/Magistrate in dealing with

cancellation/untraced reports/order investigation by Central Bureau of Investigation/ call upon the police to submit a charge-sheet/order re investigation/fresh investigation, requirement of law for filing of cancellation/untraced report by the police and disposal thereof by the Court/Magistrate within reasonable time, filing of Cancellation Reports and Untraced Reports by the police on the basis of compromise between the parties referring it to Lok Adalat, consignment of cancellation/untraced etc.. The Hon'ble Court also issued detailed Guidelines to the police, Courts/Magistrates concerned, Sessions Judges and Chandigarh Judicial Academy.

Ravneet Kaur and another Versus State of Punjab and others, CRWP-5929- 2021, Date of decision : 31.08.2021- Minor girl entitlement to reside with a person of her choice in live-in- relationship/give consent to her removal from lawful guardianship to live-in- relationship with consummation thereof by such person etc.?-HELD-Hearing petition filed under Article 226/227 of the Constitution of India for issuance of directions to State to protect their (residing together in live- In relationship- Girl minor) life and liberty from danger at the hands of parents and relatives, Hon'ble Punjab & Haryana High Court has held that "a minor girl aged above 15 years who has not attained marriageable age of 18 years may solemnize marriage with a person of her choice but in view of the provisions of the PCM Act, POCSO Act, the IPC and the observations made by Hon'ble Supreme Court in Independent Thought's Case such marriage cannot be legally enforced to allow consummation thereof and entrustment of her custody to her husband; that a minor girl is not entitled to reside with a person of her choice in live-in-relationship in the nature of marriage; that a minor girl cannot give consent to any person of her choice for her removal from lawful guardianship and sexual relationship with her for consummation of marriage or live-in-relationship in the nature of marriage and her consent is immaterial, if she was enticed or taken away out of lawful guardianship and that any such person of her choice with whom she wants to live in live-in-relationship cannot purport to act as her guardian and claim her custody without seeking order from Guardian Judge/Family Court under the GW Act or the HMG Act as the case may be. The fundamental right of such minor girl child to protection of life and liberty does not extend to protection of the minor girl for residing with her husband or a person of her choice in live-in- relationship in the nature of marriage and her life and liberty have to be protected by sending her to Child Care Institution under the orders/supervision of the Child Welfare Committee or to her parents, if so consented to by her or to her parents- in-law or some other relative on such terms and conditions as considered appropriate by the Court."

The Hon'ble Punjab & Haryana High Court passed Directions to District/Subordinate Courts to the effect that "The concerned District/Subordinate Courts are directed to ensure that minor girls in need of care and protection are not sent to Nari Niketan/Special Home/Observation Home meant for juveniles in conflict with law and are sent to proper Child Care Institutions with proper budgetary and infrastructural facilities."

Aman Preet Singh Versus C.B.I. Through Director, Criminal Appeal No. 929 Of 2021 (Arising Out Of Slp(Crl.) No. 5234/2021), Date Of Decision : 02.09.2021-Purport of Section 170, Cr.P.C.?-HELD-Hearing a case based on a misconception and misunderstanding of Section 170, Cr.P.C., Hon'ble Supreme Court has held that "The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge sheet forthwith and proceed in accordance with the procedure laid down under Section 173, Cr.P.C. ..... in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as

contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him"

Siddharth Versus State of Uttar Pradesh and Another: 2021 SCC OnLine SC 615-Whether the chargesheet cannot be taken on record unless the person is taken into custody in view of Section 170 of the Cr.P.C.?-HELD- Hearing an anticipatory bail application, Hon'ble Supreme Court has held that "It has rightly been observed on consideration of Section 170 of the Cr.P.C. that it does not impose an obligation on the Officer-in-charge to arrest each and every accused at the time of filing of the chargesheet." Hon'ble Supreme Court has further held that "if the Investigating Officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 of the Cr.P.C. does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the Investigating Officer before the court while filing the charge sheet."

Gumansinh @ Lalo @ Raju Bhikhabhai Chauhan & Anr. Versus State of Gujarat, [Criminal Appeal Nos. 940-941 of 2021 arising out of Special Leave Petition (Crl.) Nos. 2860-2861 of 2019], Date of decision : 03.09.2021-Whether the prosecution case becomes doubtful if no independent witness was examined by the prosecution to prove the case and all the witnesses are relative and interested?-HELD- Hearing Appeals filed by the appellants challenging the order of conviction against them in respect of the offence punishable under Section 306, 498A read with Section 114 of the Indian Penal Code, Hon'ble Supreme Court has held that "If the evidence of any interested witness/relative on a careful scrutiny by the Court is found to be consistent and trust-worthy, free from infirmities or any embellishment that inspires the confidence of the Court, there is no reason not to place reliance on the same." Hon'ble Supreme Court has further held that "There being no bar in examining the family members or any other person as witnesses, their evidence is not liable to be discarded on this ground."

Vikas Gupta vs State Of Haryana, CRR No.98 of 2021 (O&M), Date of decision : 03.09.2021- Whether merely because the wife is physically fit and is capable of providing tuitions would not automatically mean that she has the income to support herself and her minor children?-HELD-Hearing petition under Section 12 of the Protection of Woman from Domestic Violence Act, 2005 wherein woman claimed interim maintenance for herself and two minor children, Hon'ble Punjab & Haryana High Court has held that "Merely because the respondent-wife is physically fit and is capable of providing tuitions would not automatically mean that she has the income to support herself and her two minor children.....It is trite to say that it is the responsibility of the petitioner to maintain his wife and minor children so as to ensure that they are not deprived of the basic necessities of life, which would necessarily include housing, health and education for the minor children."

Dumya Alias Lakhan Alias Inamdar Vs The State Of Maharashtra, Criminal Appeal Nos.818-820 Of 2021 In S.L.P. (Crl.) Nos.6044-6046 Of 2021(Arising Out Of Diary No(S).43190 Of 2019, Date Of Decision : 13.08.2021-Whether the default sentence can be directed to run concurrently?-HELD-Hearing Appeals against the judgment and order dated 23.02.2016 convicting for having committed offences punishable under Sections 395, 397, 457, 379, 380, 120-B of IPC and 3(1)(ii), 3(2) and 3(4) of the MCOC Act, Hon'ble Supreme Court has held that "In terms of the decision taken by this Court in Sharad Hiru Kilambe vs. State of Maharashtra & Ors. [(2018) 18 SCC 718], the default sentence cannot be directed to run concurrently."

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

LATEST CASES: FAMILY LAW

"*The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. For a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 of the Constitution will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality — are an obligation as a society — to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination.*"

— Dr D.Y. Chandrachud, J. in Vikash Kumar v. UPSC, (2021) 5 SCC 370, para 44

Chandrashekar v. Swapnil: 2021 SCC OnLine SC 656 - Maintenance amount being paid to son scaled-down, but period of maintenance increased: Supreme Court-HELD-Supreme Court decided that it was inclined to modify the order of Family Court which was affirmed by the High Court.

Bench stated that the deduction being suffered by the appellant from his salary were largely in the realm of statutory and compulsory deductions which were made from the monthly income.

"Deductions which were being suffered by the appellant from his salary were largely in the realm of statutory and compulsory deductions which were made from the monthly income."

Further, the appellant had shown his bona fides by paying an amount of Rs 6.64 lakhs and also made a disclosure of his salary slips. Payment of Rs 20,000 per month to the first respondent would leave no resources to maintain his other two children and family.

In view of the above, some scaling down was required. But an arrangement to provide maintenance to the first respondent until he completes his first-degree course after High School will be necessary so that the first respondent becomes self-supporting and can live in dignity.

Bench added that it is conscious of the fact that by this Order the Court is extending the period for maintenance, however in issuing the said direction, the Court has borne in mind two significant aspects:

firstly, the maintenance payable by the appellant has been reduced from rupees twenty thousand per month to rupees ten thousand per month;

and secondly the past arrears have been capped at the amount of Rs 6.64 lacs which has already been paid.

Therefore, in view of the facts and circumstances along with the needs of the minor child, Court opined that the appeals should be disposed of in terms of the following directions:

- Amount of Rs 6.64 lakhs which has been paid by the appellant towards the arrears of maintenance of the first respondent shall be treated as a full and final payment as of 28 February 2021
- Commencing from 1 March 2021 and for the period until 31 March 2022, the appellant shall pay a monthly maintenance of Rs 10,000 towards the expenses of the first respondent. The amount shall be paid no later than the tenth day of each succeeding month commencing from 10 March 2021. In the event that the second respondent nominates a bank account for that purpose, the appellant shall ensure a transfer of funds in the electronic mode to the nominated bank account. If this

arrangement is not suitable, the money shall be paid over by Demand Draft on or before the tenth day of every succeeding month for the maintenance of the first respondent;

- Amount of monthly maintenance shall stand increased by Rs 1000 per month commencing from 1 April 2022. For succeeding years, the amount of maintenance shall similarly stand increased by a further amount of Rs 1000 per month commencing from the first day of April; and

- Appellant shall pay maintenance for the first respondent on the above basis for a period of six years commencing from 1 April 2021 until 31 March 2027 or until the first respondent completes his first degree course, whichever is earlier. This direction is intended to ensure that the first respondent shall be maintained by the appellant until he completes his basic education ending with a first degree course after he completes his high school education.

Samual Sk. v. State of Jharkhand: 2021 SCC OnLine SC 645 - SC allows reduction in sentence under S. 498-A IPC if husband pays Rs 3 lakh compensation to wife, children -HELD-A Division Bench of the Supreme Court agreed to reduce the sentence of the appellant−husband convicted for offence of cruelty to woman punishable under Section 498-A IPC, if he pays Rs 3 lakh as compensation to his wife and children. The Supreme Court observed that:

"The object of any criminal jurisprudence is reformative in character and to take care of the victim. It is towards this objective that Section 357 CrPC is enacted in the statute. The objective of which is to apply whole or any part of the fine recovered to be applied on payment to any person of compensation for any loss or injury caused by the offence. In the present case, it is one of voluntarily offering the amount albeit to seek a reduction of sentence."

The appellant submitted that he was willing to pay a compensation of Rs 3 lakh to the complainant and the children. The complainant was agreeable to receive the compensation of Rs 3 lakh. Further, on compensation being paid, she had no objection if the sentence of the appellant is reduced and/or if he is granted the benefit of the Probation of Offenders Act. In such view of the matter, the Court said that:

"Keeping in mind the nature of the offence, we had declined the benefit of the Probation of Offenders Act to the appellant. However, if the petitioner/appellant is showing remorse and is willing to make arrangements for [the complainant] and his two children born out of the wedlock, we would not like to come in the way of such an arrangement, which should be beneficial to [the complainant] and her children."

Noting that the appellant had undergone about seven months of imprisonment, the Court was inclined to reduce the sentence to the period already undergone in case he pays a sum of Rs 3 lakh to the complaint for her benefit and the children's benefit. The Court however made it clear that if the amount is not paid, the appellant will have to undergo the remaining part of the three years' sentence.

Sukhjeet Kaur v. State of Punjab, 2021 SCC OnLine P&H 1606 - HC allows waiving off mandatory 6 months period for divorce- HELD- The High court of Punjab and Haryana allowed the application for waiving off the mandatory period of six months for divorce by mutual consent.

The instant petition had been filed by the petitioners i.e. Wife and husband who were aggrieved by the order of the Family Court, whereby their application for waiving off the mandatory period of six months had been rejected.

The petitioners submitted that they had sought divorce by mutual consent and their joint statement was recorded under Section 13-B of Hindu Marriage Act on the ground that husband was residing abroad in Houston TX (USA) since 2019. The parties were living separately since then and three children, which were borne out of the wedlock remained with the husband. Therefore, it was submitted by the parties that the mandatory period of six months be waived off.

Reliance was placed by the Family Court on the decision of the Supreme Court in *Amandeep Singh v. Harveen Kaur,* (2017) 8 SCC 746, wherein it had been held that, "*where there are no chances of reconciliation, six months period cannot be waived off except in exceptional circumstances and the parties are thus aggrieved by the impugned order.*"

Observing that the couple had settled the matter and were mature to the extent that first petitioner was 34 years old and petitioner 2 was 35 years of age and had been blessed with 3 children; moreover, it was not disputed that the husband was also staying abroad for the last more than two years and they had even settled regarding the children; the Bench opined that in such circumstances, further waiting period would only prolong the proceedings and it was a fit case to exercise the jurisdiction of the Court in waiving off the mandatory period of six months.

The Bench opined that the judgment in *Amandeep Singh's case* had not been appreciated in its real sense by the Family Court. The relevant portion of the said judgment reads as under:-

"16. The object of the provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options. The amendment was inspired by the thought that forcible perpetuation of status of matrimony between unwilling partners did not serve any purpose. The object of the cooling off the period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The object was not to perpetuate a purposeless marriage or to prolong the agony of the parties when there was no chance of reconciliation. Though every effort has to be made to save a marriage, if there are no chances of reunion and there are chances of fresh rehabilitation, the Court should not be powerless in enabling the parties to have a better option."

Accordingly, the impugned order was set aside. The Family Court concerned was directed to take up the application again and dispose of the main case within a period of 10 days.

Yuvraj Raman Jadhav v. State of Maharashtra : 2021 SCC OnLine Bom 780– Whether HC should quash an FIR arising out of matrimonial dispute on ground of same being settled amicably? - HELD- The Division Bench of Bombay High Court reiterated the observation of Supreme Court in *Gian Singh v. State of Punjab,* (2012) 10 SCC 303, while quashing an FIR registered for offences under Sections 498(A), 406, 504, 323, 34 of the Penal Code and Sections 3, 4 of the Dowry Prohibition Act, on the ground of matter being resolved amicably.

Due to differences between the husband and wife, they sought a divorce and a petition was filed before the Family Court, Bandra which was later converted into mutual consent divorce petition under Section 13-B of the Hindu Marriage Act, 1955.

High Court stated that considering the fact that a matrimonial dispute which sought to be amicably resolved, the Court deemed it appropriate to seek guidance from the Supreme Court decision in *Gian Singh v. State of Punjab,* (2012) 10 SCC 303, wherein it was observed that:

"…the criminal cases having overwhelmingly and pre-dominatingly civil

favour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affrmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

Bench added that the present matter involved offences arising out of matrimony and was basically private in nature and the parties sought to resolve their entire dispute and due to the compromise between them, the possibility of conviction would be remote and bleak and continuation of criminal case would lead to great prejudice or injustice.

Therefore, in view of the above discussion, petition was allowed while allowing the below prayer clause:

"a. That this Hon'ble Court be pleased to quash and set aside the FIR No.256 of 2019, registered by Vikhroli Police Station at Mumbai, under Sections 498(A), 406, 504, 323, 34 of Indian Penal Code, and 3, 4 of Dowry Prohibition Act dated 19.06.2019 and Criminal Case No.959/PW/2020 and pending before Ld. 31st Metropolitan Magistrate's Court at Vikhroli, Mumbai, and further be pleased to discharge the Petitioners from C.C. No.256 of 2019 under Sections 498(A), 406, 504, 323, 34 of Indian Penal Code, and 3, 4 of Dowry Prohibition Act."

Sunita v. Yogesh Kumar: 2021 SCC OnLine P&H 1057– 6 months wait is uncalled for; HC waives 6 months' requirement, grants divorce to couple entrapped in an irretrievably broken marriage- HELD- The Bench of Punjab and Haryana High Court allowed waiver statutory period of 6 months for dissolution of marriage and granted divorce to the couple entrapped in an irretrievably broken marriage.

The Bench opined that the marriage of the petitioners had broken down irretrievably and there was no possibility of any reconciliation between them. Therefore, the order of the Court below in insisting the parties to wait for another six months for the second motion hearing, was totally uncalled for. Holding that the marriage between the parties had irretrievably broken and now they had decided to part their ways, so that they both have an opportunity to live their lives in the manner they like, hence, insistence of the Court below to wait to another six months would result in adding to their woes. Consequently, the revision petition was allowed and the impugned order was set-aside. The Family Court was directed to entertain the petition filed by the petitioners by waiving off six months period and proceed with the petition in accordance with law.

Mahima Tuli
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NOTIFICATION

The Constitution (One Hundred and Fifth Amendment) Act, 2021: President of India has given assent to the Constitution (One Hundred and Fifth Amendment) Act, 2021on August 20, 2021 which enables States and Union Territories to identify Socially and Educationally Backward Class (SEBC) and include them in a list to be published under Article 342A (1), specifying SEBCs in relation to each State and Union Territory. The amendment was introduced in the wake of the Supreme Court ruling in the Maratha reservation case which had by a 3:2 majority, ruled that it is the Central government alone which is empowered to identify SEBCs.

To get over this judgment the Amendment Act has proposed changes to Article 342A.

> *"In order to adequately clarify that the State Government and Union territories are empowered to prepare and maintain their own State List/ Union territory List of SEBCs and with a view to maintain the federal structure of this country, there is a need to amend article 342A and make consequential amendments in articles 338B and 366 of the Constitution,"* the 'Statement of Objects and Reasons' of the bill said.

The question regarding power of States to specify SEBCs had arisen in the Maratha Reservation case before the Supreme Court.

The Court in that judgment had held that States can, through their existing mechanisms, or even statutory commissions, only make suggestions to the President or the Commission under Article 338B, for inclusion, exclusion or modification of castes or communities, in the list to be published under Article 342A (1).

> *"By introduction of Articles 366 (26C) and 342A through the 102nd Constitution of India, the President alone, to the exclusion of all other authorities, is empowered to identify SEBCs and include them in a list to be published under Article 342A (1), which shall be deemed to include SEBCs in relation to each state and union territory for the purposes of the Constitution,"* the Court had held.

Article 342A was inserted into the Constitution by way of 102nd Constitutional Amendment Act. It reads as follows:

> *"(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.*
>
> *(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under*

clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

The following changes are now proposed to be introduced to the said Article by way of the Constitution (One Hundred and Fifth Amendment) Act:

In Article 342A of the Constitution,— (a) in clause (1), for the words "the socially and educationally backward classes which shall for the purposes of this Constitution", the words "the socially and educationally backward classes in the Central List which shall for the purposes of the Central Government" shall be substituted;

(b) after clause (2), the following shall be inserted, namely:— 'Explanation.— For the purposes of clauses (1) and (2), the expression "Central List" means the list of socially and educationally backward classes prepared and maintained by and for the Central Government.

(3) Notwithstanding anything contained in clauses (1) and (2), every State or Union territory may, by law, prepare and maintain, for its own purposes, a list of socially and educationally backward classes, entries in which may be different from the Central List.'.

One of the main arguments on which the Maratha SEBC Act was challenged was that after the Constitution (102nd Amendment) Act which came into force with effect from August 2018, the State legislature was denuded of its power to declare a particular class to be socially and educationally backward.[1]

EVENTS

- Sh.H.S.Bhangoo, Faculty Member, CJA gave a Webinar on "Bail: Revisiting the Law (Part II)" on September 04, 2021 to the District Judiciary of Punjab, Haryana and UT Chandigarh.
- Two sessions Webinar was organized on "Gender Sensitization" on September 18, 2021. This Webinar was for the entire judicial fraternity of the states of Punjab, Haryana and UT Chandigarh. It was structured keeping in view the letter received from National Judicial Academy, Bhopal.

  Session I **:** Hon'ble Mr. Justice Arun Monga, Judge, Punjab & Haryana High Court on "Gender Sensitization **:** Constitutional Perspective".

  Session II **:** Ms.Sonia Kinra, Faculty Member, CJA on "Gender Sensitization **:** Practices to be followed in Court".

[1] https://images.assettype.com/barandbench/2021-08/fbc75da4-10d2-479e-8a8f-52433b6fa76b/Constitution__105th_Amendment_Act_.pdf