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Supreme Court Raises Concern over Non-Adherence to Maintenance Guidelines

On November 6, 2023, the Hon'ble Supreme Court in the case of **Aditi v. Jitesh Sharma, 2023 SCC OnLine SC 1451** noted a non-compliance of the articulated guidelines on maintenance elucidated in the case of **Rajnesh v. Neha and Another, (2021) 2 SCC 32,** particularly within the realm of matrimonial litigation. The Apex Court mandated the re-circulation of the judgment containing comprehensive guidelines for the expeditious adjudication of cases involving the award of maintenance. This directive pertains to dissemination among judicial officers across all High Courts in the jurisdiction.

The aforementioned direction was issued by a bench presided over by Justices Vikram Nath and Rajesh Bindal during the consideration of an appeal against a High Court ruling termed 'cryptic.' The impugned order had substantively altered a well-reasoned decision of the Family Court, resulting in the reduction of the monthly maintenance from Rs. 20,000 to Rs. 7,000 imposed upon the father.

In the year 2020, the Supreme Court had delivered a landmark judgment in the case of Rajnesh v. Neha (supra). In this celebrated decision, the Court provided comprehensive guidelines to streamline the process of granting maintenance. These guidelines encompassed various aspects, including the criteria for determining the amount of maintenance, the effective date from which maintenance should commence, the enforcement of maintenance orders, and the establishment of provisions for interim maintenance payments.

The Court noted in that case that in maintenance procedures, the wife tends to overstate her demands and the husband prefers to conceal his actual income, and so imposed a uniform form of Affidavit of Disclosure of Assets and Liabilities to be filed in such cases. The Court also observed that the previously established recommendations had clearly not been followed. The Court expressed concern that the inability to follow guidelines was a recurring issue that was increasing litigation in the appellate courts.

The Apex Court stated that ***"The case in hand is not in isolation. Even after pronouncement of the aforesaid judgment, this Court is still coming across number of cases decided by the courts below fixing maintenance, either interim or final, without their being any affidavit on record filed by the parties. Apparently, the officers concerned have failed to take notice of the guidelines issued by this Court for expeditious disposal of cases involving grant of maintenance. Comprehensive guidelines were issued pertaining to overlapping jurisdiction among courts when concurrent remedies for grant of maintenance are available under the Special Marriage Act, 1954, Section 125 Cr.P.C., the Protection of Women from Domestic Violence Act, 2005, Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act, 1956, and criteria for determining quantum of maintenance, date from which maintenance is to be awarded, enforcement of orders of maintenance including fixing payment of interim maintenance. As a result, the litigation which should close at the trial level is taken up to this Court and the parties are forced to litigate"***.

The Bench further noted that nothing is evident from the record or even pointed out by the appellant at the time of hearing, that affidavits were filed by both the parties in terms of Rajnesh's case (supra), which was directed to be communicated to all the High Courts for further circulation to all the Judicial Officers for awareness and implementation. Further, it said that comprehensive guidelines were issued pertaining to overlapping jurisdiction among Courts when concurrent remedies for grant of maintenance are available under various laws. Thus, the litigation which should close at the trial level is taken up to Supreme Court and the parties are forced to litigate.

The Court directed the Supreme Court's Secretary General to re-circulate the aforementioned judgment not only to all Judicial Officers through the High Courts concerned, but also to the National Judicial Academy and the State Judicial Academies, to be taken into account during training programmes.

Ajay Kumar Sharda
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DISCHARGE OF ACCUSED

The Criminal Procedure Code, 1973 (CrPC) contemplates discharge of the accused by the Court of Session under Section 227 CrPC in a case triable by it; cases instituted upon a police report are covered by Section 239 CrPC and cases instituted otherwise than on a police report are dealt with in Section 245 CrPC. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused. Under Section227 CrPC, the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However discharge under Section 239 CrPC can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power to discharge is exercisable under Section 245(1) CrPC when, "the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction". Sections 227 and 239 CrPC provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section245 CrPC, on the other hand, is reached only after the evidence referred in Section 244 CrPC has been taken.

Notwithstanding the difference in the language of the provisions mentioned hereinbefore and whichever provision may be applicable, the court is required to see, at the time of framing of charge, that there is a prima facie case for proceeding against the accused. At this stage the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

In case titled **State of Tamil Nadu vs N. Suresh Rajan & others (2014) 11 SCC 709**, Hon'ble Supreme Court has held that at the time of considering an application for discharge, the court cannot act as a mouthpiece of the Prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless as to pass an order of discharge.

Application of judicial mind is necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell

into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of report under Section 173 CrPC. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge.

The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "**the record of the case**" used in Section 227 Cr.P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the Investigating Agency.

If the accused is able to demonstrate from the report under Section 173 CrPC , which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at the stage of framing the charge. The main intention of granting a chance to the accused of '**making submissions'** as envisaged under Section 227 of the CrPC is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the Investigating Officer. Case titled **State of Gujarat vs Dilipsinh Kishorsinh Rao 2023 SCC Online SC 1294** relied upon**.**

The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. It has to be kept in mind that a mini trial cannot be held at the stage of framing the charge.

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Insight of the Trial under the POCSO Act, 2012

Introduction

Keeping in view the aims and objects of the POCSO Act, 2012, some deviations from the adversarial criminal system have been adopted by the legislature. All the stakeholders including the judicial system are bound to adopt the same. For maintaining confidentially, the identity of victim is not to be disclosed either during investigation or trial. Statement of the victim under Section 164 of Cr.P.C. has to be recorded in the presence of any parent or any other person in whom the child has trust or confidence. If there is need of assistance of translator or an interpreter for recording such statements, the same can be appointed. Even the statement of the victim has to be recorded by audio-video electronic means wherever possible. In contrast to section 209 Cr.P.C., the Special Courts designated under the Act can take direct cognizance as per section 33(1) of the POCSO Act. Challan has to be filed in a sealed envelope. Charge has to be framed under the POCSO Act and in alternative under the provisions of Indian Penal Code where there is doubt with regard to commission of the offence. The statement of the victim has to be recorded within 30 days of taking cognizance in the case and the same has to be recorded *in-camera,* again in the presence of either parent or any other person in whom the child has trust or confidence. The questions to be put to the child victim/witness either in examination in chief or during cross examination cannot be put directly but have to be disclosed to the Judge, Special Court who would further put the same to the victim/witness. If the accused is convicted under the POCSO Act and he was also charged in alternate under the IPC, conviction would be in both the provisions of law. However, he cannot be sentenced for both the offences and has to be sentenced according to provision laid down under section 42 of the POCSO Act. Wherever the victim is held as victim under the definition of section 2(wa) of Cr.P.C. she/he is entitled to the compensation for rehabilitation, medical expenses etc.

Charge

The offences for which alternate punishment under section 42 of the POCSO Act has been prescribed are required to be charged in alternative under the IPC apart from the POCSO Act. The doubt for framing charge under section 221(1) is created where the age of the victim has been claimed to be near 18 years i.e. may be 15, 16, 17 or 18. For example, the acts of commission constituting the offence under section 354 IPC may also amount of offence under section 8 of the POCSO Act. In such a situation accused

is to be charge sheeted and tried for both the offences under section 354 IPC and is alternative, also under section 8 of the POCSO Act. Even the circumstances which would render the offence under the category of “aggravated” as defined under section 5 and 9 of the Act.

Conviction and Sentence

If the accused who has been tried under section 354 IPC and also under section 8 of the POCSO Act, on conclusion of trial, has been found to be guilty under both the offence as the ingredients of offences under both the provisions have been proved and the victim is a child, the accused shall be held guilty for both the offence i.e. under section 354 IPC and under section 8 of the POCSO Act. However, the basic precept of criminal law is that a person may not be punished twice for the same set of acts of commission or omission which collectively constitute an offence covered by two different provisions of law. Though the law permits trial on alternative charge for both offences but the punishment may be awarded only for one of them which is graver in nature.

Section 71 of Indian Penal Code connotes that the offender shall not be punished with a more severe punishment than the court which tries him could award for any one of such offences.

Here, we cannot ignore the provision under section 26 of General Clauses Act, 1897. It envisages that where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished for the same offence.

If the accused is charged under section 376 (2) Indian Penal Code and in alternative, under section 4 of the POCSO Act, on finding the accused guilty, he is to be convicted under the provisions of Indian Penal Code as well as the POCSO Act as the ingredients of both are fulfilled. However, he cannot be punished under both the provisions of law as per section 42 of the POCSO Act, section 71 of Indian Penal Code and section 26 of General Clauses Act. He can be punished either under section 376(2) of Indian Penal Code or under Section 4 of the POCSO Act whichever provides for graver punishment.

In other words, the accused can be charged alternatively if same act is defined as an offence under two and different provisions of law i.e. under Indian Penal Code and the POCSO Act. If during trial, the offence is proved to be committed upon a child below 18 years of age then it is proved to be offence under the Indian Penal Code as well as

under the POCSO Act, therefore, the accused would be convicted under both the provisions of law. However, according to section 42 of the POCSO Act, section 71 Indian Penal Code and section 26 General Clauses Act, he cannot be punished under both the provisions of law but would be punished only under the provisions of law which prescribes graver sentence.

Compensation

Section 357, 357A, 357B and 357C Cr.P.C. talk about the compensation including interim compensation to be granted to the victim. Further, section 33(8) of the POCSO Act and Rule 9 of the POCSO Rules, 2020 deal in the grant of interim as well as final compensation to the victim. It is not only on conviction of the accused, the compensation can be granted to the victim but even on acquittal if the court holds that the victim falls under the definition of term 'victim' of section 2(wa) of Cr.P.C. However, if interim compensation has been granted to the child victim and she/he resiles from the statement later on, no recovery can be made. In the cases where interim compensation has been granted, the same has to be adjusted while granting final compensation. The additional point in the cases under POCSO Act is that the amount in interim/final compensation has to be quantified by the Judge, Special Court and the payment has to be made by the DLSA. While quantifying the amount, the factors prescribed under Rule 9(3) of POCSO Rules 2020 have to be considered.

Whether Compensation granted is stayed automatically on filing of the appeal?

In the case of "Bunty vs. State of Punjab" CRM No. 21784 of 2023 in CRM-D-607 of 2023, the questions taken up for consideration are as follows:

(i) Whether on appeal being filed, the applicant/appellant is entitled to stay of fine/substantive sentence awarded by the trial Court as a matter of right?

(ii) Whether an application is required to be filed for stay of recovery of fine, and if so under whichprovision?

(iii) Whether fine for defraying the expenses properly incurred in the prosecution/payment of compensation contemplated underSection 357(1)(a) to (d) Cr.P.C., as also for payment of compensation under Secction357(3) Cr.P.C. can be stayed under Section 357(2) Cr.P.C?

(iv) Whether the decision of the Coordinate Benches in **Jaspal Singh's and Sunder Singh's cases (Supra)** stand impliedly overruled on account of being inconsistent with the dictum of law enunciated by Hon'ble the Supreme

Court in **Dilip S. Dahanukar's & Satyendra Kumar Mehra's cases (Supra) ?**

(v) Whether fine imposed on a convict in terms of a statutory provision of law under which the conviction has been recorded and is to be paid to the victim for meeting medical expenses and rehabilitation constitutes fine or compensation?

Discussing the case of **Salinder Kumar Mehta alias Salinder Kumar Mehra versus State of Jharkhand 2018 (18) SCC 139** and **Dilip S. Dahanukar versus Kotak Mahindra Co. Ltd.and Anr. 2007 (6) SCC 528,** the above questions have been answered as follows by our Hon'ble High Court:

Ans.(i) : No. fine imposed/substantive sentence awarded can be stayed by the Appellate Court under Section 389 Cr.P.C. for reasons to be recorded in writing, depending on the facts and circumstances of the case and on the applicant/appellant making out a case warranting stay/suspension.

Ans.(ii): Yes. Under Section 389 Cr.P.C.

Ans.(iii): Section357 (2) contains an embargo against utilization of amount of fine towards situations contemplated in sub clauses (a) to (d) of Section 357(1) Cr.P.C. including payment of compensation during subsistence of period of limitation for filing appeal and in case an appeal has been filed, till the decision of the appeal. As per Section 357 (2) Cr.P.C, it is only the fine imposed which is not to be utilized qua situations contemplated in Clause (a) to (D) of Section 357 (1) Cr.P.C. and the same would stand automatically stayed by virtue of Section 357 (2) Cr.P.C. in view of the decision in **Satyendra Kumar Mehra's and Dilip S. Dahanukar's case (Supra),** likewise, qua compensation awarded under Section 357 (3) Cr.P.C.

Ans.(iv): Decision of Hon'ble the Coordinate Division Benches in **Jaspal Singh's and Sunder's case (Supra)** and contrary to the dictum of law enunciated in **Satyendra Kumar Kumar** as well as **Dilip S. Dahukar's case (Supra).** Consequentially, the same no longer hold the field and stand impliedly overruled.

Ans.(v) : Fine imposed under Section 376D IPC to be paid to the victim does not fall under any of the situations contemplated under Section 357(1) to (d) Cr.P.C. nor Section 357 (3) Cr.P.C., therefore, does not fall within the scope of Section 357(2) Cr.P.C. and would be governed by Section 389 Cr.P.C. and it is only if a case is made out warranting intervention that the fine imposed can be stayed by the Appellate Court for reasons to be recorded in writing. The Legislature consciously opted to use the word

'fine' instead of 'compensation' while directing the payment to the victim so as to keep it outside the ambit of Section 357 (2) Cr.P.C.

Conclusion

The time frame and the deviations in the procedure mentioned in the Act are required to be strictly followed. All the stakeholders are duty bound not to disclose the identity of the child victim in order to avoid the secondary victimization of the victim. For the said purpose, the FIRs under the POCSO Act are not uploaded on the portal, the pseudo names to the child victims are assigned, the applications moved to other stakeholders i.e. medical examiner, magistrate do not contain the identity of the child victim. If any document is there on the record which discloses the identity of the child victim, the same has to be kept in a sealed cover by having a copy of the original by deleting the name or other identity of the child victim from the copy, the copies of the report under section 361 Cr.P.C. do not contain the identity of the victim, the charge is framed by not disclosing the identity of the child victim. The charge is required to be framed in the alternative under the IPC or any other law in force at the time of commission of offence, if the said offence is defined under both the provisions of the law. The statement of the child victim has to be recorded within 30 days of taking cognizance of the offence and that too *in*-camera and by putting the questions through presiding officer of the Special Court and by not making the accused sit personally in the court room and by making the child victim/witness comfortable in the presence of any parent or any other person in whom the child has trust or confidence. At the conclusion of trial, if the accused is found to be guilty under the POCSO Act and correspondingly, the offence under the IPC and any other law at the time of commission offence is made out, he shall be held guilty under both the offences. However, he cannot to be punished for both the offence and under section 42 of the POCSO Act, 71 of the IPC and 26 of the General Clauses Act, he shall be punished for offence for which graver punishment has been prescribed. On conviction of the accused, the victim is entitled to compensation. Even if the accused is acquitted, the victim can be granted compensation only if she/he is held as victim. Grant of compensation not under section 357(1), 357(3) Cr.P.C. can be automatically stayed and the application under section 389 Cr.P.C. is required to be moved. The application of section 357 (2) Cr.P.C can be there only if compensation either u/s 357(1) or 357(3) Cr.P.C. has been granted.

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LATEST CASES: CIVIL

"The history of any nation cannot haunt the future generations of a nation to the point that succeeding generations become prisoners of the past. The golden principle of fraternity which again is enshrined in the Preamble is of the greatest importance and rightfully finds its place in the Preamble as a constant reminder to all stakeholders that maintenance of harmony between different sections alone will lead to the imbibing of a true notion of nationhood bonding sections together for the greater good of the nation and finally, establish a sovereign democratic republic. The Court must constantly remind itself that courts of law, as indeed every part of the "State", must be guided by the sublime realisation, that Bharat is a secular nation committed to securing fundamental rights to all sections as contemplated in the Constitution."

— K.M. Joseph, J. in Ashwini Kumar Upadhyay v. Union of India, (2023) 8 SCC 402, para 12

Infrastructure Leasing & Financial Services Ltd. v. HDFC Bank Ltd.: 2023 SCC OnLine SC 1371 - Can rents receivable by debtors be assigned to the lender as an actionable claim?– **HELD**- The Bench opined that as per the MFA, the receivables or rents that which IL&FS is entitled to, form the security for the advance extended to it by the lender. Further, the Assignment Agreement clearly indicates that rents payable to IL&FS stood unconditionally assigned to HDFC.

The Court explained the nature of a Lease Rental Discounting (LRD) Agreement as under: *"The Lease Rental Discounting (LRD) arrangement - a new kind of financial agreement by which a banker allows credit facilities to a commercial property owner, has the flexibility of ensuring that the asset owner is given access to credit. The dominant condition is that a substantial portion or the entire rent or receivables which the owner would be entitled to are made- sold or assigned, absolutely to the creditor bank. This is with the intention that the borrower's liabilities are discharged automatically from the proceeds payable in respect of the property. Such amounts virtually are by way of unsecured debts."* It was observed that though the documents executed by IL&FS do not use the term 'LRD' in them but in effect they were LRD Agreement. *"An application of the rule that all the contemporaneous documents are to be read together, to discern the true purport of the contract, it is evident that what the parties intended was the assignment of the debt, i.e., the rents payable.it is the nature and substance of the transaction which is determinative",* the Bench opined.

The Court held that the rents payable by IL&FS tenants, lessees and licensees are debts, stood transferred to the creditor, i.e. HDFC Bank. The NCLAT order has been upheld. *"The earlier discussion in this judgment, about the true nature of the transaction in this case led this court to hold that it is an assignment and not a pledge. The reference to pledge, in some places in the documents, did not undermine the fact that the rents payable to and receivable by the lender (IL&FS) stood absolutely assigned to HDFC.* ***The provisions of the TPA and the discussion of the various authorities support the conclusion that there can be a transfer of debts, which are defined as actionable claims.*** *In the present case, the rents payable by IL&FS tenants, lessees and licensees are debts, which stood transferred to the creditor, i.e. HDFC Bank. Therefore, the NCLAT's conclusions are unexceptionable; the challenge to its correctness, therefore fails."*

IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi: 2023 SCC OnLine SC 1398- Insurer has no right to recover motor accident claim compensation from insured vehicle owner for driver's fake licence- **HELD** -In the matter at hand, the Court noted that the petitioner-insurance company did not even raise the plea that the owner of the vehicle allowed the driver to

drive the vehicle with his fake licence. Therefore, the Court said that the claim of the petitioner-insurance company that it has the right to recover the compensation from the owners of the vehicle, owing to a willful breach of the condition of the insurance policy, viz., to ensure that the vehicle was driven by a licenced driver, was without pleading and proof. The Court reiterated that once a seemingly valid driving licence is produced by a person employed to drive a vehicle, unless such licence is demonstrably fake on the face of it, warranting any sensible employer to make inquiries as to its genuineness, or when the period of the licence has already expired, or there is some other reason to entertain a genuine doubt as to its validity, the burden to prove that there was a failure on the part of the vehicle owner in carrying out due diligence apropos such driving licence before employing that person to drive the vehicle is upon the insurance company. The Court said that in the present case no evidence was placed on record which would draw an inference that the vehicle owner ought to have gotten verified the driver's driving licence. The Court held that it was for the petitioner-insurance company to prove willful breach on the part of the said vehicle owner.

Geetha v. Nanjundaswamy: 2023 SCC OnLine SC 1407- Part rejection of plaint impermissible under Order VII Rule 11 of CPC-HELD- The Court referred to *Dahiben v. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366* for succinctly explained relevant principles under Order 7 Rule 11 and explained that "the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected."

The Court expressed that "The approach adopted by the High Court is incorrect and contrary to the well-entrenched principles of considering an application under Order VII Rule 11 of CPC". It further questioned the sustainability of the impugned order and pointed out to reiterate that an application under Order VII Rule 11, CPC a plaint could not be rejected in part, a principle well established and continuously followed since 1936 after decision in Maqsud Ahmad v. Mathra Datt & Co., 1936 SCC OnLine Lah 337. The same was also explained in Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 and followed in Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780. The Court said that the High Court erred in rejecting the plaint in part with respect to scheduled property, permitting the plaintiffs to prosecute the case with respect to other properties, an approach which was impermissible while considering an application under Order VII Rule 11 of CPC.The Court held that the High Court committed an error in passing the impugned order due to misapplication of the well-established principles under Order VII Rule 11 of CPC and by rejecting the plaint in part, which was contrary to law.

P. Kishore Kumar V. Vittal K. Patkar: 2023 INSC 1009– Revenue Records Won't Confer Title; In Title Suit, Plaintiff Can't Succeed By Merely Pointing Out Lacunae in Defendant's Title-HELD- Reiterating that revenue records are not documents of title, the Supreme Court held that mere mutation of revenue records would not divest the real title-owners of a land of their right, title and interest in the land. Referring to a catena of precedents, the Court observed that *"mutation in revenue records neither creates nor extinguishes title nor does it have any presumptive value on title. All it does is entitle the person in whose favor mutation is done to pay the land revenue in question".*

Shakeel Ahmed V. Syed Akhlaq Hussain: 2023 INSC 1016– Can title of Immovable Property be Transferred through Agreement to Sell or General Power Of Attorney**?- HELD** - The Supreme Court while referring to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882 held that no title could be transferred with respect to immovable properties on the basis of an Agreement to Sell or on the basis of a General Power of Attorney.

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LATEST CASES: CRIMINAL

"The expression "mental health" has a wide connotation and means much more than the absence of a mental impairment or a mental illness. The determination of the status of one's mental health is located in one's self and experiences within one's environment and social context. The term "mental health" cannot be confined to medical terms or medical language, but should be understood in common parlance."

— Dr D.Y. Chandrachud, J. in X v. State (NCT of Delhi), (2023) 9 SCC 433, para 68

Madan Vs. State of Uttar Pradesh: 2023 SCC OnLine SC 1473; 2023 INSC 990-Appreciation of evidence of interested and rustic witness?-HELD-Hearing Criminal Appeals against the judgment upholding the conviction and sentence in the case of offences punishable under Sections 148 and 449, Section 302 read with Section 149, Section 307 read with Section 149, Section 323 read with Section 149 of IPC and Section 25 of the Arms Act, 1959, the Hon'ble Supreme Court, referring to the observations in the case of ***Piara Singh and Others v. State of Punjab (1977) 4 SCC 452*** has held that merely because some of the witnesses are interested or inimical witnesses, their evidence cannot be totally discarded. The only requirement is that their evidence has to be scrutinized with greater care and circumspection.The Hon'ble Supreme Court has further referred to the observations in the case of ***Waman and Others v. State of Maharashtra (2011) 7 SCC 295***, wherein it was held that if the evidence of interested witnesses is found to be consistent and true, the fact of being a relative, cannot by itself discredit their evidence.The Hon'ble Supreme Court has further referred to the observations in the case of ***State of Uttar Pradesh v. Krishna Master and Others (2010) 12 SCC 324*** regarding relevant factors while appreciating evidence of a rustic witness.

The Hon'ble Supreme Court has further referred to the observations in the cases of ***State of Andhra Pradesh v. Bogam Chandraiah and Another (1986) 3 SCC 637, Darbara Singh v. State of Punjab (2012) 10 SCC 476*** and ***Subodh Nath and Another v. State of Tripura (2013) 4 SCC 122*** that it is a settled law that though motive could be an important aspect in a case based on circumstantial evidence, in the case of direct evidence, the motive would not be that relevant. The Hon'ble Supreme Court has further noted that it is a settled position of law that, while sentencing, the Court is not required to apply only the 'crime test' but also the 'criminal test'.

Sajeev Vs. State of Kerala: 2023 SCC OnLine SC 1470: 2023 INSC 998-Testimony of a hostile witness?-HELD-Hearing Criminal Appeals against the judgment upholding the conviction and sentence in the case of offences punishable under Sections 302, 307 and 326 read with Section 120B of the Indian Penal Code, Section 55(a), (h), (i) and Section 57 (A) (1) (ii) of the Abkari Act, the Hon'ble Supreme Court, referring to the observations in the cases of ***Mohd. Naushad v. State (NCT of Delhi) 2023 SCC Online SC 784*** ; ***Hari and Anr. v. State of UP. 2021 SCC Online SC 1131*** and ***Koli Lakhmanbhai Chanabhai v. State of Gujarat (1999) 8 SCC 624,*** has noted that it is the settled law that the testimony of a hostile witness can be accepted to the extent that the version is found to be dependable on careful scrutiny thereof. Testimony of such a witness can be relied upon and cannot be treated as being washed off the record.

Parshuram Vs. State of Madhya Pradesh: 2023 SCC OnLine SC 1416; 2023 INSC 973-Member of an unlawful assembly?-HELD- Hearing Criminal Appeals against the judgment upholding the conviction and sentence in the case of offences punishable under Section 302 read with Section 149 of the Indian Penal Code, the Hon'ble Supreme Court,

referring to the Constitution Bench ***Masalti v. State of U.P. [1964] 8 SCR 133*** has held that it is not necessary that every person constituting an unlawful assembly must play an active role for convicting him with the aid of Section 149 of IPC. What has to be established by the prosecution is that a person has to be a member of an unlawful assembly, i.e. he has to be one of the persons constituting the assembly and that he had entertained the common object along with the other members of the assembly, as defined under Section 141 of IPC. As provided under Section 142 of IPC, whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Manish Sisodia Vs. Central Bureau of Investigation: 2023 SCC OnLine SC 1393; 2023 INSC 956-Right to bail?-HELD-Hearing Criminal Appeals against the judgment declining bail under Sections 7, 7A, 8 and 12 of the PoC Act and Sections 120B, 201 and 420 of the IPC and Sections 3 and 4 of the PML Act, the Hon'ble Supreme Court, referring to Section 45 of the PML Act, in ***Vijay Madanlal Choudhary v. Union of India 2022 SCC OnLine SC 929***, has noted that the provision does not require that to grant bail, the court must arrive at a positive finding that the applicant has not committed an offence under the PML Act. Section 45 must be construed reasonably as the intent of the legislature cannot be read as requiring the court to examine the issue threadbare and in detail to pronounce whether an accused is guilty or is entitled to acquittal. Further, an order on an application for bail is passed much before the end of trial and sometimes even before commencement of trial. Lastly, it is trite, that for the purpose of considering an application for bail, although detailed reasons are not necessary to be assigned, and, therefore, the evidence need not be weighed meticulously, a tentative finding should be recorded on the basis of broad probabilities. The order granting bail must demonstrate application of mind at least in serious cases where the applicant has been granted or denied bail. The findings recorded by the Court for grant or refusing bail being tentative, will not have any bearing on the merits of the case, and the trial court would proceed and decide the case on the basis of evidence produced during trial without in any manner being prejudiced thereby.

The Hon'ble Supreme Court has further held that detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious.The Hon'ble Supreme Court has further held that while the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven.

The Hon'ble Supreme Court has further held that the right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.

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

LATEST CASES: LAND LAWS

"A judgment is an authority only in regard to its ratio which is required to be discerned; and a decision cannot be regarded as an authority in regard to its conclusion alone or even in relation to what could be deduced therefrom."

— Dinesh Maheshwari, J. in Suneja Towers (P) Ltd. v. Anita Merchant, (2023) 9 SCC 194, para 50

Jhabbar Singh v. Jagtar Singh AIR 2023 SC 2074 : 2023 INSC 373- Section 121 of Punjab Land Revenue Act - HELD- For interpreting Section 121 of Punjab Land Revenue Act, analogy can be drawn from Order XX Rule 18 of CPC. When a Revenue Officer takes a decision under Section 118 of Punjab Land Revenue Act, for partition of property, then the said partition would stand completed and the joint status of the parties would stand severed; subject to the decision in appeal if any preferred by the party. The further proceeding to draw an instrument of partition would be only an executory or ministerial work to be carried out to completely dispose of the partition case. Hence, merely because the instrument of partition was not drawn, it could not be said that the partition was not completed or that the joint status of the parties was not severed.

Ramesh Chandra Sharma v. State of Uttar Pradesh: AIR 2023 SC 1117 : (2023) 2 SCR 422 : 2023 INSC 144 - Land Acquisition - HELD- The Land Acquisition Act does not distinguish between classes of owners, and uniformly provides compensation to all class of landowners. The classification made between Pushtaini landowners and Gair-pushtaini landowners, on the basis of the reasoning, is violative of the law laid down in the *Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500* and Article 14 of the Constitution. **- Land Acquisition - HELD-** When the purpose of the acquisition of the land is for the benefit of the public at large, then the nature of the owner of the said land is inconsequential to the purpose. If such a classification on the basis of the nature of owner is allowed, then on the same grounds, there might be a possibility of future classifications where power holding members of the society may get away with a larger compensation, and the marginalized may get lesser compensation. The Bench held that -

1. The Land Acquisition Act does not envisage any differential compensation on the basis of such classification;
2. The mischief rendered by the classification can be severed and the remaining part of the executive actions that seek to grant compensation for the purpose of rehabilitation would remain valid in law;
3. The ex-gratia payment and increased base amount shall be given to all landowners in the concerned area;
4. Any claim to differentiate between classes of person to be backed by empirical data;
5. Even if classification has a rational nexus to the objective of notification, it must be legitimised by the parent statute.

Manubhai Sendhabhai Bharwad v. Oil and Natural Gas Corporation Ltd: AIR 2023 SC 992 : (2023) 1 SCR 1021 : 2023 INSC 61 - Land Acquisition Act, 1894- HELD- If the land is continued to be under temporary acquisition for number of years, meaning and purpose of temporary acquisition would lose its significance. Temporary acquisition cannot be continued for approximately 20 to 25 years. It cannot be disputed that once the land is under temporary acquisition and the same is being used by the ONGC for oil exploration, it may not be possible for

the landowners to use the land; to cultivate the same and/or to deal with the same in any manner.

Furthermore, the grievance with respect to the quantum of annual rent paid is concerned, the High Court has already issued directions in terms of para 7(iii) of the impugned judgment and order. Even otherwise, as per section 34 of the 1894 Act, if the appellants are aggrieved by the amount of compensation/annual rent, it will always be open to the appellants/landowners to approach the Collector and the Collector shall refer such reference to the decision of the Court.

Indore Development Authority v. Burhani Grih Nirman Sahakari Sanstha Maryadit Sneh Nagar: AIR 2023 SC 1401 : (2023) 2 SCR 84 : 2023 INSC 200- Land Acquisition Act, 1894; Section 5A -HELD- Merely because Section 5A has not been mentioned in the said order, the entire acquisition proceedings including notifications under Sections 4 & 6 of the Act, 1894 and more particularly the declaration which was issued after considering the report/objections under section 5A cannot be declared illegal. When the Collector has exercised the power of the appropriate government and a declaration under section 6 of the Act has been issued after considering the report on the objections under Section 5A of the Act, the High Court has seriously erred in quashing and setting aside the entire acquisition proceedings on the aforesaid ground.

State of Gujarat v Jayantibhai Ishwarbhai Patel : (2023) 2 SCR 696 : 2023 INSC 253 - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Section 24 (2) - HELD-Once the land owner refuses to accept the amount of compensation offered by the Acquiring Body, thereafter it will not be open for the original land owner to pray for lapse of acquisition on the ground that the compensation has not been paid.

Land and Building Department through Secretary v. Attro Devi: AIR 2023 SC 1964: 2023 INSC 357- Land Acquisition Act, 1894-HELD- The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated as a trespasser. When a large chunk of land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is complete and land vest in the State free from all encumbrances with possession, any person retaining the land or any re-entry made by any person is nothing else but trespass on the State land.

Haryana Urban Development Authority v. Jagdeep Singh: AIR 2023 SC 2257 : 2023 INSC 503- Land Acquisition Act, 1894 - Demand of Additional Price - HELD- The dispute pertains to demand of additional price for the allotment of plot to the Respondent. The additional price can be demanded in case there is enhancement in cost of the land awarded by the competent authority under the Land Acquisition Act. It is the admitted case of the Appellants that the land for allotment of the plot was never acquired. Hence, there could not be any enhancement in the cost of the land by any authority or court under the Land Acquisition Act. From these undisputed facts on record and the terms and conditions contained in the allotment letter, there is no illegality committed by the learned court below in setting aside the demand of the additional price of the plot allotted to the Respondent.

Mahima Tuli
Research Fellow

NOTIFICATION

1. Govt notifies CMV (Ninth Amendment) Rules, 2023 categorizing vehicles which will comply with requirements of Rule 124: On 7-11-2023, the Ministry of Road Transport and Highways notified the Central Motor Vehicles (Ninth Amendment) Rules, 2023 to amend the Central Motor Vehicles Rules, 1989 ('CMV Rules'). The provisions came into force on 7-11-2023.

Key Points:

1. Rule 125M has been inserted which relates to "Type approval of electric power train vehicles and hybrid electric vehicle".

   The provision will apply to the following vehicles:

   - electric power train vehicles, including pure electric vehicles and hybrid electric vehicles;
   - strong hybrid electric vehicle;
   - plug-in hybrid electric vehicle;
   - series hybrid electric vehicle;
   - series parallel hybrid electric vehicle.

2. These vehicles will have to comply with requirements specified in the Table of Rule 124 of the CMV Rules, 1989 relating to Safety Standards of Components.
3. The definition of the Electric Power Train has been specified as follows- "a system consisting of one or more electric energy storage devices such as a battery, electromechanical flywheel or super capacitor, one or more electric power conditioning devices and one or more electric machines that convert stored electric energy to mechanical energy delivered at the wheels for propulsion of the vehicle".
4. A Hybrid Electric Vehicle is one which draws energy from a consumable fuel or a battery, capacitator, flywheel or generator.
5. Plug-in Electric Vehicle includes a strong hybrid electric vehicle which has a provision for off Vehicle charging of rechargeable energy storage system.
6. Series Hybrid Electric Vehicle means the vehicle which allows power to be delivered to the driven wheels solely by a rechargeable energy storage system and also incorporates the use of a combustion engine to provide power to the rechargeable energy storage system or electric motor.
7. Series Hybrid Electric Vehicle means a parallel hybrid electric vehicle which additionally incorporates a system for the combustion engine to provide power to the rechargeable energy storage system or electric motor.[1]

[1] http://www.indiaenvironmentportal.org.in/content/476070/central-motor-vehicles-ninth-amendment-rules-2023/

EVENT OF THE MONTH

- One day Refresher-cum-Orientation Course was organized by Chandigarh Judicial Academy for Civil Judges from the States of Punjab, Haryana and UT on November 25, 2023. The course was coordinated by Sh. B.M. Lal, Faculty Member, CJA. The Resource Persons for the course were Sh. B.M. Lal, Faculty Member, CJA, Sh. Pradeep Mehta, Faculty Member, CJA and Ms. Madhu Khanna Lalli, ADJ-cum-Faculty Member, CJA.

PICTORIAL GLIMPSES

Refresher-cum-Orientation Course