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CJA **e-NEWSLETTER**

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

FROM THE DESK OF CHIEF EDITOR

Chandigarh Judicial Academy has completed one year partnership with Sri Lankan Judges Institute. It started in the month of December, 2016. The first programme was held from December 12-16, 2016. This was a good beginning. Sri Lankan Judges Institute sanctioned three programmes for the year 2017 in April, August and December respectively. Accordingly, the third programme of the year 2017 was held from December 08-13, 2017. It was a group of 33 Sri Lankan District Judiciary. The delegation was led by Hon'ble Justice Eva Wanasundera, Judge, Supreme Court of Sri Lanka. Before her elevation as Judge of Supreme Court, she was the first lady Attorney General of Sri Lanka. She delivered the inaugural address, and participated in all the sessions and on all the working days from December 08-13, 2017. We were truly honoured in having her in Chandigarh Judicial Academy.

Justice Eva Wanasundera delivered a thought provoking inaugural address. The same is being included in this monthly e-Newsletter. She traced historical linkage of Sri Lanka with India. She acknowledged thankfully that the main religion of Sri Lanka flows from Lord Buddha from India. Sri Lankan's feel proud to call themselves Buddhists. They firmly believe in the teachings of Buddha. She focused on the role that the Judges are required to play. She reminded them that they are not the engines of power. In their judicial functioning, they need to learn social engineering. This is true of India. Equally, true of Sri Lanka. This four day programme was structured into 18 different sessions. Variety of subjects, variety of issues concerning the two systems were discussed. The sessions were devoted to Constitutional, Civil and Criminal matters. The advancement in technology and its impact on the Judicial Institution was the major focus. Specific sessions were devoted to e-Judicial System of the States of Punjab, Haryana and Chandigarh. Sessions were also devoted to electronic evidence and Cyber Crimes. Judicial communication, recording of court proceedings and writing of judgments were other areas which were covered. Due emphasis was given on, how to strengthen the judicial human fabric so that the trust and confidence of the people could be built in this Institution of Judiciary. In different sessions, the best practices being followed in India were shared. Court and case management aspects were also discussed. The sessions were interactive. It would not be wrong to say, the entire programme was intellectually stimulating.

Judges in India and across the borders must be exposed to the autobiographies and biographies of lawyers and judges in different countries. The life experiences recorded are educative. They inspire the judges to be good human beings. They motivate the judges to render wholesome justice in difficult and different situations. They demonstrate that how judges have to be bold and firm. There are many auto-biographies and biographies which need to be read by the legal and judicial coparcenary. I would like to make specific reference to **Legends in Law** by V. Sudhish Pai. It covers the best of 42 lives of great Men of Law in the Indian context. This book portrays the best of legal literature weaved through the medium of life experiences. It would not be wrong if I say that it is a 'must' reading for lawyers and judges. I have enjoyed it. It is a book which relaxes you as also teaches you so many things to make the legal coparcenary a blend of good human beings. Judges must be compassionate. Humanism must be in-built in them. This book is an adult dose of judicial culture.

Wish you all Happy 2018.

Balram K. Gupta

**SPEECH AT CHANDIGARH JUDICIAL ACADEMY – INDIA - 8TH DECEMBER, 2017
BY JUSTICE EVA WANASUNDERA, JUDGE, SUPREME COURT OF SRI LANKA**

Professor, Dr. Balram K. Gupta, Senior Advocate, members of the head table, District Judges and Magistrates,

I wish all of you a very good morning. We all are happy to be here in this beautiful city Chandigarh Sector 43D at the Chandigarh Judicial Academy. I am quite sure that the Director Academics and his staff have organized a good programme for us who have come from the judiciary of Sri Lanka **not only** to learn from the academy but also to share our experiences as judicial officers from the small island Sri Lanka, being a close neighbor of India.

Sri Lanka is not just another neighbor of India. The history of Sri Lanka tells us that Prince Vijaya son of Sinhabahu, the ruler of Sinhapura from India came to Sri Lanka in 543 BCE from Sinhapura and got married to Kuveni alias Kuvanna, the beautiful princess belonging to the Yaksha Gothra who reigned in the area she lived in and had two children, a son and a daughter. According to the Mahavansa, it is King Vijaya from India who gave origin to the Sinhalese people. The Sinhalese speak an Indo-Aryan language which King Vijaya brought from India.

So, for so long we have had connections with India. We are relatives of Indians. We received our main religion from Lord Buddha from India. We are a proud to call ourselves Buddhists thanks to India. We practice the non sectarial

Buddhist norm that each and every person born on this planet earth is equal to each other with a mind and a body. It is only the language we differ in, the skin color we differ in. It is just the outer appearance but within each human being is the great mind which can be cultivated to great heights to reach Nirvana or Moksha in a higher vein but in a lower vein it is equity, justice, reasonableness, audi alteram partem, care, the benefit of the rank and file of the society. Ultimately the law and order in a country depends on the work overseen by the judiciary and nothing else. You see, all your work goes down as work for Justice. We have come here to learn a little more regarding how to act judicially, how to write judgments better, how to deal with the litigants problems and the behavior of lawyers in court etc.

The Sri Lanka Judges Training Institute has made arrangements for you to come here and participate in the programme because the Sri Lankan Judiciary needs to be trained more and more. There is no end to learning. We have made you come all the way here because the whole environment puts you at ease. You do not have to think about your work, your home or anything else. You are here to make the maximum out of this programme. You are taken away from the stress in your judicial life. Please relax and attend to what is taught, share your experiences with the lecturers and among yourselves and make your days easy and

happy. These days your head and mind can absorb more, you can speak up quite freely and become more learned than you already are.

Our system of law in Sri Lanka is based on the Roman Dutch law as the Common Law of the country but the English Law plays a truly significant role in the areas of commercial law, banking law, international trade law etc. Sri Lanka and India were both colonies of Great Britain and as a result we have inherited so much from the English Law. The Evidence Ordinance of Sri Lanka is based on the Indian Evidence Act of 1872 with some modifications. Thanks to Sir James Fitz-James Stephen's excellent drafting, Sri Lanka adopted the Indian Evidence Act and enacted our own Evidence Ordinance in the year 1895. In Section 100 of our Ordinance, it is provided that if the said Ordinance is silent on any particular matter, we should bring in, the English Law. Then, the Indian Civil Procedure Code of 1877 was adopted by Sri Lanka in 1890. It is the same with our Penal Code of 1883. But now, we all know that the case law has developed the statutory law to a great extent. In all aspects of law prevalent in our country, the advocates or counsel appearing in all different cases before the Supreme Court, the Apex Court of the country continuously quote from the Indian cases.

So, let me tell you that being here in Chandigarh you can learn a lot. You will be able to apply what you learn here when you go back home. You all are judges who play a high role

in the society in Sri Lanka. You can't afford to go wrong in your judgments. You can not go wrong in your bench orders. You have to give reasons for your conclusion in each and every judgment and order you make. You have to analyze the evidence both oral and documentary led before court when you are writing judgments. Your work has to be responsibly carried out. Ultimately when the society reaches out to you for justice, you cannot afford to grant them anything else but justice. You have to be quite disciplined on the bench and outside as well. It is no easy job. In fact it is very difficult occupation.

You have a lot of power in your hands. You can remand the suspects. What is it that you have to remember at any time you think of putting them behind bars for a short stay? The Bail Act. The provisions of the Bail Act are very important and I believe all you magistrates have to study the provisions of that piece of legislation and keep it at your finger tips.

You can come across situations which arise in open court and you realise right at a particular moment that you do not know the law relevant to that particular matter. Do not hesitate to keep down the case to be taken up later. When you adjourn court, you can immediately have a quick look at the provisions of law or you can contact a senior judge, a friend of your who is more experienced and then decide the matter correctly. Don't hesitate to pause and take the right decision rather than hurriedly take the wrong decision. You always tend to think that

'well the litigant or the suspect has a right to appeal' but remember that it is not easy for any party to appeal. Why? Because it costs them money and may be they will unnecessarily suffer if you make the wrong decision. So be very considerate and careful. There is another aspect to this. What about your integrity. You cannot afford to get a bad name as a judge. You have to protect yourself as well. These are practical problems which you can avoid.

Do not prolong cases unnecessarily. Do your best to conclude them at the earliest possible way. We all are aware that the society always complains about laws delays. Don't turn a blind eye to that. You have to do your little bit of contribution by not delaying your work. You have to write judgments and orders within a short time. When you delay, the litigant suffers and you suffer as well because the Judicial Service Commission will delay or not grant you, the annual increments of your salary. You gain a black mark as a delaying judge. It is very difficult to erase that black mark. So be diligent in your work for the betterment of the society and for yourself. Have a portion of your day to day time allocated to write the orders and judgments. That is your duty, your obligation and your life. You have to be determined to finish your work within a period you decide on but it has to be quite reasonable, acceptable and well thought about. You all are very important persons and do not lose that importance. It is difficult career you have stepped into but you can be a winner and not a looser. Please do steady work.

Please learn to be self disciplined. Learn to criticize yourself rather than criticize others. Learn to evaluate yourself. You should check yourself in all aspects. Learn to enjoy your work rather than take it as a burden. Be kind to yourself as well as be considerate of all those suspects, victims and litigants you see everyday.

Do not try to please your past seniors from whom you learned work before you became a judge. Treat them very courteously but do not show any partiality towards them. They do not expect that either. They would be proud of you when you treat them in par with others because in court you have to be treat everybody equally. Don't show any partiality. You are on the bench and you cannot be seen to be doing anything wrong when you sit on the bench. You are in a show case. Everybody is watching you. Be mindful. You have to balance your powers in the correct way. You need not fear but you have to be careful to do the correct thing, mind you, in each and every case. It is not easy but that is what is expected of a judicial officer. You cannot go beyond that.

Now, let us be happy. Let us learn something more. Let us try to keep in mind what we learn and use it in the future. Your career is what matters to you. You being learned in the law will help you to discharge your duties in a better way. Make the best out of this trip to create good relationships and improve your knowledge.

Thank you.

LATEST CASES: FAMILY LAW

“Children are not only the future citizens but also future of the earth. Elders in general, and parents and teachers in particular, owe a responsibility for taking care of the well being and welfare of the children. The world shall be a better or worst place to live according to how we treat children today.”

R.C. Lahoti, J. in *Rohit Singhal vs. Principal, Jawahar N. Vidhyalaya*, (2003) 1 SCC 687

Prateek Gupta vs. Shilpi Gupta & Ors.: MANU/SC/1537/2017 : Criminal Appeal No. 968 of 2017 : DoD 06.12.2017: Issue of Welfare of Child has Paramount Significance, not Legal Principles or Legal Rights of Parties – **Held** – the issue with regard to the repatriation of a child has to be addressed not on a consideration of legal rights of the parties, but on the sole and preponderant criterion of the welfare of the minor. The summit court **further Held** – *“The appellant being the biological father of Aadvik, his custody of the child can by no means in law be construed as illegal or unlawful drawing the invocation of a superior Court’s jurisdiction to issue a writ in the nature of habeas corpus. We are, in the textual facts and on an in-depth analysis of the attendant circumstances, thus of the view that the dislodgment of the child as directed by the impugned decision would be harmful to it.”*

It is further held that, *“As has been claimed by the appellant, the child is growing in a congenial environment in the loving company of his grand-parents and other relatives. He has been admitted to a reputed school and contrary to the nuclear family environment in US, he is exposed to a natural process of grooming in the association of his elders, friends, peers and playmates, which is irrefutably indispensable for comprehensive and conducive development of his mental and physical faculties.”* Setting aside the high court judgment, the court opined that the child, till he attains majority, ought to continue in the custody, charge and care of the appellant, subject to any order to the contrary, if passed by a court of competent jurisdiction in an appropriate proceeding deciding the issue of its custody in accordance with law.

Sanju Devi vs. State of Bihar and Anr.: MANU/SCOR/50712/2017 : SLP (Cr.) No. 4057/2015 : DoD 06.12.2017 : Judicially separated wife is also entitled to

maintenance – Held – If a divorced wife is entitled for maintenance, there is no reason why a wife who is judicially separated is not entitled for maintenance. The apex court was considering a submission put forth on behalf of the husband that there is already a decree of judicial separation and in view of Section 125(4) of the Code of Criminal Procedure, 1973, the wife is not entitled to any maintenance. **Further Held** – *“We are noting this argument only to reject it since we find no substance in this argument. If a divorced wife is entitled for maintenance, there is no reason why a wife who is judicially separated is not entitled for maintenance.”* It is further added that it does not subscribe to the view of the High court that merely because the trial court has not given a finding that the wife is not able to look after herself, she is not entitled for maintenance. The High Court is required to look into the question whether the petitioner is entitled to maintenance or not and, if so, the quantum of maintenance.

Harjinder Singh vs. Rajpal : MANU/SCOR/50024/2017 : SLP (C) No. 18046/2013 : DoD 01.12.2017: Don’t leave husband’s company without our permission, SC Bench tells a wife – **Held** – The Hon’ble Supreme Court directed a woman to live with her husband for a few weeks and not to leave him without getting permission from it. The bench stated : *“We find that everything is still not lost. The petitioner /Harjinder Singh has been very gracious and fair in his submissions. The respondent wife has not instituted any case except one case for maintenance.”* **Further Held** – *“Respondent /Rajpal is directed to go with the petitioner /Harjinder Singh today from the Court. The respondent is directed to behave herself properly and look after the petitioner and his aged mother. Nobody from the family of the respondent shall interfere with their peaceful living. Without permission from the Court respondent /Rajpal shall not leave the company of the petitioner /Harjinder Singh.”*

LATEST CASES: CIVIL

“The requirement of efficiency is an overriding mandate of the Constitution. An inefficient administration betrays the present as well as the future of the nation”

Dr. T.K Thommen, J. in *Indra Sawhney vs. Union of India*, (1992) Supp. (3) SCC 217

Samar Kumar Roy vs. Jharna Bera : 2017 (4) RCR (Civil) 810 (SC) - The jurisdiction of civil court to grant declaration to determine the legal character of alleged marriage is not barred under section 34 of specific relief act - In this case it has been observed by the Supreme Court that the civil suit for the annulment of the marriage and perpetual injunction restraining the respondent from claiming plaintiff as her husband is maintainable under Section 34 of the Specific Relief Act. The jurisdiction of the civil court is not barred under the Family Courts Act to determine the legal character of alleged marriage either expressly or impliedly.

State of Uttarakhand vs. Mandir Shri Laxman Sidh Maharaj : 2017 (4) RCR (Civil) 801 (SC) - Trial court can only grant the relief which is claimed in the plaint and trial court cannot travel beyond the pleadings of the case - In the present case which was filed by the plaintiff (Temple) for declaration as owner of the suit property along with permanent injunction restraining the state to interfere into the possession of the temple, the Supreme Court has observed that the trial court had proceeded to decree the suit by conferring an ownership of the temple with a right of easement over the use of well to drink water on the basis of their adverse possession which is a jurisdictional and legal error committed by the trial court. It was further observed that the suit filed by the plaintiff is misconceived and the trial court can only grant the relief which is claimed in the plaint and trial court cannot travel beyond the pleadings of the case.

Raja Venkateswarlu vs. Mada Venketa Subbaiah & Ors. : 2017 (4) RCR (Civil) 904 (SC) - Mentioning of wrong provision of law is not material - The appellant decree holder had moved an application under Section 151 of CPC for the police protection for enforcing the decree under order 21 rule 32 CPC. The application was rejected by the High Court on the grounds that section 151 CPC is not

applicable. It has been observed by the Hon'ble Supreme Court that if the Executing Court has the jurisdiction and if that provision was not invoked, is immaterial and if the executing court has followed the procedure under the rules then there is no need to mention the exact provision of law.

Management of Bharat Heavy Electricals Ltd. vs. T.A. Mathivanan (D) Thr. LRs (SC) : 2017 (4) SCT 783 SC - Once the Labour Court upheld the departmental enquiry as being legal and proper then the only question that survived for consideration before the Labour Court is whether the punishment of "dismissal" imposed by the appellant to the respondents is legal and proper - The Labour Court had held that the departmental enquiry was properly held; secondly, the employer instead of holding an enquiry should have stayed it awaiting the outcome of the criminal case; thirdly, since the criminal case resulted in the acquittal of the respondents, the departmental enquiry stood vitiated as violating the principle of natural justice; fourthly, since the employer did not lead any evidence in support of the charge, the charge remained unproved; and lastly, the dismissal orders are bad in law in the light of the four grounds and, therefore, the respondents be reinstated in service with payment of full back wages by the appellant.

The Apex Court reversing the order of Labour Court observed that once the Labour Court upheld the departmental enquiry as being legal and proper then the only question that survived for consideration before the Labour Court was whether the punishment of "dismissal" imposed by the appellant to the respondents was legal and proper or it requires any interference in its quantum. the Labour Court should have then confined its enquiry to examine only one limited question as to whether the punishment given to the respondents was, in any way, disproportionate to the gravity of the charge leveled against them and this, the Labour Court

should have examined by taking recourse to the provisions of Section 11-A of the Industrial Dispute Act, 1947 and the law laid down in the case of *The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. vs. The Management & Ors.*, (1973) 1 SCC 813.

Nelatur Sampooramma vs. Special Deputy Collector, L.A, Telugu Ganga Project, Podalakur at Nellore, Andhra Pradesh: 2017 (4) RCR (Civil) 432 (SC) - Compensation for fruit bearing trees - In a land acquisition case under the old Act, the Hon'ble Supreme Court has observed in an issue regarding the compensation for calculation of fruit bearing trees by holding that Planting, raising and making commercial use of fruit bearing trees is a painstaking affair and cost of the same is consistently on the rise as the years are passing by which is to be kept in mind. The award of compensation in relation to fruit bearing trees depends upon the facts and circumstances of the each case. In this case the claimants claimed the compensation on the basis of earlier award wherein Rs.3000/- per pomegranate tree was awarded but it was in the award of year 1999 whereas in the present case the award was of the year 1992 and deducting the cost of 7 years, the compensation to the tune of Rs.2000/- per pomegranate tree should be awarded to the claimants.

Mahavir and Ors. vs. Union of India : 2017 (4) RCR (Civil) 567 (SC) - Section 24 of new act protects bonafide claimants - The Hon'ble Supreme Court has observed that, if the proceedings of land acquisition under the old act upto the passing of the award were finalized and the claimants deliberately did not receive the amount or refused to collect the same would not make them entitled to invoke the provisions of new act by invoking Section 24 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act, 2013.

Dharampal (Dead) through LRs vs. Punjab Wakf Board: 2017 (4) RCR (Civil) 688 (SC) - Claim by the defendant on the basis of adverse possession by counter claim is not maintainable - In this case the defendant was in unauthorized occupation of the land belonging to Wakf Board wherein the suit for

possession was filed by the Wakf Board. The defendant had claimed the title by way of adverse possession over the suit land by way of counter claim. It has been observed by the Hon'ble Supreme Court that the plea to the defendant is not available and by way of counter claim it would be treated as plaint and is not permissible.

State of Maharashtra vs. Reliance Industries Ltd. & Ors. : 2017 (4) RCR (Civil) 854 (SC) - Part of building can be acquired & the owner is having the option to express his desire that his whole of the building be acquired - It has been observed by the Hon'ble Supreme Court that the land acquisition act, 1894, provides that a part of building can be acquired. The owner is having the option to express his desire that his whole of the building be acquired and if such an intention is expressed then it is incumbent upon the authority to acquire the whole building. It is further held that when the flats can be sold independently, obviously they can also be acquired floor wise independently and this can be a valid acquisition of such floors independently without land in such like cases.

Damini and Ors. vs. Managing Director Jodhpur Vidyut Vitran Nigam Ltd & Ors.: 2017 (4) RCR (Civil) 786 (SC) - It has been held by the Hon'ble apex court that the limitation for filing the application under Fatal Accident Act 1885 is 2 years as mentioned in Article 82 of limitation act. In such like situations for filing the suit for damages, Article 113 of limitation act providing 3 years limitation would not be applicable.

Sri Dinesh Kumar J. @ Dinesh J. vs. National Insurance Company Ltd. & Ors.: Civil Appeal No. 22966 of 2017 : DoD 15.12.2017 (SC) - It has been held by the Supreme Court in MACT matter that If a person drives a vehicle without a licence, he commits an offence. The same, by itself, would not lead to a finding of negligence as regards the accident. The lower courts should have observed that it was the driver of the mini truck who was driving rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, and only because he was not having a licence, then he would not be held to be guilty of contributory negligence.

LATEST CASES: CRIMINAL

“Drug abuse is a social malady... There is no doubt that drug trafficking, trading and its use, which is a global phenomenon and has acquired the dimensions of an epidemic, affects the economic policies of the state, corrupts the system and is detrimental to the future of a country. It has the effect of producing a sick society and harmful culture.”

Dr. A. S. Anand, J. in *State of Punjab vs. Baldev Singh*, (1999) 6 SCC 172

Sarmishtha Chakraborty & Anr. vs. Union of India Secretary & Ors.: 2017 (4) RCR (Crl.) 761 SC: Law finder Id 876401 : Medical Termination of Pregnancy Act, 1971 : In this case, medical report revealed that mother shall suffer injury if the pregnancy is continued and there will be multiple problems if the child is born alive. **Held** – the right of a woman to have reproductive choice is an inseparable part of her personal liberty, as envisaged under article 21 of the Constitution. Cases of nature of medical termination have to rest on their own facts because it shall depend upon the nature of the report of the Medical Board and also the requisite consent as engrafted under the Medical Termination of Pregnancy Act. Accordingly, a pregnant woman was permitted to abort 26 week pregnancy as medical report revealed that there was danger to life of both woman and baby to be born if pregnancy was not terminated.

Chand Devi Daga & Ors. vs. Manju K. Humatani & Ors.: 2017 (4) RCR (741) SC : Law Finder Id 921264 : In this case a criminal revision was filed by Smt. Chandra Narayan Das before the Additional Sessions Judge, which was dismissed. Criminal Miscellaneous Petition against the order of dismissal was filed in the High Court of Chhattisgarh by Smt. Chandra Narayan Das. High Court issued notice in the said petition. After issuance of notice, petitioner Smt. Chandra Narayan Das died. An application was filed by her legal heirs praying them to be substituted in the place of the petitioner. High Court allowed the said application and permitted the legal representatives to come on record for prosecuting the Criminal Miscellaneous Petition. Aggrieved by the said judgment, the appellants filed appeal. **Held** – In case of death of complainant in warrant case, legal heirs of the complainant to prosecute the criminal petition. Even in case of trial of summons case, it is not necessary or mandatory that after death of complainant, the complaint is to be rejected. Magistrate can proceed with the complaint.

Magistrate under section 249, has power to discharge a case where the complainant is absent, however, with the condition the offence may be lawfully compounded or is not a cognizable offence. The Code of 1973 did not intend that in case of death of complainant in a warrant case the complaint is to be rejected.

Asharfi vs. State of Uttar Pradesh: MANU/SC/1556/2017: Criminal Appeal No. 1182 of 2015 : DoD 08.12.2017 – After the 2016 Amendment, mere Knowledge of the Accused that Victim Is SC/ST Is Sufficient for Prosecution under SC/ST Act – Held – The apex court on considering an appeal filed by a man convicted concurrently by the High Court and the trial court in a rape case, since the victim belonged to the SC/ST community, the accused was also convicted under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act, and was sentenced to undergo life imprisonment with fine. The Hon’ble Bench observed, that prior to the amendment, the words used in Section 3(2)(v) of the SC/ST Prevention of Atrocities Act were “.....**on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe**” and hence it is clear that the statute laid stress on the intention of the accused in committing such offence in order to belittle the person as he/she belongs to Scheduled Caste or Scheduled Tribe community. The Supreme Court **further Held**: that after the amendment of the Scheduled Caste/ Scheduled Tribe Prevention of Atrocities Act carried out in 2016, mere knowledge of the accused that the person upon whom the offence is committed belongs to the community suffices to bring home the charge under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act.

State of Haryana vs. Vikas and Anr. : CRM-A-1848-MA-2017: DoD 20.11.2017 (P&H) – The State of Haryana filed the application u/s 378(3) seeking leave to appeal against the judgment dated 06.10.2016, passed by learned Addl. Sessions Judge, Gurgaon, vide which the

respondents have been acquitted of the charges u/s 376(1) and 376(2)(i) IPC and S. 4 of The Protection of Children from Sexual Offences Act, for short 'POCSO Act'. Allegations leveled by prosecutrix "A" and "B" are that accused Sombir raped prosecutrix 'A' and Vikas-accused raped prosecutrix 'B'. During trial both prosecutrices stated that no crime was committed by both the accused. All the material witnesses turned hostile and both the prosecutrices also failed to identify the accused. FSL and DNA reports did not match according to the allegations against the accused. **Held** – Ld. Trial Court has rightly observed that both the prosecutrices were held to be major on the date of occurrence and they gave false evidence and turned hostile. Thus, their testimony cannot be termed as sufficient evidence to prove the guilt. In view of the above, this Court is fully in agreement with the reasoning given by learned Trial Court while acquitting respondents being the possible view. **Further Held-** There is no merit in the present application to grant leave to appeal. Although Ld. Trial Court has adopted the right approach while taking cognizance of offence in terms of S. 344 of Cr.P.C. against both the prosecutrices, i.e. PW-1 and PW-3 to eradicate the evil of perjury and that recourse is obligatory under Rule 8 of the Punjab and Haryana High Court Case Flow Management Rules, 2007 framed by this Court, for short 'Rules of 2007' and Rule 8 of Rules of 2007 reads as under:

“Proceedings for perjury – If the Trial Judge, delivering the judgment, is of the view that any of the parties or witnesses have willfully and deliberately uttered blatant falsehoods, he shall consider, at least in grave cases, whether prosecution should be initiated for perjury and order prosecution accordingly.”

Accordingly, Hon'ble HC accorded sanction for prosecution of PW2- Murti Devi (mother of prosecutrix 'A'), PW4-Satyawati (mother of prosecutrix 'B'), PW5-Satya Narain (brother of prosecutrix 'B') and PW6- Samina (sister of prosecutrix 'A') alongwith PW1 and PW3.

Asha Nagar vs. Gyan Swaroop through LR Hardeep Singh :2017 (4) RCR (Cri.) 759 P&H : Law finder Id 833768 : S.500 IPC - Suit claiming damages for defamation was filed by plaintiff. Plaintiff died during pendency of suit. It was contended that the cause of action to claim damages on the ground of defamation was

personal in nature to the sole plaintiff and the cause of action does not survive. So, Hardeep Singh was not entitled to be impleaded as the legal representative of deceased plaintiff. **Held** – the suit was filed by deceased plaintiff Gyan Swaroop for recovery as damages on account of his defamation. So, the cause of action to file the suit for damages by the plaintiff was on account of his defamation, which is purely personal in nature to the deceased plaintiff and such cause of action will not survive after the death of plaintiff.

Satnam Singh Kahlon and others. vs. State of Punjab and Another : 2017 (4) RCR (Cri.) 922 P&H : Law Finder Id 925604 : S. 319 Criminal Procedure Code – S. 306 IPC : In this case, challan was presented under section 306 IPC against Jasvir Singh. During the pendency of the trial, an application was filed by the prosecution under section 319 Cr.P.C. for summoning Satnam Singh Kahlon and others as additional accused. Ld. Additional Sessions Judge allowed the application by holding that while deposing in the court, as witness, complainant reiterated the allegations against the above said persons. It was **further held** that no just explanation is given by the investigating agency for keeping the names of accused persons in column No. 2 while presenting the report under section 173 Cr.P.C. and there is sufficient evidence on record to summon these persons. Revision petition was filed by petitioners challenging the above said order vide which the application filed by the prosecution under section 319 Cr.P.C was allowed by Additional Sessions Judge. **Held-** the court below has not given its satisfaction that it appears to the court that these persons are also involved in the commission of the offence and they should be tried along with the accused already challaned. It is the necessary ingredient to summon additional accused under section 319 Cr.P.C. Mere fact that the complainant gave statement to the Police by leveling allegations that these persons also harassed the deceased by saying that he has illicit relations with wife of Jasvir Singh and the same facts have been stated by Surjeet Kaur in her statement before the Court, cannot be held as sufficient evidence from which the court can say that it appears to the court that these persons are also involved in the commission of the offence. Accordingly, the order passed by Ld. Additional Sessions Judge was set aside.

STANDARD OPERATING PROCEDURE (SOP) FOR REHABILITATION OF CHILDREN IN CONFLICT WITH LAW

The Ministry of Women and Child Development has developed a [Standard Operating Procedure \(SOP\)](#) for [rehabilitation of children in conflict with law](#) under the Juvenile Justice System. The SOP aims to reduce incarceration while protecting children from violence, abuse and exploitation. The SOP promotes rehabilitation as an effective approach than usage of punitive measures and involves families and communities as a safer, more appropriate and effective approach. The SOP is designed as a guide for stake holders such as functionaries of child care institutions, Juvenile Justice Boards/ Children's Courts, National and State Commission for Protection of Children, State/UT Governments and Police etc while dealing with children in conflict with law. Some important highlights from SOP are as follows:

TRAINING OF STAFF: Regular staff training and their assessment should be made mandatory. Mindfulness and other programs for the mental health of staff should be introduced in order to help them develop a positive environment within the observation home.

SOP FOR LAW ENFORCEMENT AGENCIES Law enforcement officials from JJB and DCPUs, juvenile judges, magistrates, social workers, case workers and police should be trained continuously on constructive approaches that make it possible to avoid formal arrest and detention of CCL with an increased knowledge in the area of juvenile justice.

JUVENILE JUSTICE BOARD – Activities for Intervention: Intervention is a series of activities designed to address issues that caused the child to commit an offense. These can be achieved by :

1. Strengthening of free legal aid cells;
2. Capacity building for Juvenile Justice Board 6members and staff of JJB;
3. Capacity building for Observation Home Staff attached to JJB;
4. Facilitate regular meetings of JJB members with children and staff at Observation home;
5. Facilitate regular meetings of JJB members with parents and released children through follow-up meetings;
6. Involvement of NGO's in the functioning observation homes;
7. Awareness to parents and children on free legal aid and procedure of JJ system;
8. Ensure accountability through regular review meetings.

Setting up of a Child / Youth Guidance Centre in association with each JJB – The centre should provide services based on the principle of diversion for child/youth offenders. The JJB should use discretion to refer children to the Guidance Centre based on the social investigation report.

This centre should provide the following services: -Individual work and Therapeutic Care; Collaborative and Community work; Mindfulness training for children and their parents; Staff training Community based diversion centers should be set up wherever plausible. In designing a community service programme, the JJB may combine the restorative justice approach by keeping in mind: 1. the nature of offence committed by the CCL; 2. the circumstances of its commission o the impact on the victim; 3. lessons that should be taught to the CCL; 4. how the programme will help correcting the harm to the victim.

The preconditions for adopting restorative practice in a given case are: 1. The CCL must accept commission of offence; 2. The CCL (and not their parents) must be ready to accept responsibility for correcting the wrong 3. The CCL must be ready to apologize to the victim 4. The victim will have a say in deciding what they want the CCL to do to make amends 5. It cannot be demeaning the offender but must be focused on making good the harm caused. 6. The victim should be assisted in not demanding something which is beyond the means of the CCL to fulfill.

Detailed information is available at:

http://www.wcd.nic.in/sites/default/files/SOP%20ON%20REHABILITATION%20OF%20CHILDREN%20IN%20CONFLICT%20WITH%20THE%20LAW_0_0.pdf

EVENTS OF THE MONTH

1. One day workshop to impart **training to Principal Magistrates and Members, Juvenile Justice Boards of Punjab, Haryana and Chandigarh** was organized on December 02, 2017. This workshop covered: Production of Child before the Board, Functions of the Board, Procedure in Case of Missing Children, Post Production Processes by Board, Orders of Board, Individual Care Plan, Rehabilitation and Reintegration of Children, Use of Child Friendly Procedures, Preliminary Assessment, Presumption and Determination of Age, Provisions of Bail and Child Psychology and Behaviour of Children in Conflict with Law. 90 participants attended the programme.

2. **Refresher-cum-Orientation Course** was organized to sensitize Additional District and Sessions Judges from the States of Punjab and Haryana with regard to Compensation and Sentencing on December 02, 2017. The Programme covered – Sentencing - Law and Procedural Aspects, Compensation under Motor Vehicles Act, Dragon Dictation Software and Visit to Paperless Court. 64 participants attended the programme.

3. **Five Days Computer Training Programme for Staff of District Courts in the State of Haryana** was organized from November 29 - December 03, 2017. This training was divided in two components: three days by Centre for Development of Advanced Computing (C-DAC) and two days Case Information Software and NJDG Training. The participants in this training programme were technically qualified (B.Tech / M.Tech / M.C.A). This orientation programme would equip them well in the performance of court work as also they would be able to provide training to others.

4. **Training Programme for Different Stakeholders under Juvenile Justice Act** was organized on December 04, 2017. The participants included nominees of SIPU, CCI, DCPU/PO of Punjab, Haryana and Chandigarh. The programme covered topics: Pre-production action of Police, Other offences against children under JJ Act, Use of Child Friendly procedure after apprehension, Role of in-charge of Child Care Institutions (CCI) while dealing with children, Role of PO, DCPU and CWO while dealing with children, Role in Re-habilitation & Re-integration, Child Psychology and Behaviour of Children. 125 participants attended the programme.

5. **Forth Delegation and third of the year 2017 of 33 Sri Lankan Judges** came to Chandigarh Judicial

Academy on December 07, 2017 for one week Academic programme (from 07th-14th December, 2017). This delegation was led by Hon'ble Justice Eva Wanasundera, Judge, Supreme Court of Sri Lanka. In four working days, the entire Programme was structured into 20 different sessions. Different sessions were taken by Justice Anil Dave, Justice (former Judge Supreme Court of India), HMJ Rajesh Bindal, HMJ A.B. Chaudhari, HMJ G.S. Sandhwalia, HMJ Ritu Bahri, Justice S.S. Saron, Justice L.N. Mittal, Justice B.B. Parsoon, Anupam Gupta, A.P.S. Deol, Senior Advocates, Anil Malhotra, Advocate, Pavan Duggal, Advocate, Cyber Law Expert, Supreme Court of India, Dr. Balram K. Gupta, Director (Academics), Inderjeet Mehta, Director (Admn.), CJA. This programme was co-ordinated by Pradeep Mehta, Faculty, CJA. The welcome address was delivered by HMJ A.B. Chaudhari, President, BOG, CJA and the inaugural address by Hon'ble Justice Eva Wanasundera, Judge, Supreme Court of Sri Lanka. Justice Eva Wanasundera was present and participated on all the four working days and in all the sessions.

6. On completion of One Month Orientation Course for ADJs (on promotion) from the State of Haryana, **Valedictory Function** was organized on December 07, 2017.

7. **CDAC / CIS Training for Ministerial Staff of Haryana and Chandigarh** was organized from December 13-17, 2017 at CJA. 29 participants attended the training programme.

8. **Valedictory Function of Sh. Rattan Deep Singh, Civil Judge, Jalandhar**, on completion of Three Months Capsule Course at CJA was organized on December 16, 2017.

9. **Refresher-cum-Orientation Course** was organized to sensitize Civil Judges from the States of Punjab, Haryana and UT Chandigarh with regard to Important Civil Matter on December 16, 2017. The Programme covered – Interpretation of Revenue Records and their use in Adjudication of Civil Suits, Law relating to Injunctions-Temporary and Interlocutory, Dragon Dictation Software and visit to Paperless Court. 57 participants attended the programme.

10. **CDAC / CIS Training for Ministerial Staff of Punjab and Chandigarh** was organized from December 18-22, 2017 at CJA. Batch-I 29, Batch-II 28.

FORTHCOMING EVENTS

1. **Refresher-cum-Orientation Course** to sensitize Civil Judges-cum-Judicial Magistrates from the States of Punjab and Haryana with regard to Important Civil Matters on January 06, 2018. The Programme would cover – Law and Child Adoption under various Legislations, Examination of witnesses during hearing of Suit, Suits for Foreclosure – Sale and Redemption – Substantial Issues, Dragon Dictation Software and Visit to Paperless Court.

2. **Refresher-cum-Orientation Course** to sensitize Civil Judges-cum-Judicial Magistrates from the States of Punjab and Haryana with regard to various Rights of Women under Different Legislations on January 20, 2018. The Programme would cover – Women's Right to Property under Hindu Succession Act, Right to Maintenance of Women - Legal Aspects, Woman's Right to be free from Violence – Legal Scenario, Dragon Dictation Software, Visit to Paperless Court.