APRIL 2017

CJA e-NEWSLETTER

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

VOLUME : 02
ISSUE : 04

In this Issue:

FROM THE DESK OF CHIEF EDITOR

The Supreme Court in its order dated April 11, 2017 set aside the Order passed by the Himachal Pradesh High Court because of the English language used in the judgment. The order briefly reads:

> "After hearing learned counsel, it is not possible to comprehend the contents of the impugned order passed by the High court. The order passed by the High Court is, therefore, set aside and the matter is remanded to the High Court for afresh consideration on merits"

The High Court verdict is a case study on exactly how English should not be written. Every judge, everyday is to dictate orders and judgments at different levels. The fundamental requirement is that the Language used should be such which should be comprehended properly. It should be understood and digested effectively by the consumers of orders and judgments of courts. If the consumers of judgments fail to understand the order or the judgment, such a judgment or order would be a nullity. Precisely, this is reason, why the Summit Court of the country set aside the impugned order of the High Court and remanded back the case for re-hearing.

The language plays the role of the conveyer belt. Language is the vehicle. The smooth flow of the language would help to convey what one wishes to convey. If the language is such which hampers the clarity and soundness of mind, such language fails in its basic purpose. The Apex Court has rightly struck the caution. It is timely. Many a time, it is found that the orders are not weaved in clear language. Long sentences are written. The clear thread would be found missing.

Keeping in mind, the requirement of language, an Article on: 'The Art and Craft of Writing Judgment' is being included in this issue of e-Newsletter. The whole effort in this small article is to focus on the kind of language which needs to be used. The writing of difficult language on the one hand. On the other hand, the writing of simple language in short sentences. It is found that short sentences and simple language conveys what needs to be conveyed. It is urged that the Judges and Judicial Officers should nurture the art of writing short sentences. Appropriate words. It is not the vocabulary which is to be tested. It is use of right word at the right place. It is believed that judicial communication is an art which needs to be nurtured from the beginning. It must become the part of the personality of each Judge.

Balram K. Gupta

THE ART AND CRAFT OF WRITING JUDGMENTS

I never had the opportunity of writing a judgment. Therefore, I have no locus to write on this. I hasten to add. I have been a consumer of judgments for the last 50-years. As a student of Law, Parliamentary Fellow, Law Teacher, Lawyer and Judicial Educator. I have read and dissected hundreds of judgments. Reading the judgments, many a time, I felt happy. Sometimes, very happy. Sometimes, unhappy. Writing of a good judgment is both an art and craft. This comes to Judges by way of experience. To some, gradually. To some, naturally. Judges make living contribution to the growth and development of Law and Jurisprudence. They speak their mind. They unfold their mind. Through their judgments. Judiciary is a highly productive organ. They do justice. They render justice. They remove the sense of injustice. Judges are engaged in the best kind of service to humanity. Justice is divine. Few are fortunate to belong to this coparcenary.

Indian judges are second to none. Their contribution is highly match-able. Comparable with the best. I have had the opportunity of inter-acting with the judges across the country. At all levels. I also had the opportunity of meeting judges in Canada, U.K. and USA. Indian judges and their judgments are being cited around the globe. For laying down good law. The judicial brethren in black robes have played their role innovatively.

As a consumer, I would like to share what a good judgment is. Its language must be easy. Easily communicable. Understandable. Digestible. Justice V.R. Krishna Iyer and Lord Denning, both have made rich contribution to legal literature through their judgments and writings. Probably, the richest. The generations to come would remember them. For the flavour of their language. For making law and literature inseparable. No judicial separation is possible. How-so-ever hard the judges may try.

Justice Iyer used difficult language. A fertile mind, sound, knowledgeable and versatile. Could speak and write on any topic or issue. And yet, link the same with law. He was a blend of many disciplines. The difficulty with him was his language. Both spoken and written. Difficult. He had no ending vocabulary. He coined words. In order to understand Justice Krishna Iyer, one needed to keep the company of a good dictionary. He would use not only difficult words but also write long sentences. It was so difficult to understand him correctly and accurately. One had the feeling that sometimes even a simple idea / principle / thought would be conveyed in such a manner which would be difficult to comprehend. One would get lost in his language. It would be apt to quote a few lines from one of the writings of Justice Iyer:

> "*Moderation is a fatal thing; nothing succeeds like excess – wrote Oscar Wilde, good for literary lampoon, not for forensic praxis. And yet, the elation of elevation to the high Bench seduces some robed brethren to imitate, simian fashion, the Oscar dictum; and in this 'excess' process, intemperately indulge in pejorative denunciation of brethren of the lesser Judiciary and thereby caricature the Judicature."* [From The Bench To The Bar – page 140].

This may be compared with what Justice K.T. Thomas wrote in his judgment (AIR 1997 SC 1157)

> *"Judges of higher courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against lower judiciary"*

It would be equally beneficial to refer to what has been written by Chief Justice of India, Justice S.R. Das:-

> "*It has been recognized that judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and reserve."*

The simple language reflects the clarity of mind. A sound thought if not couched in easy language would not have the desired effect. Therefore, effective language is the foundation of a good judgment.

I had the occasion of meeting Justice Iyer personally. I did not hesitate to ask him, why such language? His response was spontaneous. Language is a tool. Once you get used to using a particular kind of a tool, you cannot help it. It becomes a habit. It comes automatically. Justice Iyer's language tool was his own. He used it throughout his life. He died 99 and plus. This does not mean that he has not made rich contribution in the domain of law and justice. It would be difficult to surpass him. Equally, difficult to bye-pass him. He would be remembered for the richness of his substance and equal richness of his language. One only wished, his language could be more communicable. He could render justice in common man's language.

Lord Denning was totally different. He was Judge for 38 years from 1944 to 1982. He nurtured the art of simple language. Short sentences. Sometime even one word. Effective. Would convey in a most natural manner the meaning and the context. His style was sue generis. Even most complex factual canvas would read like a story in his judgments. Gripping. Each word matching the situation. He cultivated a style which commanded attention. He would never let the judgment be dull and difficult. He believed in maintaining the attention of his readers. The judgments need to be interesting. Denning believed that style was the dress of thought. He used to gather the threads together to weave the judgment. Simple writing is reflective of superior mind. In order to show the style of writing. It would be good to refer to a small para from Lord Denning's, *The Family Story:-*

> *"To go from the Court of Appeal to the House of Lords is like going into retirement. It is rather like the senior partner retiring and becoming a consultant. In the Court of Appeal you are under continuous pressure. In the House of Lords you are relaxed and at ease. You sit four days a week. Sometimes less. Sometimes short days. You reserve every judgment, with ample time to think it over and to write it."*

I recall my university days as a teacher of Law. I used to commend to the students of English literature, Denning style of writing English. Some professors of English literature were my students of Law. To them, I commended Lord Denning. I also commended that they should work on law and literature. What a blend it would be. This mix needs to be explored and exploited fully. This mix makes the Judgments more readable. Understandable. Literature helps in connecting to the situation. Explaining the situation. The two lines of Tennyson's poem, *The Brook* read: "*For men may come and men may go. But I go on forever*". How well it makes clear the concept of corporate separate entity. The flavour of literature makes the Judgment 'wholesome'. You cannot divorce one from the other. It would be apt to quote Denning:

> "Judges do not speak, as do actors, to please. They do not speak, as do advocates, to persuade. They do not speak, as do historians, to recount the past. They speak to give Judgment. And in their judgments, you will find passages, which are

> worthy to rank with the greatest literature…."

Justice P.B. Gajendragadkar (as he then was) met Lord Denning who had come to New Delhi to deliver some lectures. During the meeting, Justice Gajendragadkar told Denning that he liked to read his judgments because they were crisp, lucid, path-finding and, in one sense, essentially his own. They both had good long meeting. While parting, Denning told Gajendragadkar, "Judge, I have learnt quite a lot from you this morning". Gajendragadkar responded, "Lord Denning, it is just like you to say that".

I was still not a student of law when Denning was commissioned to conduct the ***Profumo Inquiry*** in June, 1963. He completed the work in three months. Submitted the report in September, 1963. Denning records in his *Due Process of Law* that it was the best seller. In the *Family Story*, Denning has quoted paras from the Report to demonstrate his style of writing. Interestingly, the Report came to be used by a Britisher as a passport for having entry to Canada. He happened to forget his passport in his hotel room. The cabin people told him, he will not be allowed entry into Canada. At the immigration counter, he opened his brief case. Took out the copy of the *Profumo Report*. The report that had just been published. He gave the copy. The Chief gave him the permit for 24-hours. He attended the meeting. Got back. The Report did the trick.

Justice M.C. Chagla was Chief Justice of Bombay High Court from 1947 to 1958. It has been recorded that his Judgments bear the impress of a great and cultured mind. Quick in perception. Broad in vision. Fresh in approach. He believed that judgments should be founded on first principles. He illuminated justice. He humanized the law. His judgments reflected his burning desire to do 'real' or 'complete' justice. His judgments had no dark corners. Reasoned. Balanced. Both parties knew – why he has won and why he has lost. That is the beauty of a good judgment. His extempore judgments dictated on the spot were lucid. Complete in all respects. Facts. Law. Application and Interpretation. Dictating of extempore judgments is a skill most needed. Our judges are hard pressed for time. Magna Carta in 1215 ordained, not to sell justice, not to deny justice and not to delay justice. This recipe holds good till to-day. Even to-day, one has to wait for long, many years for the turn of one's case. Even after the case is heard, judgments are kept pending. This is double jeopardy. There are some judges who keep their judgments pending. Once if the judgment is kept pending, it remains pending. The best is to dictate the judgment when it is fresh in mind. Let this be the habit. Your out-put would be far more. Normally, It should be the norm to dictate the judgments in open court. In any case, without delay. When there are no pending judgments, one is relaxed. One is able to render real justice. Moreover, when the judgment is delayed, it creates doubts in the minds of litigants. This is still worse. Let us not over-look the pressure of work on our judges. In complex cases, judgments need to be reserved. Reserved judgments should not be delivered in haste. At the same time, they be not delayed. Unduly.

A good judgment is one which is readable. Covers all aspects. Reasoned. The parties must know the reasons for winning or losing. Men of law should know clearly what is the law laid down. So that they can advise their clients in future with clarity and certainty. No doubts and no gaps be left. A good judgment should be able to satisfy all stake-holders. The judicial coparcenary at every level will do its very best to make judgments as the real vehicle of justice.

Dr. Balram K. Gupta,
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Director (Academics), CJA

LATEST CASES: FAMILY LAW

"… When a spouse makes a complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life… We, the judges and lawyers, therefore, should not import our own notions of life. We may not go parallel with them. There may be generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents."

K. Jagannatha Shetty, J. in Shobha Rani vs. Madhukar Reddi, (1988) 1 SCC 105

Manish Jain vs. Akanksha Jain: 2017 (4) SCALE 152–Hindu Marriage Act, 1955 – Maintenance pendent lite – the Court while discussing it's powers under section 24, HMA held that the Court has a wide discretion with regard to grant of alimony pendent lite – this discretion is purely judicial and is to be exercised in the light of provisions and objects of the Act. Further held that under section 24 if it appears on application of any of the parties that the petitioner has no sufficient means to support necessary expenses, then the court may grant expenses of the proceedings and monthly maintenance as it deems fit.

Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy: MANU/SC/0457/2017 – HMA 1955 – section 25(2), Permanent Maintenance – Held – power of the court to grant permanent alimony to either spouse when claimed through application and under sub section (2) of section 25, HMA, 1955 the court may vary, modify or discharge and order for permanent alimony on account of "change in circumstances of the parties".

Ram Nath Sao since deceased thr. L.Rs. vs. Goberdhan Sao since deceased thr. L.Rs.: 2017 (4) SCALE 338 – Hindu Succession Act, 1956 – Succession – Held – on death of "Karta", his widow/wife becomes entitled to share in Joint Family property but her share would not be determined till partition in the family. The Joint Family in question continues as Joint Family with son becoming the "Karta". Further Held, on death of the son automatically notional partition as per section 6 of HSA, 1956 will be presumed and the shares will be divided. In absence of a will, the share of the son in Joint Family Property would devolve by intestate succession.

Karunanidhi vs. Seetharama Naidu & Ors. : 2017 (4) SCALE 1 – **Hindu Succession Act, 1956 –** Held **–** by virtue of a will, once, the heir becomes the absolute owner of the property then as a necessary consequence, he/she is entitled to alienate such property by any mode permissible in law to anyone. Further, if a heir dies after 9/9/2005 then proving other conditions her heirs can claim interest in the suit properties. But suo moto application of provisions of section 15 (2) (a) cannot be done by a court without framing any additional substantial question of law.

Durga Prasad vs. Narayan Ramchandaani (D) thr. L.Rs. : 2017 (2) SCALE 283 – Held – when the question arises as to the meaning of word "heir" in relation to who may inherit or who inherits, then the word "heir" has to be given the same meaning as would be applicable to the general law of succession that is as per section 3 (1)(f) of the Hindu Succession Act, 1956 which defines the word "heir".

Bhagwati vs. Anil Choubey : 2017 (4) SCALE 502–Hindu Marriage Act, 1955, Section 5, 12(1)–Child Marriage Restraint (Amendment)

Act, 1978–where only husband who was major at the time of marriage is seeking annulment of marriage on ground of minority of wife at time of marriage–Held–under section 12(1)(c) of HMA, 1955 though, the child marriages are voidable, the option to seek annulment on ground minority at the time of marriage is only available to the spouse who himself was minor and the annulment would not be granted to the husband as he was major at time of marriage.

Suman Singh vs. Sanjay Singh : 2017 (3) SCALE 408 – **Cruelty as ground for divorce –** where the trail court granted decree of divorce to husband on grounds of cruelty and dismissed petition for restitution of conjugal rights filled by wife based on isolated incidents alleged to have occurred 8-10 years prior to filling of the petition – Held – to constitute the act of cruelty within meaning of section 13 (1)(ia) of HMA, the incidents alleged should be of recurring nature or continuing one and they should be in near proximity with filling of the petition. Few isolated incidents of past and that too found to be condoned by the parties' cannot constitute cruelty.

Krishna Veni Nagam vs. Harish Nagam: 2017 (3) SCALE 471 – Held– in the interest of justice under matrimonial proceedings, the doctrine of forum non convenience can be applied and transfer petitions can be allowed on account of either physical or financial hardship where the party to the case cannot participate in proceedings at a different place.

Raj Talreja vs. Kavita Talreja: MANU/SC/0493/2017–Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. Referring to the definition of cruelty as laid down in Ravi Kumar v. Julmidevi (2010 (4) SCC 476), the Court observed "In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty". Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act 1955. However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse leveling false accusations against the other spouse would be an act of cruelty.

Rupak Rathi vs. Anita Chaudhary: 2014 (2) RCR (Civil) 697 – **Court of Competent Jurisdiction – Hindu Marriage Act, 1955– Foreign Judgment–**Held**–**a judgment on divorce given by a foreign court can be challenged in Indian civil court, if it was obtained with fraud or by concealing facts or in violation of law of natural justice.

Chiranjilal Srilal Goenka (Dead), by Lrs. vs. Jasjit Singh. : MANU/SC/0767/2000–Hindu Adoptions & Maintenance Act, 1956, Ss.12,13–Held**–**Ss.12-13 read together provide that adoption does not divest any person of any estate which is vested in him before adoption- similarly the adoptive parents are also not deprived of the power to dispose of their property by will or otherwise- this power to dispose of the property is subject to any agreement between the parties.

LATEST CASES: CIVIL

""… the public institutions should be cautious and must not give impression of taking sides. It is destructive of fairness … in democratic set up the people or community being sovereign the exercise of discretion must be guided by the inherent philosophy that the exerciser of discretion is accountable for his action. It is to be tested on anvil of rule of law and fairness or justice particularly if competing interest of members of society is involved."

R.M.Sahai, J. in Bangalore Medical Trust vs. Muddappa ,(1991) 4 SCC 54

Orissa Olympic Association through General Secretary vs. State of Orissa: 2017 (4) SCALE 217 – The Apex court held that though the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite Rule of action or code of conduct. While an administrator is discharging public function, he, like police service, is also required to avoid any type of conflict of interest. It is clear as day that the relationship between the two individuals and their different obligations expose conflict of interest. It is an interest where one may abuse the public office to gain personal benefit either directly or indirectly. It can be stated with certitude that the principle of rule of law does not countenance such conflict of interest.

Deepa E.V. vs. Union of India: MANU/SC/0413/2017 – The question set forth in the present appeal is whether any person who has applied under OBC category by availing age relaxation and also attending the interview under the said category can claim right to be appointed under the general category or not. Deciding on this issue, the apex court held that where there is an express bar for the candidates belonging to SC/ST/OBC, who have availed relaxation for being considered for general category, no application of principle laid down in Jitendra Kumar Singh and Another v. State of Uttar Pradesh and Others, reported in (2010) 3 SCC 119 shall apply in which due to absence of express bar, a candidate of reserved category was allowed to be considered for the post under general category.

Ajitsinh Arjunsinh Gohil vs. Bar Council of Gujarat: MANU/SC/0384/2017 – A lawyer is treated as a part of the noble profession and expected as an elite member of the society, to be professionally responsible and constantly remind himself that his services are rendered to the consumers of justice. Once a complaint is made by a litigant, it has to follow a definite procedure and is required to be dealt with as per the command of the Act to conclude the disciplinary proceeding within a period of one year from the date of receipt of the complaint or the date of initiation of the proceedings at the instance of the State Bar Council. On many an occasion, it has come to the notice of this Court that disciplinary authority of the State Bar Council is not disposing of the complaint within the stipulated period, as a consequence of which the proceeding stand transferred to the BCI. A statutory authority is obliged to constantly remind itself that the mandate of the statute is expediency and the stipulation of time is mandatory. State Bar Councils should take a periodical stock of cases in each meeting with regard to the progress of the Disciplinary Committee, find out the cause of delay and guide themselves to act with expediency so that the Council, as a statutory body, does its duty as commanded under the Act.

National Insurance Company Ltd. vs. Hindustan Safety Glass Works Ltd.: 2017 (4) SCALE– When a claim is made by the insured that itself is actionable. There is no question of requiring the insured to approach a court of law for adjudication of the claim. This would amount to the encouraging avoidable litigation which certainly cannot be the intention of the insurance policies and is in any case not in public interest. In a dispute concerning a consumer, it is necessary for the courts to take a pragmatic view of the rights of the consumer principally since it is the consumer who is placed at a disadvantage vis-à-vis the supplier of services or goods. It is to overcome this disadvantage that a beneficent

legislation in the form of the Consumer Protection Act, 1986 was enacted by Parliament. The provision of limitation in the Act cannot be strictly construed to the disadvantage of a consumer in a case where a supplier of goods or services itself is instrumental in causing delay in the settlement of the consumer's claim.

Dalip Kaur Brar vs. M/s. Guru Granth Sahib Sewa Mission (Regd.) & Anr.: 2017 (4) SCALE 346 – An appeal having been preferred against the order of eviction, it would be natural to postulate that the respondents would have to first exhaust the appellate remedy before seeking to question the final order of eviction in revision before the High Court. Moreover, the appeal was not withdrawn. The scope of the challenge by the respondents before the High Court in revision was in regard to the conditions which were imposed by the appellate authority for staying the operation of the order of eviction. The respondents were aggrieved by the condition of deposit and by the refusal of the appellate authority to modify its order imposing those conditions. When the proceedings have attained finality parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The principles of res judicata and constructive res judicata apply also to successive stages of the same proceedings.

M/s. Kaushik Coop. Building Society vs. N. Parvathamma & Ors.: 2017 (4) SCALE 490 – It may be true that the Court at initial stage may not enter into the merits of the matter. Its opinion in the nature of things would be a prima facie one. But the Court must also consider that the analogy of res-judicata or of the technical rules of civil procedure is, in cases like the present one, appropriate and the Courts are expected to administer the law so as to effectuate its underlying object. Court shall also bear in mind that the basic character of this principle is public policy and preventive as to give finality to the decision of the Court of competent jurisdiction and prevent further litigation. Quoting Ramji Gupta & Anr. vs. Gopi Krishan Agrawal (dead) & Ors., (2013) 9 SCC 438, para 15, court observed, "In order to operate as res judicata, the finding must be such that it disposes of a matter that is directly and substantially in issue in the former suit, and that the said issue must have been heard and finally decided by the court trying such suit. A matter which is collaterally or incidentally in issue for the purpose of deciding a matter which is directly in issue in the case, cannot be made the basis for a plea of res judicata".

Mrs. Hema Khattar & Anr. vs. Shiv Khera: 2017 (4) SCALE 382 – Where an agreement is terminated by one party on account of the breach committed by the other, particularly, in a case where the clause is framed in wide and general terms, merely because agreement has come to an end by its termination by mutual consent, the arbitration clause does not get perished nor is rendered inoperative. In an agreement between the parties before the civil court, if there is a clause for arbitration, it is mandatory for the civil court to refer the dispute to an arbitrator.

Palure Bhaskar Rao vs. P. Ramaseshaiah & Ors.: 2017 (4) SCALE 482 – Seniority and eligibility are also distinct concepts. As far as promotion or recruitment by transfer to a higher category or different service is concerned if the method of promotion is seniority-cum-merit or seniority per se, there is no question of eligible senior being superseded. Other things being equal, senior automatically gets promoted. But in the case of selection based on merit-cum-seniority, it is a settled principle that seniority has to give way to merit. Only if merit being equal, senior will get the promotion. Merely because a person is senior, if the senior is not otherwise eligible for consideration as per the rules for promotion, the senior will have to give way to the eligible juniors.

LATEST CASES: CRIMINAL

"The mental agony, expense and strain which a person proceeded against in criminal law has to undergo coupled with delay, may result in impairing the capability or ability of the accused to defend himself…"

R.C. Lahoti, J. in P. Ramachandra Rao vs. State of Karnataka, (2002) 4 SCC 578

Jayshree Ujwal Ingole vs. State of Maharashtra and Ors.: 2017 (4) SCALE 321 – **Negligence** – Held – to infer rashness and negligence on the part of a medical professional, a simple lack of care, an error of judgment or an accident, is not a proof of negligence. Further held – the word "gross" has not been used in section 304 A IPC but the expression 'Rash and Negligent act' under section 304 A has to be read as qualified word "grossly". Further held – error of judgment by a doctor does not amount to a rash and negligent act under section 304 A.

Virupakshappa Goudaand Ors. vs. The State of Karnataka and Ors.: 2017 (4) SCALE 133 – **Grant of bail – Held** – bail application cannot be allowed solely or exclusively on the ground that the fundamental principle of criminal jurisprudence is that the Accused is presumed to be innocent till he is found guilty by the competent court. Further held – A bail application is not to be entertained on the basis of certain observations made in a different context. There has to be application of mind and appreciation of factual understanding of the pronouncements in the field. An order of bail cannot be granted in an arbitrary manner. Further held – once the court has declined to grant bail then the same factual points should not be allowed.

Manju Devi vs. Onkarjit Singh Ahluwalia and Ors.: 2017 (3) SCALE 699 – Anticipatory Bail–Held **–** though words 'Harijan' 'Dhobi' etc. are often used by people belonging to the so – called upper castes as a word of insult and abuse but Calling a person by these names is nowadays an abusive language and is offensive. In such cases, a victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight. Hence anticipatory bail should not be granted.

K. Sitaram and Ors. vs. CFL Capital Financial Service Ltd. and Ors.: 2017 (3) SCALE 689 – Issuance of process – Held – When a person files a complaint and supports it on oath, rendering himself liable to prosecution and imprisonment if it is false, he is entitled to be believed unless there is some apparent reason for disbelieving him. The only condition requisite for the issue of process is that the complainant's deposition must show some sufficient ground for proceeding. Unless the Magistrate is satisfied that there is sufficient ground for proceeding with the complaint or sufficient material to justify the issue of process, he should not pass the order of issue of process. Where the complainant, who instituted the prosecution, has no personal knowledge of the allegations made in the complaint, the magistrate should satisfy himself upon proper materials that a case is made out for the issue of process. Further Held – If the intention of the Assignor and the assignee to the Assignment Deed is clear, then the bank is duty bound to inform about the assignment.

Krishnegowda & Ors. vs. State of Karnataka: 2017 (4) SCALE 42 – Conviction – Held **–** this is a classic case where at each and every stage of the trial, there were lapses on the part of investigating agency and the evidence of the witnesses is not trustworthy which can never be a basis for conviction. The basic principle of criminal jurisprudence is that the accused is presumed to be innocent until his guilt is proved beyond reasonable doubt. The evidence of eyewitnesses is only consistent on the aspect of injuries inflicted on the deceased but on all other factors there are lot of contradictions which go to the root of the matter. Further held – It is settled law that mere latches on the part of Investigating Officer itself cannot be a ground for acquitting the accused. The Courts have to independently deal with the case and should arrive at a just conclusion beyond reasonable doubt basing on the evidence on record. Once there is a clear contradiction between the medical and the ocular evidence coupled with severe contradictions in the oral evidence, clear latches in investigation, then the benefit of doubt has to go to the accused.

Gautam Jain vs. Union of India (UOI) and Ors.: 2017 (1) SCALE 310 – Detention order – Held **–** the 'Grounds of Detention' should be separate and not composite. If detention is based on multiple grounds in as much as

various different acts, which form separate grounds, in such cases even if one of the ground is rejected, the principle of segregation contained in Section 5A gets attracted.

Shama vs. State of Haryana: MANU/SC/1694/2017 – Validity of dying declaration–Held **–** When the dying declaration is properly recorded and is corroborated by the testimony of an eyewitness who proved the motive behind the incident and also proved the incident in question by identifying the accused serves sufficient for the conviction of the accused.

State of Maharashtra vs. Nisar Ramzan Sayyed: MANU/SC/0388/2017 – Held **–** no direct evidence but only dying declarations of deceased, tested by the convectional process of cross examination and the standard yardsticks of credibility leads to acquittal. Further held- where a dying declaration is suspicious, it should not be acted upon without corroborative evidence but Indian law recognizes the fact that "a dying man seldom lies". **Further held**- where a life is at stake subject to human error and discrepancies and therefore the doctrine of 'rarest of rare cases', is not res-integra in awarding the death penalty, shall be applied in considering the quantum of punishment.

Vineet Kumar and Ors. vs. State of U.P. and Ors.: 2017 (4) SCALE 292 – Inherent power under Sec 482 Cr.P.C.–Held – inherent power given to the High Court under section 482 Code of Criminal Procedure is with the purpose and object of advancement of justice. When solemn process of court is sought to be abused by a person with some oblique motive, the court has to thwart the attempt at the very threshold. It cannot permit a prosecution to go on if the case falls in one of the following categories:

(i) Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment.
(ii) When there is material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive.

Further held – The High Court should not hesitate in exercise of its jurisdiction under section 482 Code of Criminal Procedure to quash the proceeding where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Devendra Nath Srivastava vs. State of Uttar Pradesh: 2017 (4) SCALE 261 – Held – the Proof of causal connection between the act of the accused and the death, leads to considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Indian Penal Code is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300.

Surain Singh vs. The State of Punjab: 2017 (4) SCALE 394 – Culpable homicide or Murder – Held **–** the Proof of causal connection between the act of the accused and the death, leads to considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Indian Penal Code is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300.

Sudha Renukaiah & Ors. vs. State of A.P.: MANU/SC/0445/2017 – Group Rivalry – Held – when there are eye-witnesses including injured witness who fully support the prosecution case and proved the roles of different accused, prosecution case cannot be negated only on the ground that it was a case of group rivalry. Further held – mere non showing of the weapons to the doctors at the time of their dispositions in the court is inconsequential and in no manner weakens the prosecution case if it is clear by the medical evidence about the nature of weapon used. Further held – The Group rivalry is double edged sword.

Roopendra Singh vs. State of Tripura: 2017 (4) SCALE 468 – Right of appeal to victim u/s 372 Cr.P.C. – Held **–** Section 372 of the Code of Criminal Procedure has conferred upon a victim a substantive and independent right to maintain an appeal against acquittal. The widow of the deceased also comes within the definition of "victim" as incorporated in Section 2(wa) hence grant of leave to appeal allowed.

NOTIFICATIONS

1. President of India gives assent on 20th April 2017 to **THE HUMAN IMMUNODEFICIENCY VIRUS AND ACQUIRED IMMUNE DEFICIENCY SYNDROME (PREVENTION AND CONTROL) ACT, 2017.** The Act strengthens the rights of HIV positive people, and ensures that equal and fair treatment be meted out to them.

Salient features of the Act are:

i. Discrimination against HIV positive persons and those living with them has been prohibited on various grounds. These include the denial, termination, discontinuation or unfair treatment with regard to: (i) employment, (ii) educational establishments, (iii) health care services, (iv) residing or renting property, (v)standing for public or private office, and (vi)provision of insurance (unless based on actuarial studies).

ii. The stipulation for HIV testing as a pre-requisite for obtaining employment or accessing health care or education has been prohibited.

iii. Disclosure of HIV status shall only be permitted with the affected person's informed consent, and if required, by a Court order. Establishment keeping records of information of HIV positive persons have been directed to adopt data protection measures.

iv. HIV positive persons below the age of 18 years have the right to reside in a shared household, and enjoy the facilities of the household.

v. Central and State Governments have been made responsible for (i) preventing the spread of HIV or AIDS, (ii) providing anti-retroviral therapy and infection management for persons with HIV or AIDS, (iii) facilitating their access to welfare schemes especially for women and children, (iv) formulating HIV or AIDS education communication programmes that are age appropriate, gender sensitive, and non stigmatizing, and (v) laying guidelines for the care and treatment of children with HIV or AIDS.

vi. **Courts have been directed to dispose of on priority basis, cases relating to HIV positive persons. In any legal proceeding, if an HIV infected or affected person is a party, the Court may pass orders that the proceedings be conducted (a) suppressing the identity of the person, (b) in camera, and (c) to restrain any person from publishing information that discloses the identity of the applicant. The complaints relating to violation of the Act, as well as the provision of health care services shall be inquired into by an ombudsman, who shall be appointed by each State Government. The ombudsman is expected to submit a report to the State Government every six months, stating the number and nature of complaints received, the actions taken and orders passed.**

2. **MATERNITY BENEFIT (AMENDMENT) ACT, 2017** : The Act had received the assent of the President on March 27, 2017, and had come into force on April 1, 2017. However, the provision for crèche facilities [S.4 (1)] shall be enforced from July 1, 2017. After the coming into force of the Amendment Act, the Ministry of Labour and Employment, Government of India has issued certain clarifications vide **Notification No.S-36012/03/2015-SS-I dated April 12, 2017.**

Salient Features of the Act are:

(i) Maternity leave available to the working women to be increased from 12 weeks to 26 weeks for the first two children.

(ii) Maternity leave for children beyond the first two will continue to be 12 weeks.

(iii) Maternity leave of 12 weeks to be available to mothers adopting a child below the age of three months as well as to the "commissioning mothers". The commissioning mother has been defined as biological mother who uses her egg to create an embryo planted in any other woman.

(iv) Every establishment with more than 50 employees to provide for crèche facilities for working mothers and such mothers will be permitted to make four visits during working hours to look after and feed the child in the crèche.

(v) The employer may permit a woman to work from home if it is possible to do so.

(vi) Every establishment will be required to make these benefits available to the women from the time of her appointment.

EVENTS OF THE MONTH

1. On the completion of one year Institutional Training of Judicial Officers from the States of Punjab and Haryana, the Valedictory Function was held on April 08, 2017. HMJ A.K. Sikri, Judge, Supreme Court of India while delivering the Valedictory Address counselled the young Judicial Officers to follow three Cs mantra - Compassion, Conduct and Confidence. Justice Sikri said that Justice was divine service. Justice must be punctuated with three Cs. He said, the Trainee Judicial Officers who came to the Academy were now going out as angels. Justice S.J. Vazifdar, Chief Justice of Punjab and Haryana High Court emphasized the importance of Judicial Education in transforming a Trainee Judicial Officer into a trained and sensitized Judge. He reminded that a Judge was not only a Judge in court but outside the court as well. HMJ Rajesh Bindal, President, BOG, CJA shared his concern to bring discipline in training the Judicial Officers so that when they move out of CJA, they perform their judicial functions in a effective and orderly manner. The introduction of the Monthly e-Newsletter and the setting up of Study Circles in each District were the steps taken to enhance the capacity of Judicial Officers in the performance of their judicial functions. Dr. Balram K. Gupta, Director (Academics) reminded the young Judicial Officers that they are not the engines of power. They are the engines of Justice. Referring to the Magna Carta, Dr. Gupta told the Judicial Officers not to sell Justice, not to deny and delay Justice. He gave the recipe to hear courteously, to consider soberly, to answer wisely and to decide impartially.

On this occasion, HMJ Sanjay Kishan Kaul, Judge, Supreme Court of India delivered the Founder's Day lecture. Justice Kaul gave several tips to the Trainee Judicial Officers for imparting Justice fearlessly. He asked them to be a learner throughout their career and advised the parents and relatives of the Judicial Officers to maintain distance from them professionally so that they could work without fear or favour. Their relationship should not be hindrance in carrying out their Judicial Functions. The Annual Newsletter : The Glide containing the pictorial journey of the activities of the Academy of the year 2016-17 was released. HMJ M.M.S. Bedi, Member, Board of Governors, CJA gave expression of gratitude to one and all. In doing so, Justice Bedi desired the young Judicial Officers to move forward and play effectively their role in their judicial journey. Judicial Officers Arjun Singh and Pragati Rana gave a warm and eloquent vote of thanks for what had been done by the CJA during their training period.

2. The second Academic Programme for 27 High Court Sri Lankan Judges was organized from April 21-25, 2017. The Resource Persons included : HMJ G.S. Singhvi, HMJ Swatanter Kumar, HMJ Anil R. Dave, former Judges of Supreme Court of India ; HMJ Vijender Jain, former Chief Justice, P&H High Court, HMJ Mahesh Grover, HMJ Rajesh Bindal, HMJ M.M.S. Bedi, HMJ Ajay Tiwari, HMJ G.S. Sandhawalia, Judges of Punjab and Haryana High Court, Shri Ashok Aggarwal, Anupam Gupta, Gurminder Singh, Senior Advocates, Neeraj Aarora, Cyber Lawyer and International Arbitrator and Dr. Balram K. Gupta, Senior Advocate and Director (Academics), CJA. They took the different sessions. The participating Judges were given the certificates and the mementoes. On behalf of the Sri Lankan Judges Institute the Resource Persons were also given the Sri Lankan memento. While giving the expression of gratitude, they said that "**they were treated to a feast of intellectual brilliance throughout the sessions.**"

3. A Conference on the Juvenile Justice (Care & Protection of Children) Act, 2015 and Juvenile Justice (Care and Protection of Children) Model Rules, 2016 was held on 30th April, 2017. This conference was in collaboration with the Hon'ble High Court of Punjab and Haryana Committee on Juvenile Justice. HMJ M. Jeyapaul, HMJ Jaswant Singh, HMJ Rekha Mittal, HMJ Darshan Singh and HMJ Dr. Shekher Dhawan steered through the different sessions. Besides the Hon'ble Judges, Mr. Sidharth Luthra, Senior Advocate, Dr. K.P. Singh, DGP (Prisons), Haryana, Shri Amod K. Kanth, Dr. Mohua Nigudkar and Ms. Mandeep Pannu, ADJ-cum-Faculty Member, CJA were the Resource Persons in the different sessions. Moreover, the presentations relevant to each session were also made.

FORTHCOMING EVENTS

Second Workshop on Family Court Matters is scheduled to be organized on May 20, 2017 at Jallandhar. The same would be co-ordinated by Ms. Ranjana Aggarwal, ADJ-cum-Faculty Member, CJA. The Workshop would be on the same pattern as the first Workshop had been structured and organized in February 2017.