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HMJ Daya Chaudhary

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FROM THE DESK OF CHIEF EDITOR

Judges and Justice are inter-woven. They are in-separable. The quality of Justice is proportionate to the quality of Judicial Human Fabric. Judges are human beings. They deal with human problems. Disputes of humans require to be handled with compassion. With humanism. A Judge must bear in mind that when a judge tries a case, he is himself on trial. Even the most just men (including women) should not act as judges in their own case. In one's own case, how can a Judge, judge without the touch of one's own self interest. Justice is not only to be done. It must seem to be done. Self judging is the most difficult exercise. It is difficult to divorce oneself from oneself. Judging self is not possible in the eyes of others. Therefore judging is to be done by a neutral mind.

Justice Badruddin Tyabji was the first Indian barrister in Bombay. He became the Judge of Bombay High Court in 1895. He acted as Chief Justice in 1902, first Indian to hold this position. It is recorded that Justice Tyabji decided cases fairly and honorably. Fali S. Nariman in his Autobiography : **Before Memory Fades** (page 65-66) records that Justice Tyabji's two sons were members of the Bar. In every case which came before Justice Tyabji, solicitors in Bombay would brief two of his sons on behalf of their respective clients. The two sons would appear, one for the plaintiff and the other for the defendant. Indeed, an interesting situation. The father, the Judge. The two lawyer sons, representing the two sides. They lived together. Dined together. The malicious gossip was, they discussed their cases at the dining table. This was brought to the notice of the Chief Justice, Sir Lawrence Jenkins. Justice Jenkins sent a message to Justice Tyabji, is it appropriate for the two sons to appear in their father's court? Tyabji thundered, "Go and tell the CJ to mind his own business". The matter rested at that. Justice Tyabji kept on deciding cases, favoring neither of the two sides. I am sharing this with a purpose. This demonstrates the 'strength' of the Judge's human fabric. He would decide cases on merit. Not concerned, which son wins the case. So difficult. Yet, it did happen. Therefore, I ask, is it possible to-day? I pause for an answer.

I was in a dilemma to come to the Bar or not. I had enjoyed more than two decades of my teaching and legal writing. I had good exposure to the best of the Institutions both in UK and USA. Worked and lectured. It was a rewarding experience. Enriching and fulfilling. My Vice Chancellor told me, think of what you have already achieved and contributed nationally and internationally. I had 14 more years before I reach the age of 60 years. I was told to give serious thought before I decide to leave the university. I was offered even sabbatical leave from the university. This would have given me an option to come back to pursue my academic love. I discussed within and beyond the family. I shared my concern with my brother. He told me, demonstrate to the people, your own identity. Be a model. Be an example for others. I decided to accept the challenge. I had my standing in the legal domain. My own strength. No dependency. I used to tell my students of law : Be bold. Be straight. Be honest. Be upright. Be able. Be skilful. Above all, be not crafty. I also used to tell, think who does not need a lawyer? Sadhus. Swamies. Criminals. Even innocents also. With this mind-set, I thought, I could stand of my own, firmly and fairly. I remember my professional years (more than 22 years before I joined NJA in April 2013) of active legal practice. Whenever, I got a respondent brief, the first thing that I would do, find out, which Bench had issued 'notice'. Even if the roster had changed and the matter was not to go back to the same Bench, I would not accept the brief. I must have refused good number of cases. I had my own satisfaction. No amount of money could

give me that satisfaction. I sailed very well. No regrets. In fact, it was not difficult to be 'straightforward'. It was nurturing of certain values. Values which strengthen Legal and Judicial coparcenary. One regret. I never had the opportunity of seeing my brother-in-action-in-court. I used to be told that I was missing something. I had gone for swearing-in ceremony of my brother as Chief Justice. Judges of the Kerala High Court came to know that I was designated Senior Advocate. They asked me, Dr. Gupta, we would be seeing you more often. My response was, not till January 22, 2004. I kept my word. Even otherwise, I did not visit Kerala for a holiday during that time. Much later (2013-14), during my stint with NJA, we had organized South Zone Regional Conference in Cochin. I met Justice K.T. Thomas, former Chief Justice of Kerala High Court and former Judge of the Supreme Court of India. It was a good opportunity to meet him. He said, I have been told that the two brothers, write the same way. Talk the same way. It made me feel good. This kind of satisfaction has its own flavor.

I was more than one year old in the legal profession. I was called by Hon'ble the Chief Justice of Punjab and Haryana High Court. I met him. I was told that I was being considered for being designated as Senior Advocate. There was a surprise look on my face. Be not surprised. I was reminded that they were taking into consideration my contribution to legal education within and beyond the country. I said, this is true. Still, I urged, not at this stage. I was nudged that lawyers work and virtually campaign for this. You are saying 'no'. I shared my concern. People would accuse me that my brother has got it done for me. I told, Chief, this would be more a reflection on you. He hugged me. Told me that this never crossed his mind. I completed 10 years. I was designated as Senior Advocate in 2002. My brother was not in Chandigarh the day the full Court met to consider the matter alongwith other advocates. The only Professor of Law to be designated as Senior Advocate in this part of the country. It has always given me a good feeling.

One more aspect. I had taught law at the Punjab University from 1969-1990. Gradually, my students came to be elevated as judges. Justice Swatanter Kumar came to be elevated as judge of Punjab and Haryana High Court in the year 1994. I attended the swearing-in ceremony. In the evening, I met him. I shared my difficulty. He was clear and categorical. What difficulty ! "You do your duty. I would do my duty." This was the end of it. I am blessed. Over the years, many of my students came to be elevated. As Chief Justice of India, Judges of the apex Court, Chief Justices and Judges of different High Courts. Virtually, on each occasion, some student / students of mine would be elevated as judges of Punjab and Haryana High Court. Many lawyers would ask, do not you feel bad that your students are becoming judges, you are not. I would smile. I told them, you need to be a teacher to realize, how good you feel when your students occupy Constitutional positions. You feel proud. You get the same feeling as a parent does. A teacher always lives in the reflected glory of his students. Students provide sun-shine to their teachers. My students are my treasure. It would never be empty. Always full and secure. No theft. No robbery. What else you want! It is this contentment which is the life-time- achievement-award. I would continue to cherish it.

My message to you all. Continue to weave and nurture Legal and Judicial Human Fabric by your deeds and conduct. No threat to the future of this coparcenary.

Balram K. Gupta

Inaugural Address delivered by HMJ Daya Chaudhary on 14.01.2019 to newly Appointed and Promotee Additional District & Sessions Judges

A very good morning and warm greeting to all of you assembled here with a specific reason and purpose. It is a matter of pleasure for me to address the young judicial officers who are keen and eager to undertake higher responsibilities. It is also the beginning of New Year 2019 and starting of your challenging career with more responsibilities in the Superior Judicial Service. Happy New Year 2019. Happy New Year 2019 to all of you. I also wish to congratulate you on your achievements as you have already crossed many hurdles by coming out of very hard competition. After crossing the threshold, you would enter a new world of activities, challenges and expectations. New challenges and responsibilities will tempt your heart, tense your mind and test your soul.

When you enter this battle field like Arjuna, you must know your mission, target with the determination being well equipped to achieve your goal.

The Judicial Service is not a service in the sense of employment. Judges are not employees like other services. As members of the judiciary, they exercise the sovereign judicial powers of the State. The Judges at whatever level, they may be, represent the State and its authority, unlike the administrative executive or the members of the other services. Others cannot be placed at par with the members of the judiciary, either constitutionally or functionally. In all aspects of judicial management, training of the judicial officers is to meet out new challenges, which is essential pre-requisite.

Training and development of human resources of the judicial department is an issue which is required and should be addressed earnestly to attain higher efficiency. Working knowledge of all the disciplines is essential for a judge. By such training, you are acquainted with the procedural requirements for dealing with different stages of cases including the writing of judgments and interlocutory orders and also dealing with administrative matters like framing of charges in criminal trial, ensuring that all the incriminating pieces of evidence are put to the accused while recording statement of accused under Section 313 Cr.P.C. All these matters are to be taken up for the time of training itself. Training is to enable you to meet out various types of situations, which are to be faced in the Court.

It is not enough for a Judge to be impartial, efficient and competent. He or she is required to be effective in interpreting the law to achieve a just solution.

I hope the training programme would be great help to all of you. I have no doubt and hope so that all of you will discharge your duties and functions to your utmost satisfaction. All of you are young and energetic. If you strictly follow and adhere by the advice given during training or otherwise by the experienced, you are assured of your bright future in the judicial hierarchy.

I conclude with the strong belief and immense faith that you will confirm to establish time tested court etiquette and uphold the dignity and enhance the decorum of temple of justice. I am sure that this training programme would make you more confident. I wish for all of you a successful and fruitful career as judicial officer with the grace of Almighty.

As you step out of the portals of this Academy not only my wishes and prayer but blessings also as well as advice are with you. You are the base of judicial pyramid. Be strong and brave to uphold the dignity of judiciary as stated by Swami Vivekananda :

“All power is within you; you can do anything and everything. Believe in that, do not believe that you are weak. Stand up and express the divinity within you. Stand up, be bold, be strong. Take the whole responsibility on your shoulders and know that you are the creator of your own destiny.”

Jai Hind

LATEST CASES : CIVIL

“The constitutional justification for judicial review, and the vindication of the Rule of law remain constant in all areas, but the mechanism for giving effect to that justification varies.”

S.H. Kapadia, J. in *Epuru Sudhakar vs. Govt. of A.P.*, (2006) 8 SCC 161

Rajasthan Small Industries Corporation Limited vs. M/s Ganesh Containers Movers Syndicate: 2019 SCC OnLine SC 65 – Mere delay or neglect of an arbitrator to act in passing the award by itself cannot be the ground to change arbitrator in deviation from the terms agreed to by the parties.

Radhamma & Ors. vs. H.N. Muddukrishna & Ors.: 2019 SCC OnLine SC 64 – Section 30 of the Hindu Succession Act 1956 provides that the undivided interest of a Hindu in a joint family property can be disposed of by Will – Held – It was observed by the Supreme Court affirming the judgement of High Court that the law insofar as it applies to joint family property governed by the Mitakshara school, prior to the amendment of 2005, when a male Hindu dies after the commencement of the Hindu Succession Act, 1956 leaving at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary. An exception is contained in the explanation to Section 30 of the Act making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property can be disposed of by him by Will or any other testamentary disposition and in the given facts and circumstances, the testator was indeed qualified to execute a Will bequeathing his undivided share in the joint family properties by a Will.

Punjab State Electricity Board & Anr. vs. Thana Singh & Ors.: 2019 SCC OnLine SC 27: Claim for parity of pay scale cannot be claimed unless there is complete identity between two posts – Held – The Supreme Court observed that unless there is complete identity between two posts, the posts should not be treated as equivalent to claim parity of pay scale. The court was considering the appeal filed by the Punjab State Electricity Board (PSEB) wherein the issue was about parity in the pay scales of two posts Head Clerks and the Internal Auditors in Group XII of the Board. The high court had ruled that there ought to be parity.

Sushil Thomas Abraham vs. M/s Skyline Build: 2019 SCC OnLine SC 19: Dismissal of plaintiff's application to file suit as indigent person won't bar him from seeking permission to file appeal as indigent person–Held–Dismissal of application filed by a plaintiff under Order 33 Rule 1 of the Code of Civil Procedure (seeking permission to institute the suit as an indigent person) by the trial court in the earlier round of litigation is not a bar against the plaintiff to file an application/appeal under Order 44 Rule 1 of the Code and seek permission from the appellate court to allow him to file an appeal as an indigent person.

Management of Barara Cooperative Marketing-cum-Processing Society Ltd. vs. Workman Pratap Singh : 2019 SCC OnLine SC 1: Retrenched worker can't claim preference over regularised employee for re-employment under Section 25(H) of ID Act – Held – In the matter where an illegally terminated workman had sought reinstatement claiming preference over other persons being a “retrenched workman” as per Section 25(H) of the Industrial Disputes Act, 1947, Supreme Court held that it was not a case of a retrenchment of the respondent from service as contemplated under Section 25(H) of the ID Act as the workman had already accepted the compensation awarded to him in lieu of his illegal termination.

Union of India & Ors. vs. Krishna Kumar & Ors.: Civil Appeal No. 672 of 2019 (arising out of SLP (C) No.26451 of 2014): DoD 14.01.2019 (SC) – The Supreme Court reiterating the law held that there is no vested right to promotion, but only a right to be considered for promotion in accordance with the Rules which prevail on the date on which consideration for promotion takes place.

Prakash Chand Dagavs Saveta Sharma & Ors. : 2019 (1) RCR (CIVIL) 372 (SC)-Registered owner's liability to a third person – Held – The original owner petitioner who sold his Santro car to the respondent in this case is liable to third party till the vehicle is transferred in the name of transferee. It was observed by the Supreme Court that “*Even though in law*

there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person Merely because the vehicle was transferred does not mean that such registered owner stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person."

Urvashiben & Anr. vs. Krishnakant Manuprasad Trivedi : 2019 (1) RCR (CIVIL) 366 (SC) – Held – The respondent-plaintiff has filed suit for specific performance of the Agreement to Sell with regard to suit schedule property and the appellant-defendants have filed application under Order VII Rule 11(d) of the Code of Civil Procedure (CPC) to reject the plaint on the ground that suit is barred by limitation. The said application was contested by the respondent and trial court, allowed the application and rejected the plaint. The High Court in first appeal dismissed the appeal and appellant/defendant approached Apex Court and dismissing the appeal. It was observed by the court that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. Further, it was observed that at that stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in this case, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial.

Jarnail Singh & Anr. vs. Bhagwanti (D) through LRs. & Ors. : 2019 (1) RCR (CIVIL) 153 (SC) – Contradictions from recital of will – Held – The plaintiffs/ respondents in the appeal filed by the appellants/ defendants, based their claim in the suit on the ground that the suit land was inherited by them on the basis of succession. They are the grand-daughters whereas the defendants set up the will executed by the deceased in their favour who was the owner of suit land. The first appellate court reversed the judgment of trial court and dismissed suit but High court reversed the judgment. The Supreme Court dismissed the appeal and ignored will by holding that in this case the only attesting witness's evidence does not inspire confidence with regard to execution and genuineness of the Will. Further, it was observed that coupled with this, the evidence of defendant Jarnail Singh created all the more

cloud on the execution of Will. Jarnail Singh deposed that in lieu of services rendered by him testator executed the Will. The cross examination of Jarnail Singh reveals that he was in Army from the year 1960 to 1979, whereas the Will was executed in the year 1970 and it appears highly improbable that Jarnail Singh had an opportunity to render any service to testator of will and will was found to be suspicious.

Khodiyaar Rolling Mills vs. Paschim Gujarat Vij Company Ltd. : 2019 (1) RCR (CIVIL) 147 (SC) – Setting aside exparte money decree – Held – The application of appellant under Order 9 Rule 13 CPC was dismissed by the trial court as he had failed to explain the delay of about 21 months. The appellant on the directions deposited Rs.70 lakh with the respondent. It was observed by the Supreme Court while setting aside exparte decree that *"By order dated 8th January, 2015 this Court has directed the appellant to deposit a sum of Rs.70,00,000/- (Rupees Seventy Lakhs) with the respondent without prejudice to his contention. In compliance thereof, the appellant has deposited Rs.70,00,000/- (Rupees Seventy Lakhs) with the respondent. Since the appellant has shown his bonafide by depositing Rs.70,00,000/- (Rupees Seventy Lakhs), without going into the merits of the case, with a view to afford an opportunity of hearing to the appellant in the suit, the ex-parte decree (dated 17.4.2007) passed in Special Civil Suit NO.56 of 2006 is set aside and this appeal is allowed."*

Union of India vs. V.R. Tripathi : 2018 SCC OnLine SC 3097 : Children born out of void marriage are legitimate, compassionate appointment cannot be denied to them – Held – the Supreme Court held that benefit of compassionate appointment scheme cannot be denied to the children born out of a second marriage. It observed that, "The exclusion of one class of legitimate children from seeking compassionate appointment merely on the ground that the mother of the applicant was a plural wife of the deceased employee would fail to meet the test of a reasonable nexus with the object sought to be achieved. It would be offensive to and defeat the whole object of ensuring the dignity of the family of a deceased employee who has died in harness. It brings about constitutional discrimination between one class of legitimate beneficiaries/legitimate children."

LATEST CASES : CRIMINAL

“When young person is being processed correctionally, a sufficient restorative period to heal the psychic wounds is necessary.”

V.R. Krishna Iyer, J. in *Hiralal Mallick vs. State of Bihar*, (1977) 4 SCC 44

Ashish Jain vs. Makrand Singh : 2019 SCC OnLine SC 37 : (1) Involuntary statement leading to 'Section 27 Recovery' has no evidentiary value (2) Finger print evidence of accused taken without magistrate's order not illegal – **Held** – While dismissing appeal against High Court judgment acquitting the accused in a robbery and murder case, the Supreme Court has observed that there is no evidentiary value to an involuntary confessional statement made under undue pressure and compulsion from the investigating officer, even when it leads to the recovery of material objects in relation to a crime. The Supreme Court further observed that merely due to the absence of a magisterial order authorizing the police to obtain fingerprints of the accused, it cannot be held that the fingerprint evidence was illegally obtained. The High Court had found that the fingerprint evidence was illegally obtained by the police as there was no authorization of the same by the Magistrate. However, in the present case, the bench said that the absence of a magisterial order casts doubts on the credibility of the fingerprint evidence, especially with respect to the packing and sealing of the tumblers on which the fingerprints were allegedly found. The SC then upheld the High Court judgment discarding fingerprint evidence in this case.

State of Madhya Pradesh vs. Kalyan Singh : 2019 SCC OnLine SC 7 : **Criminal proceeding under Section 307 IPC can't be quashed on the basis of complainant and accused's settlement** – **Held** – Supreme Court set aside a High Court order that had quashed the criminal proceedings for the offences under Sections 307, 294 read with Section 34 of the IPC solely on the ground that the original Complainant and the accused have settled the dispute. The Court took note of the fact that not only the aforementioned offences were non-compoundable but also the allegations against the accused were “very serious” as allegedly the accused had fired twice on the complainant by a country made pistol and that one of the accused persons was reported to be a hardcore criminal having criminal antecedents.

Rajendra Pralhadrao Wasnik vs. State of Maharashtra : 2018 SCC OnLine SC 2799 : **Probability of reform and rehabilitation and not its possibility or impossibility to be considered before awarding death sentence** – **Held** – Supreme Court commuted the death sentence awarded to the review petitioner to life imprisonment. The petitioner was convicted under Sections 376(2)(f), 377 and 302 IPC for rape and murder of a 3- year old girl. He was awarded death sentence by the trial court which was confirmed by Bombay High Court. Aggrieved thereby, he preferred an appeal before the Supreme Court which was dismissed. Now, the petitioner was before the Court for review of its judgment dismissing his appeal.

The Court was concerned with the order of death sentence awarded to the petitioner and focused its discussion on certain points including:

Circumstantial evidence

According to the petitioner, the case was based on circumstantial evidence. The Court held, “ordinarily, it would not be advisable to award capital punishment in a case of circumstantial evidence. But there is no hard and fast rule.”

Reform, rehabilitation and re-integration into society

Harking back to *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684, the Court held that “*Bachan Singh* requires us to consider the probability of reform and rehabilitation and not its possibility or its impossibility. it is the obligation on the prosecution to prove to the court, through evidence, that the possibility is that the convict cannot be reformed or rehabilitated.”

DNA Evidence

The Court laid stress on the usefulness of the advanced scientific technology and advised the prosecution to take advantage of it in such cases as the present one and stated, “where DNA profiling has not been done or it is held back from the Trial Court, an adverse consequence would follow for the prosecution.”

Prior history of the convict or criminal antecedents

After considering various earlier decisions, the Court held that mere pendency of one or more criminal cases against a convict cannot be a factor for consideration while awarding sentence.

Narayan Malhari Thorat vs. Vinayak Deorao Bhagat : 2018 SCC OnLine SC 2571: Determining question of intention in case pending investigation while deciding application under Section 482 Cr.P.C not justified – Held – Supreme Court allowed an appeal filed against the judgment of Bombay High Court whereby it had quashed criminal proceedings instituted against the respondent.

According to the FIR for offence under Section 306 IPC, the daughter and son-in-law of the appellant were teachers in a village Zila Parishad School where the respondent was also a teacher. He used to call appellant's daughter on mobile and harass her. Despite efforts of his son-in-law, the respondent continued to call and harass the appellant's daughter. There was a verbal altercation between his son-in-law and the respondent after which the son-in-law committed suicide leaving behind a suicide note naming the respondent. The respondent approached the High Court under Section 482 Cr.P.C. seeking quashing of the FIR. Observing that prima facie the respondent did not have the intention to aid or instigate the deceased to commit suicide, the High Court quashed the FIR. Aggrieved thereby, the appellant preferred the present appeal by special leave.

The Supreme Court noted that there were definite allegations against the respondent which were supported by statement of witnesses as well as the suicide note written by the deceased. The Court was of the opinion that the High Court was not justified in entering into question whether the respondent had requisite intent to aid, instigate or abate the commission of suicide at the stage where the investigation was yet to be completed. The Court found merit in submissions of the appellant and set aside the judgment impugned. The appeal was allowed and the authorities concerned were directed to complete the investigation.

Neelam vs. State of Haryana : 2018 SCC OnLine P&H 2044 : Completion of investigation without considering outcome of Forensic Science Laboratory cannot be considered a fair investigation – Held – This petition was filed before Punjab and Haryana

High Court under Section 482 Cr.P.C for transfer of investigation of an FIR registered under Section 306 IPC.

Facts of the case were such that petitioner was the mother of deceased who filed an FIR for the murder of deceased but the same was registered under Section 306 IPC. Petitioner was aggrieved by the fact that the case was not being investigated. Thus, petitioner prayed for the investigation to get a transfer to an officer of the rank of Superintendent of Police outside the jurisdiction where it was earlier being investigated or hand over of the investigation to an independent agency. Whereas respondent contended that investigation was being done fairly with continuous status report filed by the investigating officer.

High Court observed that according to the status report the investigation was complete and allegations alleged was not proved as a consequence of which cancellation report was also prepared. Court noticed the fact that the FIR was registered under Section 306 IPC without taking into consideration the outcome of FSL examination. Therefore, Court said that it is in the interest of justice to transfer the investigation of the case to the Special Investigating Team (SIT) under the supervision of the Superintendent of Police.

Latesh @ Dadu Baburao Karlekar vs. State of Maharashtra : 2018 SCC OnLine SC 54 – Non-mentioning of accused's name in FIR not a ground to doubt its contents – Held – The SC made this observation while dealing with one of the contentions on the part of defence relying on the non-mentioning of names of the accused in FIR. The case relates to a murder incident that happened in the year 2006 and the high court had upheld the conviction of five accused in the case. The SC observed, "When a person gives a statement to the police officer, basing on which the FIR is registered the capacity of reproducing the things differs from person to person. Some people may have the ability to reproduce the things as it is, some may lack the ability to do so." Also, once the informant was out of shock, the supplementary statement was recorded, then he disclosed the names of the accused and attributed specific overt acts to each of the accused. The court upholding conviction of three of the appellants and acquittal of two added that FIR need not be an encyclopedia of the incident laying out miniscule details and instances of how the crime was committed.

LATEST CASES: ARMS ACT

“The court in undeserving cases cannot afford to be charitable in the administration of criminal justice which is so vital for peace and order in the society.”

K.N. Saikai, J. in *Lalji vs. State of U.P.*, (1989) 1 SCC 437

Mohmed Rafiq Abdul Rahim Shaikh vs. State of Gujarat : AIR 2018 SC 4292: Mere ownership of vehicle in which prohibited ammunitions are found won't attract conviction under Arms Act – Held – While acquitting an owner of a car in which prohibited ammunition was found, the Supreme Court has observed that it is necessary to prove that the accused was in conscious possession at some point in time before the discovery and retained control of the objects at the time of the recovery. The court observed that a person cannot be charged with the offences unless it can be shown that he had the knowledge that any sort of prohibited item was present in his car. In this case, the court noted that there is no evidence that the accused knew what the accused was carrying in the car or that he had kept the prohibited ammunition in the car. There is no evidence to establish the knowledge or even his consent.

Samir Ahmed Rafiq Ahmed Ansari vs. The State of Gujarat : 2018 (4) RCR (Criminal) 734 (SC) : Question for consideration in the present appeal was that what is the offence for which the Appellant is to be convicted for the possession of the country made pistol loaded with live cartridges and for possession of two other live cartridges – Held – Section 3 deals with licence for acquisition and possession of firearms and ammunition. As per Section 3(1) no person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds a licence issued in accordance with the provisions of the Arms Act and the Rules made thereunder. Contravention of Section 3 is punishable Under Section 25(1B) (a) with imprisonment for a term which shall not be less than one year but which may extend to three years and also be liable to fine. Both the Courts recorded concurrent findings that the Appellant was found in possession of country made pistol loaded with live cartridges and in possession of two other live cartridges which is clearly in violation of Section 3 of the Act. The appeal was filed by the appellant on the ground that

the conviction of the Appellant is not maintainable in view of **want of sanction Under Section 39 of the Arms Act** and it is not the case of the Appellant that he has a licence for possession of country made pistol. Thus accused is in possession of country made pistol without licence and he be punished under section 25(1B)(a) of Arms Act.

Sadhu Singh vs. State of Punjab: 2018 (4) RCR (Criminal) 567 (P&H): Merely because the petitioner was allegedly involved in the criminal case, his arms licence could not be suspended – Held – Arms licence which was granted to the petitioner was active in opposing terrorism (during the period of terrorism in State of Punjab). FIR was registered against the petitioner under various provisions of IPC but not under the provisions of Arms Act. The court observed that merely because the petitioner was allegedly involved in the criminal case, his arms licence could not be suspended and petition deserves to be allowed.

Sohanvir and Ors. vs. State of Haryana: 2018 (4) RCR (Criminal) 946 (P&H): While deciding a case much importance cannot be given to clerical errors. The accused cannot be allowed to take benefit of the any lapse on the part of ESAI on furnishing some wrong particulars in his affidavit – Held – Doctor observed that the cause of death was due to hemorrhage and shock following multiple fire arms injuries. All the injuries were antemortem and recent and sufficient to cause death in ordinary course of nature. He also handed over two metallic bullets recovered from the dead body to the police. Thus the deceased received four bullet injuries. The dimensions of the injury shows that two bullets are of the same bore, whereas two bullets are of different bore. Forensic evidence established that 7.65 mm cartridge was fired from pistol W2 recovered from 'R' and .38 bore cartridge was fired from revolver W1 recovered from 'S'. .38 bore revolver was recovered from 'S' and .32 bore Pistol was recovered from 'R'. Appellants disputed the veracity of the said report on the

ground that as per affidavit of Ex. P7, the said articles were handed over to him on 9.7.2007 and that he has deposited the case property with FSL on 9.7.2007. However, the court observed that much importance cannot be given to said error which appears to be a clerical one. The fact remains that the said parcels were received by FSL on 10.7.2007 with the seals intact. Further, the perusal of site plan as well as recovery memo shows that .38 bore revolver was never recovered by the police at the time of spot inspection on 5.6.2007. In fact .38 bore revolver along with three cartridges was recovered from Sohanvir @ Sonu on the basis of his disclosure statement later on after his arrest on 18.6.2007. It was thereafter that on 1.7.2007 that the revolver was taken from Maalkhana for examination by the Armourer. It appears that affidavit Ex. PW13/A is defective, in which in the parcel, .38 bore revolver had been wrongly mentioned, whereas as per recovery memo and site plan said revolver was not recovered on the day of crime. Therefore, the accused cannot be allowed to take benefit of the said lapse on the part of ESAI on furnishing some wrong particulars in his affidavit and the appeal was dismissed.

Sohan Pal @ Sonu vs. State of Haryana: 2018 (1) RCR (Criminal) 465 (P&H): When the deceased saw accused persons beating the driver of the mill, they fired at him. The eye witnesses, complainant and the other PW's failed to support the prosecution case. As per witness to recovery memo and disclosure statement, no public witness joined the investigation. Further, FSL report too failed to prove that fire arm injury to deceased was caused by country made pistol recovered from the accused by the police. Even prosecution failed to prove that any money was looted from driver or deceased or any other family member. Since the presence of all accused at the time of occurrence not proved, motive not proved, thus, conviction was set aside.

M.A. Latif Shahrear Zahedee vs. The State of Maharashtra and Ors. : 2018 (1) RCR (Criminal) 370 (Bombay) : Mere possession of the fire arm or ammunition would not constitute offence under Section 3 and 25 of

the Arms – Held – In the present case, the petitioner who is a foreigner came to India and travelled at various places in India for business purposes. Thereafter, while he was returning, at the Airport, when in his toilet kit pouch the live cartridges and one empty were found in his luggage, he called from his brother for the copies of arm licences. The said live cartridges and empty recovered from his toilet kit pouch were tallying with the description of the weapon of the rounds given in the arm licences of his brother. The F.I.R. as well as other material collected in the course of investigation revealed that apart from recovery of said cartridges and empty, there was no other material to show that the petitioner was in conscious possession thereof in his baggage. Thus, it cannot be said that the petitioner was in conscious possession of those live cartridges or that he had control over the same. The court under the circumstances and in view of the legal position set out above, observed that there was no sufficient material to proceed with the case against the petitioner for the offences punishable under Sections 3 and 25 of the Arms Act. It was also observed that, 'mere possession of the fire arm or ammunition would not constitute offence under Section 3 and 25 of the Arms. The essential requirement is the knowledge of possession or power or control over the arm or ammunition when not in actual possession.'

Anuj Kumar Gupta vs. Commissioner of Police, Navi Mumbai and Ors.: 2018 (1) RCR (Criminal) 98 (Bombay): Failure to establish threat to life can be no ground to reject the Arms licence – Held – The said petition was filed under Article 226 of the Constitution of India, whereby the Petitioner's application for grant of Arms License for self protection, as well as on family heirloom basis was rejected by the Senior Police Inspector, Licensing Branch of Police Commissioner, Navi Mumbai on the ground that the Petitioner failed to establish threat to his life. Court observed that the reason assigned that the Petitioner has failed to establish threat to his life has been recorded ignoring the material on record and moreover the said reason also cannot by itself be said to be sufficient to reject the application.

NOTIFICATIONS

Constitution (103rd Amendment) Act, 2019 enacted creating 10% additional reservation for economically weaker sections: The President on 12.01.2019 assented to the Constitution (One Hundred and Twenty fourth Amendment) Bill, 2019. The Constitution (One Hundred and Third Amendment) Act, 2019 shall come into force on the date the Central Government appoints through the official gazette. It was passed by the Rajya Sabha on 09.01.2019 as The Constitution (One Hundred and Twenty-fourth Amendment) Bill, 2019.

Highlights of the Act :

Amendment of Article 15: In Article 15 of the Constitution, after clause (5), the following clause shall be inserted, namely:

‘(6) Nothing in this article or sub-clause (g) of clause (1) of Article 19 or clause (2) of Article 29 shall prevent the State from making,-

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category.

Amendment of Article 16: In Article 16 of the Constitution, after clause(5), the following clause shall be inserted, namely:

“(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category.”

Explanation – For the purposes of Article 15 and Article 16, “economically weaker sections” shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

Bill to amend the Autism Act passed by Parliament [Highlights] : The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities (Amendment) Bill, 2018, was passed by both the houses in the Winter session of the Parliament, to further amend

the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

The Bill was passed to streamline the appointment and resignation of members of a trust which helps persons with disability to live independently.

Highlights :

The 1999 Act sets up a National Trust to enable persons with disability to live independently by:

(i) promoting measures for their protection in case of death of their parents, (ii) evolving procedures for appointment of their guardians and trustees, and (iii) facilitating equal opportunities in society.

Salient features of the Amendment :

- In Section 4 of the Principal Act of 1999 –
 - (a) in sub-section (1), the words “or until his successor shall have been duly appointed, whichever is longer” shall be *omitted*;
 - (b) after sub-section (1), the following sub-section shall be *inserted*, i.e.,
 - “(1A) The Central Government shall initiate the process for appointment of the Chairperson or Member, as the case may be, at least six months prior to the expiry of the term of office of such Chairperson or Member.”;
 - (c) in sub-section (3), the following proviso shall be *inserted*, i.e.,
 - “Provided that the Central Government may, in case of a casual vacancy in the office of the Chairperson, by order in writing, direct an officer of appropriate level, to perform the functions of the Chairperson until such vacancy is filled in.”
- In Section 5 of the principal Act, in sub-section (1), in the proviso, for the words “until the appointment of his successor is made by the Central Government”, the words “until his resignation is accepted by the Central Government” shall be substituted.
- Under the Act, the Chairperson and members of the Board of the National Trust can hold office for a term of 3 years from the date of their appointment or until their successors are appointed, whichever is longer. The Bill amends this provision to fix the tenure of the Chairperson and members of the Board to 3 years.

The Act states that if the Chairperson or members of the Board resign, they will continue in office until the appointment of their successor is made by the central government. The Bill amends this to allow the Chairperson or members of the Board to hold office till their resignation is accepted by the central government.

EVENTS OF THE MONTH

1. **Refresher-cum-Orientation Course for ADJs** from the States of Punjab and Haryana was organized on Jan. 12, 2019 to sensitize them with regard to Criminal Appeals and Common Lands. 68 ADJs from both the states were sensitized in the first two sessions on topics : East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 vis-a-vis Municipal Laws w.r.t. Village Common Lands-I&II. These two sessions were taken by the former Acting Chief Justice, Justice S.S. Saron of Punjab and Haryana High Court. The next two sessions were taken by Sh. H.S. Bhangoo, Faculty Member, CJA on Criminal Appeals : Decision Making and Judgment Writing Skills-I&II and Training on Practical Use of Computer in Courts.

2. **One Month Orientation Training Programme for ADJs (19) on promotion from the States of Punjab and Haryana and Four Months Orientation Training Programme for newly appointed ADJs(3) from the State of Haryana** commenced on Jan.14, 2019 at Chandigarh Judicial Academy. The Inaugural Address to both groups of ADJs was delivered by HMJ Daya Chaudhary, President, BOG, CJA. The Inaugural Address has been included in this issue of e-Newsletter. The programme for Promotee ADJs will conclude on Feb. 13, 2019. They were deputed for court placement at their respective places of posting during Jan. 28-30, 2019. The training programme for Direct ADJs will conclude on May 13, 2019.

3. **Ten Days Training Programme of Sixth Batch of 32 Public Prosecutors**, 30 from Punjab and 2 from Chandigarh was organized during Jan.15-25, 2019 at Chandigarh Judicial Academy. The training included four sessions of 1.15 hours per day. There were 39 sessions covering different aspects relevant for the Public Prosecutors regarding Criminal and Civil Matters: The Role of Prosecutor and the Constitution, Law on Bails- Regular and Anticipatory, Interpretation of Revenue Records & their Applicability in Cases-I&II, Protection against self Incrimination- Dimensions and Applicability, Examination of witnesses-Principles and Procedures, Sentencing Policy & Restitutive Justice- Legal and Procedural

Aspects-I&II, Suits against and by the Government – Legal implications, Law of Admissions and Confessions, Law of Custody during Investigation and special legislations, Process of Trial in Civil Cases-Best Practices, & Law on Amendments of Pleadings, Recent Changes in law-Substantive and Procedural, Compensation under MACT Act, Jurisprudence of Circumstantial Evidence, Determination of Compensation under Land Acquisition Act, Law Relating to Under Trials, Parole, Furlough & Pre Mature Release of Prisoners, Cordiality amongst Prosecutors, Police, Judiciary & District Administration, Child in Conflict with Law – Legal Rights and Protection, Role of Post-mortem in Aid of Justice, Mens-Rea Presumptions under NDPS Act & its constitutionality, Cyber Crime Parameters of Investigation-Challenge, Criminal Appeals & Revisions-Law and Procedure, Executions-Speedy & Expeditious Disposals, Medical Evidence-Legal Aspects, Ramifications of Personal Search under NDPS Act, Electronic Evidence Admissibility & Appreciation, Miscellaneous Applications under Civil Procedure Code, Prosecution Sanction for Public Servants, General Aspect of Service Law, Law on Constructive & Joint Criminal Liability, DNA Profiling & Evidence, Summoning of Additional Accused and Evidence – Legal Parameters, Awards under Arbitration & Reconciliation Act – Legal Issues, Legal Facets of Human Trafficking, Important Aspects in Checking of Challans by the Prosecutors, Access to Justice – Legal Aid Special Ref. to Kasab Case, Delays in Criminal Trials-Causes & Remedial Measures, Forensic Evidence – Legal Scenario. Besides the Faculty members, the sessions were taken by Dr. Balram K. Gupta, Director (Academics), Dr. K.P. Singh, DGP, Human Rights Commission, Haryana, Mr. Anil Malhotra, Advocate and Author, Dr. Krishan Viz, former Professor & Head, Department of Forensic Medicine and Toxicology, GMCH, Chandigarh, Dr. Devender Kumar (CFSL) and Dr. Anchal Dwivedi (CFSL). Ms. Shalini Singh Nagpal, Director (Administration) distributed the certificates and inter-acted with the participants. The training is imparted to enhance the capacity of Public Prosecutors to perform their duties effectively and efficiently. The training programme concluded on Jan. 25, 2019.

FORTHCOMING EVENTS

1. 60 Judicial Officers belonging to PCS (JB) have been selected. Accordingly, CJA is looking forward to this group of Trainee Judicial Officers (TJOs) in Feb. 2019 for one year Institutional / Foundation Training Programme. The training curri-culum has been structured on

PAN India basis with specific emphasis on practical component of the training.

2. Seventh Programme for the Public Prosecutors will also be organized during the month of Feb. 2019.